

Report of the Delegate to the General Manager of Fair Work Australia

Investigation into the National Office of the
Health Services Union under section 331 of the
Fair Work (Registered Organisations) Act 2009

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PART 1:

BACKGROUND AND

COMPLIANCE FRAMEWORK

Chapter 1 - Introduction

Structure of this Report

1. This Report is set out in five Parts:
 - a. Part 1 sets out information about the power of Fair Work Australia (**FWA**) to conduct an inquiry and investigation, a chronological history of the conduct of the inquiry and investigation by the Australian Industrial Registry (**AIR**) and FWA and extracts from legislation and the Rules of the Health Services Union (**HSU**);
 - b. Part 2 sets out matters relating to the conduct of Mr Craig Thomson while he was National Secretary of the HSU;
 - c. Part 3 sets out matters relating to conduct by:
 - i. the National Office reporting unit;
 - ii. Ms Kathy Jackson, the former National Assistant Secretary of the HSU;¹
 - iii. Mr Michael Williamson, National President of the HSU;
 - iv. Mr Iaan Dick, the former auditor of the National Office of the HSU, while Mr Thomson was National Secretary.
 - d. Part 4 sets out matters which I have considered in conducting my inquiry and investigation but regarding which I have not made findings of contravention; and
 - e. Part 5 sets out a list of all of my findings and my observations to the General Manager.

Definitions

2. Various terms are defined throughout this Report. A list of defined terms used in this report is as follows:

ABN	Australian Business Number
Aboutoun Catering	Aboutoun Catering North Sydney, which is identified in the website www.local.com.au as an Adult Service located at 5 Lavender St, Milsons Point, NSW 2061. See paragraphs 39 to 42 of chapter 6.
ACTU	Australian Council of Trade Unions
AEC	Australian Electoral Commission
AGS	Australian Government Solicitor

¹ Since Mr Thomson's resignation as National Secretary on 14 December 2007, Ms Jackson has been the National Secretary of the HSU.

AIR	Australian Industrial Registry as established by subsection 62(1) of the WR Act
ALP	Australian Labor Party
Amendment Act	<i>Workplace Relations (Registration and Accountability of Organisations) Act 2002</i>
<i>Anderson</i>	<i>Anderson v Johnson</i> (1990) 22 FCR 326
Annual leave period	The period during which Mr Thomson was on annual leave between 20 May 2004 and 24 June 2004
ANU	Australian National University
ASIC	Australian Securities and Investments Commission
ATM	Automatic teller machine
ATO	Australian Taxation Office
BAS	Business Activity Statement
BDO Kendalls	The accounting and auditing firm that was engaged by Slater & Gordon in undertaking an investigation that had been commissioned by the National Office following the Exit Audit.
BDO Kendalls Report	<p>The report produced by Slater & Gordon and BDO Kendalls entitled 'Report on suspected irregularities in the expenditure of the National Office of the Health Services Union 2002 - 2007'. The BDO Kendalls Report, which had been commissioned by the National Executive, was provided to the National Executive of the HSU in or around June 2009 at the conclusion of an investigation by Slater & Gordon and BDO Kendalls.</p> <p>A copy of the BDO Kendalls Report appears as Annexure J to this report.</p>
Boardroom of Melbourne	See paragraph 144 of chapter 6.
CA	<i>Corporations Act 2001 (Cth)</i>
CBA	Commonwealth Bank of Australia
CBA Mastercard	Mastercard accounts issued by the Commonwealth Bank of Australia
The Code	<i>Criminal Code Act 1995 (Cth)</i>
Confidential Model escorts	See paragraph 158 of chapter 6.
Council meeting minutes	<p>Minutes of a meeting of Sydney City Council held on 15 October 1997.</p> <p>See paragraph 101 of chapter 6.</p>

Credit cards	Credit cards the issuance of which was arranged for by the National Office of the HSU
Credit card statements	Mr Thomson's Diners Club statements and CBA Mastercard statements (as defined in paragraph 603 of chapter 6)
CS Diners	Criselee Stevens' Diners Club card. See the table at paragraph 175 of chapter 8.
DC	Diners Club
Defamation proceedings	Fairfax Media Publications Pty Limited (Fairfax) ats Craig Thomson, Supreme Court of New South Wales (proceedings number 56481/10)
Delegate	The Delegate to the General Manager of FWA to whom powers have been delegated under subsection 343A(3) of the RO Act.
DPP	Commonwealth Director of Public Prosecutions
Eight large travel transactions	See paragraph 640 of chapter 6
Electoral Act	<i>Electoral Act</i> 1918 (Cth)
EMC	Essential Media Communications
<i>Engineers</i>	<i>The Amalgamated Society of Engineers & Ors v Smith</i> (1913) 16 CLR 537
Exit Audit	An audit of the National Office reporting unit concerning the period during which Mr Thomson was National Secretary which was undertaken by Mr Iaan Dick, National Auditor of the HSU, and was provided by Mr Dick to the National Executive under cover of a letter dated 12 May 2008. A copy of the Exit Audit appears as Annexure I to this report.
Fairfax	Fairfax Media Publications Pty Limited
Fairfax litigation	Defamation proceedings that were issued by Mr Thomson in the Supreme Court of New South Wales against Fairfax Media Publications Pty Limited in matter number 56481/10. See the definition of 'defamation proceedings' above.
First meeting	A meeting of the committee of management of a reporting unit which must be held 'as soon as practicable' after the end of financial year and at which the committee of management must pass resolutions required by paragraph 17 of the first Reporting Guidelines/paragraph 25 of the second Reporting Guidelines. See paragraph 15 of chapter 2 for details of the committee of management statement and paragraphs 26 and 33 of chapter 2 regarding timeframes for compliance.

First Reporting Guidelines	Reporting Guidelines made by the Industrial Registrar on 20 June 2003 under section 255 of the RAO Schedule and which commenced on 1 July 2003
First subpoena	Subpoena served upon Mr Tim Lee, the General Manager of FWA, by Fairfax on 3 June 2010
Five remaining travel transactions	See paragraph 647 of chapter 6.
FOI	Freedom of information
Full report	The documents that constitute the 'full report' of a reporting unit are set out in paragraph 265(1)(a) of the RAO Schedule. See paragraph 19 and following of chapter 2.
FWA	Fair Work Australia as established under section 575 of the <i>Fair Work Act 2009</i> .
General Manager	The General Manager of FWA as established under section 656 of the <i>Fair Work Act 2009</i> .
Google maps	google.com.au/maps
GPFR	'General purpose financial report', the definition of which is set out in subsection 253(2) of the RAO Schedule. See paragraph 14 of chapter 2.
<i>Grimshaw</i>	<i>Re Grimshaw; Ex parte Australian Telephone and Phonogram Officers Association</i> (1986) 66 ALR 227
GST	Goods and services tax
HSUA	Health Services Union of Australia, being the name of the Union between 1 January 1991 and 4 September 2006.
HSU	Health Services Union, being the name of the Union from 4 September 2006.
IAS	Instalment Activity Statement
Incidental goods	Refer to the definition in paragraph 319 of Chapter 5.
Inquiry	In a letter dated 6 April 2009 the Industrial Registrar commenced an inquiry regarding the National Office reporting unit, its officials, employees and auditor under section 330 of the RAO Schedule. See paragraph 44 and 52 of chapter 1.
Industrial Registrar	The Industrial Registrar as appointed under subsection 67(1) of the WR Act

Investigation	<p>The investigation under section 331 of the RO Act that commenced on 26 March 2010 as to whether the provisions of Part 3 of Chapter 8 of the RAO Schedule, the Reporting Guidelines, the Rules of the Union or section 237 and sections 285-287 of the RAO Schedule have been contravened by the National Office and/or officials or employees of the National Office in relation to transactions occurring between 16 August 2002 and 1 March 2008 and record keeping, reporting and auditing issues arising from transactions during this period.</p> <p>See paragraph 104 of chapter 1.</p>
Investigation period	16 August 2002 to 1 March 2008
Keywed	<p>Keywed Pty Ltd, which is registered to John and Kati Traunwieser of 573A Elizabeth Street, Surry Hills NSW.</p> <p>See also 'Sydney Outcalls Network'.</p>
<i>Lewis</i>	<i>Lewis v Maynes</i> (1988) 27 IR 113
<i>Ludwig</i>	<i>Ludwig & Ors v Harris</i> (1991) 30 FCR 377
Magner	<i>E Magner, Joske's Law and Procedure at Meetings in Australia</i> , 10th edition, Lawbook Co, Sydney, 2007
MB Diners	<p>Matthew Burke's Diners Club card.</p> <p>See the table at paragraph 175 of chapter 8.</p>
MC	CBA Mastercard
The memoranda	22 memoranda dated between 28 April 2005 and 29 May 2006 have been provided by the HSU to FWA regarding amounts withdrawn as cash from Mr Thomson's CBA Mastercard and which he claimed as a 'business expense'
Miss Behaving	See paragraph 158 of chapter 6.
Modified RAO Schedule	<p>Powers of inquiry and investigation by the Industrial Registrar under sections 330 to 337 of the RAO Schedule as modified by Item 48 of the <i>Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002</i>.</p> <p>See paragraph 30 of chapter 1.</p>
<i>Morley</i>	<i>Morley & Ors v Australian Securities and Investments Commission</i> [2010] 247 FLR 140
MOU	<p>Memorandum of Understanding that was entered into between the HSU and Trade Union Training Australia dated 21 September 2005.</p> <p>See paragraphs 212 to 217 of chapter 7 on page 656.</p>
MYOB	'Manage Your Own Business' accounting and record keeping software.

National Auditor	The auditor of the National Office as appointed by the National Council or National Executive under Rule 35 of the Rules. While Mr Thomson was National Secretary the auditor of the National Office was Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd.
National Council	The National Council of the Union as established by Rule 20 of the Rules
National Executive	The National Executive of the Union as established by Rule 26 of the Rules
National Office	The reporting unit that exists by virtue of the operation of under subsection 242(5) of the RAO Schedule.
National Secretary	The National Secretary of the Union as established by Rule 32 of the Rules.
Nolta	Nolta Pty Ltd, which is identified in minutes of a City of Sydney council meeting as a 'brothel known as "Tiffanys"' and which operates at 99 Albion Street, Surry Hills NSW. See paragraph 103 of chapter 6.
NSW Branch	The New South Wales Branch of the (federally registered) HSU
NSW Union	The union known as 'Health Services Union' that is registered under the <i>Industrial Relations Act 1996</i> (NSW).
PAYG	'Pay as you Go' taxation
Pitt St Office	An office of the National Office that was opened at 803/70 Pitt Street, Sydney from (on or about) late 2005 or early 2006.
<i>Porter</i>	<i>Porter v Davis</i> (1989) 32 IR 110
Preliminary Findings	A term that is defined by Holding Redlich in their the submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) to refer to the alleged contraventions that were put to Mr Thomson in my letter of 12 December 2011 (FWA.018.0001).
Radio interview	On 1 August 2011 Mr Thomson participated in an on-air radio interview with Mr Michael Smith of Sydney radio station 2UE. See paragraph 18 of chapter 6.
RAO Regulations	<i>Workplace Relations (Registration and Accountability of Organisations) Regulations 2003</i>

RAO Schedule	<p>Schedule 1B (Registration and Accountability of Organisations) Schedule to the WR Act.</p> <p>This Schedule was subsequently renumbered as Schedule 1 with effect from 27 March 2006 as a result of the <i>Workplace Relations Amendment (Work Choices) Act 2005</i>.</p> <p>Extracts from the RAO Schedule are set out in chapter 2.</p>
<i>Re AWU</i>	<i>Re AWU</i> (1984) 11 IR 283
Red Rock	Red Rock Leisure Hotels
Registrar	Refers to Industrial Registrar, unless the context otherwise indicates.
Relevant Period	The period from on or about August 2002 to December 2007
reporting unit	<p>Under section 242 of the RAO Schedule, each of the branches of the Union is a separate reporting unit for the purposes of the RAO Schedule.</p> <p>By virtue of subsection 242(5) of the RAO Schedule, the National Office of the HSU is a separate reporting unit.</p> <p>See paragraphs 34 to 39 of chapter 1.</p>
Resignation date	The date of Mr Thomson's resignation as National Secretary on 14 December 2007.
RO Act	<i>Fair Work (Registered Organisations) Act 2009</i>
Rules	<p>The Rules of the Union from time to time as certified by the Deputy Industrial Registrar of the AIR (until 30 June 2009) or by the Delegate to the General Manager of FWA (from 1 July 2009).</p> <p>Extracts of Rules are set out in chapter 2.</p>
Schedule 1	See the definition of 'RAO Schedule'.
Schedule 1B	See the definition of 'RAO Schedule'.
Second subpoena	Subpoena served upon Mr Tim Lee, the General Manager of FWA, by Fairfax on 15 November 2010
September interview	A term that is defined by Holding Redlich in their submissions of 2 March 2012 (FWA.024.0002) on behalf of Mr Thomson as referring to the interview that I conducted with Mr Thomson on 15 September 2010.
SMH	Sydney Morning Herald newspaper
Second meeting	<p>A second meeting of either the committee of management or of members of a reporting unit at which the 'full report' must be presented.</p> <p>See paragraph 22 of chapter 2 regarding presentation of the full report to a meeting and paragraphs 26 and 33 of chapter 2 regarding timeframes for compliance.</p>

Second Reporting Guidelines	The first Reporting Guidelines (see definition above) were replaced by a subsequent set of Reporting Guidelines that were made on 12 October 2004 under section 255 of the RAO Schedule and which applied to each financial year of an organisation that started on or after 1 November 2004
Speech	A term that is defined by Holding Redlich in their submissions of 2 March 2012 (FWA.024.0002) on behalf of Mr Thomson as referring to Mr Thomson's first [maiden] speech given in the House of Representatives on 19 February 2008.
Sponsorship Agreement	An unsigned agreement entitled '2006 Central Coast Division of Rugby League - Major Sponsorship Contract' (HSUNO.018.0251) that was prepared by Sublime Marketing Innovations, Chittaway Bay, NSW, on behalf of the Central Coast Division of Rugby League and the Heath Services Union, Craig Thomson, National Secretary, Level 2 106-108 Victoria Street, Carlton South VIC. See paragraph 515 and following of chapter 7.
Staff Call	An escort agency. See paragraphs 113 to 116 of chapter 6.
Sydney Outcalls	Sydney Outcalls Network, an escort agency, the website of which is www.sydneyoutcalls.com . Sydney Outcalls' services are charged under the account name of Keywed. See paragraph 70 of chapter 6.
Tiffany's	An escort agency located at 99 Albion Street, Surry Hills NSW, the website of which is www.tiffanysgirls.com.au . See also 'Nolta'.
Timeline	A timeline of events that was attached as Annexure A to the submissions that were made by Holding Redlich on behalf of Mr Thomson on 2 March 2012 (FWA.024.0002)
TPCA	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>
TPCA Regulations	<i>Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009</i>
A Touch of Class	An escort agency operating at 377 Riley Street, Surry Hills NSW. See paragraphs 113 to 116 of chapter 6.
Union	The organisation of employees which was registered on 12 April 1911 and which was then known as 'The Hospital and Asylum Attendants and Employees' Union'.

Victorian Award	The <i>Health and Allied Services - Public Sector - Victorian Consolidated Award 1996</i> , being the award that applied to allied health professionals in the Victorian Public Health System while Mr Thomson was National Secretary.
Work Choices	<i>Workplace Relations Amendment (Work Choices) Act 2005</i> . Information regarding the HSU's response to the Work Choices legislation is set out at the beginning of chapter 7.
Wotif	An accommodation booking website at www.wotif.com.au
WR Act	<i>Workplace Relations Act 1996</i>
Young Blondes	See paragraph 158 of chapter 6.
The 14 large transactions	See paragraphs 616 of chapter 6
17 occasions	Trips 2, 4, 6, 11-13, 16, 18, 20, 22-23, 25, 28-29, 33 and 35 which are discussed at paragraphs 935 to 988 of chapter 5 and during which Mr Thomson's expenditure appears to have been excessive.
5% rule	See paragraphs 28 to 30 of chapter 2.
2007 Ruling	ATO's Taxation Ruling TD2007/21 (PUB.007.0002) which sets out the amounts that the Commissioner of Taxation considers are reasonable amounts for employees to claim for the 2007-08 income year in relation to claims made for (amongst other things) overseas and domestic travel allowance. See paragraphs 917 to 923 of chapter 5.

Interview and document references

3. Throughout this Report references are made in brackets to unique identification numbers of documents that are located in a Casebook database. Hyperlinks to electronic versions of these documents are highlighted in blue.
4. A very small number of documents have been redacted where those documents contain personal information that is not relevant to the Inquiry or Investigation (such as home telephone numbers, home addresses and, in one instance, a photograph) in order to protect that personal information.
5. The following table sets out the names and title of each person interviewed by FWA and dates of such interviews. Where references are made throughout this report to transcripts of those interviews, only the name of the witness and the paragraph reference is given in the body of the text. Paragraph references are prefaced by the letters 'PN' (paragraph number). The following table sets out document references for transcripts of interview:

	Position	Date of interview	Document reference
Iaan Dick	Former National Auditor	24 July 2009	WIT.DIC.002.0006
Kathy Jackson (1)	National Secretary	8 September 2009	WIT.JAC.002.0016
Iris Knight	Member of National Executive and National Trustee	1 March 2010	WIT.KNI.003.0001
Rosemary Kelly	Member of National Executive and Finance Committee	15 April 2010	WIT.KEL.004.0006
Belinda Ord (1)	Former National Office Finance Officer	4 May 2010	WIT.ORD.002.0001
Chris Brown	Member of National Executive	12 May 2010	WIT.BRO.002.0001
Criselee Stevens	Former National Office employee	18 May 2010	WIT.STE.004.0001
Matthew Burke	Former National Office employee	18 May 2010	WIT.BUR.003.0001
Nurten Ungun	Former National Office Administrative Assistant and Finance Officer	22 June 2010	WIT.UNG.003.0001
Karene Walton	Former National Office Co-ordinator, Organising and Training	22 July 2010	WIT.WAL.003.0001
Michael Williamson	National President	26 July 2010	WIT.WIL.003.0001
Craig Thomson	Former National Secretary	15 September 2010	WIT.THOMSON.001.0001
Belinda Ord (2)	Former National Office Finance Officer	18 February 2011	WIT.ORD.005.0006
Kathy Jackson (2)	National Secretary	11 April 2011	WIT.JAC.003.0036
Mark McLeay	HSU National Industrial Officer	20 May 2011	WIT.MCL.002.0001

Registration and structure of the Union

- On 12 April 1911 an association called 'The Hospital and Asylum Attendants and Employees' Union' (**the Union**) was registered as an organisation of employees in the State of Victoria under *The Commonwealth Conciliation and Arbitration Act 1904-1910*. Having already had various name changes, the name of the organisation was changed to 'Health Services Union of Australia' (**HSUA**) with effect

from 1 January 1991 as a result of the amalgamation of The Hospital Employees Federation of Australia and The Health and Research Employees' Association of Australia. The organisation's name was subsequently changed to 'Health Services Union' (**HSU**) with effect from 4 September 2006 as a result of the decision of Vice President Watson of the Australian Industrial Relations Commission on 29 August 2006.²

7. Registered organisations must have rules that make provision as required by the *Fair Work (Registered Organisations) Act 2009* (**the RO Act**).³ Particular requirements regarding the rules of registered organisations are set out in Part 2 of Chapter 6 of the RO Act and include provision for conditions of eligibility for membership of the organisation, powers and duties of committees of the organisation and its branches, the manner in which property of the organisation is to be controlled and its funds invested, the yearly or more frequent audit of accounts and the conditions under which funds may be spent.⁴ Rules must also provide for the election of officers by secret ballot.⁵
8. A registered organisation is a body corporate.⁶ Corporate status is conferred at the time of registration upon the 'organisation'. The organisation's internal structure, however, is a matter that is entirely at its own discretion, although it is common for organisations to be divided into branches.
9. When Mr Thomson became National Secretary, the Union's rules (**the Rules**) were set out in a rule book that had been certified on 24 May 2002. At that time and throughout the period in which Mr Thomson was National Secretary, Rule 48 provided that the Union was divided into 11 branches and that all of the members of the Union must be members of one of the Branches of the Union. With the exception of Victoria and Tasmania, there was one Branch in each State of Australia (with members in the Australian Capital Territory belonging to the New South Wales Branch (see Sub-rule 48(l)) and members in the Northern Territory belonging to the South Australian Branch (see Sub-rule 48(m)). There were five Branches in Victoria and two branches in Tasmania, with membership of those branches being determined within each State on an occupational basis.

² See matter number D2006/5 and the decision in print number PR973803.

³ See subsection 140(1) of the RO Act. The equivalent provision in August 2002 was set out in subsection 194(1) of the *Workplace Relations Act 1996*.

⁴ See, for example, subsection 141(1) of the Act.

⁵ See Division 2 of Part 2 of Chapter 6 of the Act.

⁶ When Mr Thomson became National Secretary on 16 August 2002 the relevant provision was section 192 of the *Workplace Relations Act 1996*. With subsequent legislative changes, corporate status was granted by section 27 of Schedule 1B to the *Workplace Relations Act 1996* and under the current legislative scheme is granted by section 27 of the *Fair Work (Registered Organisations) Act 2009*.

10. An annual return of information (FWA.004.0194) that was signed by the former National Secretary, Mr Rob Elliott, on 30 July 2002 and that was lodged with the AIR under subsection 268(3) of the *Workplace Relations Act* 1996 (**WR Act**) on 2 August 2002 stated that the total number of members of the Union was 61,279. Membership of the branches was divided up as follows

Victoria No.1 Branch	10,150	Tasmania No.1 Branch	7,200
Victoria No.2 Branch	5,012	Tasmania No.2 Branch	60
Victoria No.3 Branch	2,856	Western Australia No.3 Branch	3,004
Victoria No.4 Branch	1,772	South Australia Branch	301
Victoria No.5 Branch	684	Queensland Branch	161
New South Wales Branch	30,079		

11. The number of members of the Union increased while Mr Thomson was National Secretary. An annual return of information that was lodged with the AIR on 13 May 2010 (FWA.004.0026) states that the number of members of the Union as at 31 December 2007 was 76,387 with membership being divided up as follows:

Victoria No.1 Branch	14,791	Tasmania No.1 Branch	7,423
Victoria No.2 Branch	5,876	Tasmania No.2 Branch	40
Victoria No.3 Branch	3,674	Western Australia Branch	4,350
Victoria No.4 Branch	2,461	South Australia Branch	630
Victoria No.5 Branch	753	Queensland Branch	263
New South Wales Branch	36,126		

12. At a national level, the supreme governing body of the Union is the National Council, which has the management and control of the affairs of the Union.⁷ When Mr Thomson first became National Secretary, the Rules provided that National Council would meet biennially in the month of October in even years. From 30 March 2006 this rule was altered to require National Council to meet annually in the month of September, October or November. In between meetings of National Council, the National Executive (which, since rule alterations that were certified on 30 March 2006, is required to meet at least three times per year) has power to conduct and manage the affairs of the Union.⁸
13. In between meetings of National Executive, the Rules charge the National Secretary and the National President, in particular, with managing the Union's affairs. The National Secretary has the conduct and control of the business of the Union between

⁷ See extracts of the Rules under the heading National Council on page 81.

⁸ See detailed information in chapter 2 under the heading Duties of National Council and National Executive.

meetings of National Executive⁹ while the National President is required to see that the Rules are 'rigidly adhered to'.¹⁰

Appointment of National Secretaries of the Union

14. Mr Thomson's predecessor as National Secretary was Mr Rob Elliott. A special transitional rule for election of officers of the Union (Rule 29A) had provided for the creation of a National Electoral Council in 2000 which comprised the officers of the Union and branch delegates (and, in some cases, special branch delegates) to National Council. The Rules required the National Electoral Council to meet in October 2000.¹¹
15. National Officers of the Union (including the National Secretary) were elected by secret postal ballot of members of the National Electoral Council in 2000. Those officers took up office from completion of the biennial meeting of National Council in 2000 and held office for a period of four years.¹²
16. Alterations to the Rules were certified on 17 January 2001 for the purpose of synchronising elections across the Union in 2006. A new Rule 74 - *Special Rule for Synchronisation of Elections* provided that officers of the Union who were elected in 2004 would hold office for two years¹³ from completion of the biennial National Council meeting in 2004. An ordinary election (for a four year term) would then take place in 2006 in accordance with the ordinary provisions of the Rules.¹⁴
17. Mr Thomson was appointed by National Council on 23 July 2002 as National Secretary with effect from 16 August 2002 (HSUNO.023.0298; HSUNO.023.0195; HSUNO.023.0033) as a result of the resignation of Mr Rob Elliott as National Secretary.
18. In the 2004 elections Mr Thomson was declared elected unopposed as National Secretary of the Union on 12 October 2004 (E2004/215 - FWA.010.0002). Mr Thomson held office for a term of two years (as provided for in Rule 74) until a further election for National Officers in 2006. On 4 September 2006 Mr Thomson was again declared elected unopposed as National Secretary (E2006/127 - PUB.011.0001). Mr Thomson's term of office as National Secretary was four years.¹⁵
19. The minutes of the National Executive meeting held on 6 December 2007 (HSUNO.024.0014) note that Mr Thomson's resignation from the position of National Secretary was to take effect from the declaration of the poll in the NSW seat of Dobell. The minutes also record that the National Executive:
 - a. appointed Kathy Jackson to act as National Secretary from the declaration of the poll in Dobell until an appointment to fill the casual vacancy in the office was made; and

⁹ Sub-rule 32(n)

¹⁰ Rule 30.

¹¹ Sub-rule 29A(c).

¹² Sub-rule 29A(g).

¹³ Sub-rule 74(d)(i)

¹⁴ Sub-rule 74(d)(ii).

¹⁵ Rule 29B(a)(i)

- b. appointed Natalie Bradbury to fill the office of Senior National Assistant Secretary on a full time paid basis from the declaration of the poll in Dobell until an appointment to fill the casual vacancy in the office was made.
20. The minutes also record that questions be submitted to a postal ballot of National Council that both Ms Jackson and Ms Bradbury be appointed to fill those respective casual vacancies. However the minutes for the National Executive phone conference held on 14 December 2007 (HSUNO.025.0012) record that these motions were all rescinded. Mr Williamson then informed the meeting that Mr Thomson had advised of his resignation to take effect from the declaration of the poll by the AEC later that morning. The minutes record that resolutions were then passed again appointing Ms Jackson and Ms Bradbury to act in the positions of National Secretary and Senior National Assistant Secretary respectively until an appointment to fill any casual vacancy in that office can be made, and again submitting to a postal ballot of National Council that both Ms Jackson and Ms Bradbury be appointed to fill those respective casual vacancies. The minutes also note that the National Assistant Secretary's salary was 80% of \$154,537.07 as at 13 November 2007.
21. The minutes of this meeting also record that Mr Thomson announced (at the end of the meeting) that his election to the seat of Dobell had just been declared.
22. Minutes of a National Executive teleconference on 23 January 2008 (HSUNO.025.0018) record the unanimous carriage by acclamation of the resolution that:
 - National Executive congratulates Kathy Jackson and Natalie Bradbury on becoming the National Secretary and Senior National Assistant Secretary. Executive noted that they are the first women to hold full-time National offices in the HSU.

The power under which the AIR and FWA can conduct inquiries and investigations

The Workplace Relations Act - August 2002

23. When Mr Thomson first assumed office as National Secretary of the HSUA on 16 August 2002 obligations with respect to financial records, accounting and auditing of registered organisations were set out in Division 11 of Part IX of the WR Act. Included in that Division were powers of the Industrial Registrar to conduct investigations under sections 280 and 280A of the WR Act.
24. Subsection 280(1) of the WR Act required a registered organisation to lodge a copy of its financial report annually with the AIR. The Industrial Registrar was empowered by subsection 280(2) to conduct an investigation where the documents that had been lodged contained an auditor's report setting out 'particulars of a deficiency, failure or shortcoming' or where, for any other reason, the Industrial Registrar considered that 'a matter revealed in the documents should be investigated'.

25. Further powers of investigation were set out in section 280A of the WR Act:
- 280A A Registrar may, in the circumstances set out in the regulations, of if the Registrar is otherwise satisfied that there are reasonable grounds for doing so, investigate whether:
- (a) the accounts of an organisation contain any deficiency, failure, or shortcoming; or
 - (b) a provision of this Division has been contravened; or
 - (c) a regulation made for the purposes of this Division has been contravened; or
 - (d) a rule of an organisation relating to its finances or financial administration has been contravened.
26. Under section 280B of the WR Act, a Registrar had powers to require production by current and former officers, employees and auditors of information and documents that are relevant to an investigation, as well as being able to require attendance before the Industrial Registrar to answer questions. At the conclusion of an investigation, the Industrial Registrar was required by subsection 280B(3) of the WR Act to notify the registered organisation of any contravention of the WR Act or of a rule of the registered organisation.

The RAO Schedule - from 12 May 2003

27. The WR Act was amended by the *Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002 (the Amendment Act)*, which commenced on 12 May 2003. Under the amendments, requirements with respect to financial records, accounting and auditing were set out in Part 3 of Chapter 8 of a separate schedule to the WR Act. At that point in time the schedule was known as 'Schedule 1B - Registration and Accountability of Organisations' (**RAO Schedule**). The numbering of Schedule 1B was, however, changed to Schedule 1 to the WR Act with effect from 27 March 2006 as a result of the *Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices)*.¹⁶ The re-numbering of the RAO Schedule from Schedule 1B to Schedule 1 did not affect the provisions that were contained within the RAO Schedule.
28. While the RAO Schedule commenced on 12 May 2003, transitional provisions¹⁷ provided that Part 3 of Chapter 8 of the RAO Schedule applied to each financial year of an organisation that started on or after the commencement of the Reporting Guidelines¹⁸ on 1 July 2003.¹⁹ Sub-rule 36(f) of the HSU Rules provides that the financial year of the Union shall end on 30th June in each year. As a result, the effect of the transitional provisions is that Part 3 of Chapter 8 of the RAO Schedule applied to each financial year of the HSU National Office from 1 July 2003 onwards.

¹⁶ See Item 2 of Schedule 5.

¹⁷ Transitional provisions are set out in the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

¹⁸ Item 44 of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

¹⁹ The Reporting Guidelines that were made by the Industrial Registrar under section 255 of the RAO Schedule were published in the Commonwealth Notices Gazette on 25 June 2003. Paragraph 4 of the Guidelines provided that they apply to each financial year of an organisation that starts on or after 1 July 2003.

Division 11 of Part IX of the WR Act continued to apply to the financial year that ended on 30 June 2003.²⁰

29. In considering the requirements that applied to the National Office, its officers and employees from time to time, the effect of the introduction of the Amendment Act was that they were bound by:
- a. the Rules of the Union at all times;
 - b. Division 11 of Part IX of the WR Act until 30 June 2003;
 - c. Part 3 of Chapter 8 of the RAO Schedule from 1 July 2003; and
 - d. Other provisions of the RAO Schedule, including civil penalty provisions set out in sections 285 to 287, from their commencement on 12 May 2003.

Transitional Provisions - inquiries and investigations into conduct prior to 1 July 2003

30. Powers of inquiry and investigation concerning conduct prior to 1 July 2003²¹ that may have contravened:
- a. Division 11 of Part IX of the WR Act; or
 - b. the Rules of the Union;

were conferred upon the Industrial Registrar by transitional provisions. Those powers were as set out under sections 330 to 337 of the RAO Schedule as modified by Item 48 (**the modified RAO Schedule**) of the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

31. The modified RAO Schedule relevantly provided:

330 Registrar or staff may make inquiries

- (1) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether the following are being complied with:
 - (a) Division 11 of Part IX of the Workplace Relations Act as in force immediately before commencement;
 - (b) regulations made for the purposes of that Division;
 - (c) rules of an organisation relating to its finances or financial administration.
- (2) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether a civil penalty provision (see section 305) has been contravened.
- (3) The person making the inquiries may take such action as he or she considers necessary for the purposes of making the inquiries. However, he or she cannot compel a person to assist with the inquiries under this section.

²⁰ Item 3 of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

²¹ If an investigation had already commenced under sections 280 or 280A of the WR Act before 12 May 2003, that investigation continued under Item 47(2) of the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

331 Registrar may conduct investigations

- (1) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether:
 - (a) a provision of Division 11 of Part IX of the Workplace Relations Act as in force immediately before commencement has been contravened; or
 - (b) a regulation made for the purposes of that Division has been contravened; or
 - (c) a rule of an organisation relating to its finances or financial administration has been contravened.
- (2) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether a civil penalty provision (see section 305) has been contravened.
- (3) A Registrar may also conduct an investigation in the circumstances set out in the regulations.
- (4) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1) or (2), a Registrar forms the opinion that there are grounds for investigating the finances or financial administration of the organisation, the Registrar may make the further investigation.
- (5) An investigation may, but does not have to, follow inquiries under section 330.

...

335 Conduct of investigations

- (1) This section applies to:
 - (a) a designated officer or employee of the organisation concerned; and
 - (b) a former designated officer or employee of the organisation; and
 - (c) a person who held the position of auditor of the organisation during the period that is the subject of the investigation;if a Registrar has reason to believe that the person:
 - (d) has information or a document that is relevant to the investigation; or
 - (e) is capable of giving evidence which the Registrar has reason to believe is relevant to the investigation.
- (2) For the purpose of making an investigation, the Registrar may, by written notice, require the person:
 - (a) to give to the Registrar, within the period (being a period of not less than 14 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the person; and
 - (b) to produce or make available to the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access; and
 - (c) to attend before the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, to answer questions relating to matters relevant to the investigation, and to produce to the

Registrar all records and other documents in the custody or under the control of the person relating to those matters.

- (3) A notice requiring a person to attend must state that the person may be accompanied by another person. The other person may be, but does not have to be, a lawyer.

336 Action following an investigation

- (1) If, at the conclusion of an investigation, the Registrar who conducted the investigation is satisfied that the organisation concerned has contravened:

- (a) a provision of Division 11 of Part IX of the Workplace Relations Act as in force immediately before commencement; or
- (b) a provision of the regulations; or
- (c) a rule of the organisation relating to the finances or financial administration of the organisation;

the Registrar must notify the organisation accordingly.

- (2) In addition to taking action under subsection (1), the Industrial Registrar may do either or both of the following:

- (a) issue a notice to the organisation requesting that the organisation 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 Director of Public Prosecutions for action in relation to possible criminal offences.

Inquiries and investigations under the RAO Schedule

32. The RAO Schedule commenced on 12 May 2003. Powers of inquiry and investigation were conferred upon the Industrial Registrar by Part 4 of Chapter 11 of the RAO Schedule²²:

- a. From 1 July 2003 with respect to conduct that may have contravened Part 3 of Chapter 8 of the RAO Schedule (including the reporting guidelines made under that Part and the regulations made for the purposes of that Part);
- b. From 1 July 2003 with respect to conduct that may have contravened the Rules of the Union; and
- c. From 12 May 2003 with respect to conduct that may have contravened the newly introduced civil penalty provisions of the RAO Schedule (as set out in section 305 of the RAO Schedule), including general duties in relation to the financial management of organisations that are placed upon officers of registered organisations by sections 285 to 287 of the RAO Schedule.

33. Powers of inquiry and investigation that were set out in Part 4 of Chapter 11 of the RAO Schedule were as follows:

²² See Item 49 of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

Part 4—Inquiries and investigations

330 Registrar or staff may make inquiries

- (1) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether the following are being complied with:
 - (a) Part 3 of Chapter 8;
 - (b) the reporting guidelines made under that Part;
 - (c) regulations made for the purposes of that Part;
 - (d) rules of a reporting unit relating to its finances or financial administration.
- (2) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether a civil penalty provision (see section 305) has been contravened.
- (3) The person making the inquiries may take such action as he or she considers necessary for the purposes of making the inquiries. However, he or she cannot compel a person to assist with the inquiries under this section.

331 Registrar may conduct investigations

- (1) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether:
 - (a) a provision of Part 3 of Chapter 8 has been contravened; or
 - (b) the reporting guidelines made under that Part have been contravened; or
 - (c) a regulation made for the purposes of that Part has been contravened; or
 - (d) a rule of a reporting unit relating to its finances or financial administration has been contravened.
- (2) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether a civil penalty provision (see section 305) has been contravened.
- (3) A Registrar may also conduct an investigation in the circumstances set out in the regulations.
- (4) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1) or (2), a Registrar forms the opinion that there are grounds for investigating the finances or financial administration of the reporting unit, the Registrar may make the further investigation.
- (5) An investigation may, but does not have to, follow inquiries under section 330.

332 Investigations arising from auditor's report

- (1) Subject to subsection (2), a Registrar must:
 - (a) where the documents lodged in the Industrial Registry under section 268 include a report of an auditor setting out any:
 - (i) defect or irregularity; or
 - (ii) deficiency, failure or shortcoming; and
 - (b) where for any other reason the Registrar considers that a matter revealed in the documents should be investigated—investigate the matter.

- (2) The Registrar is not required to investigate the matters raised in the report of the auditor if:
 - (a) the defect, irregularity, deficiency, failure or shortcoming consists solely of the fact that the organisation concerned has kept financial records for its membership subscriptions separately on a cash basis as provided in subsection 252(4); or
 - (b) after consultation with the reporting unit and the auditor, the Registrar is satisfied that the matters are trivial or will be remedied in the following financial year.
- (3) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1), a Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the reporting unit, the Registrar may make the further investigation.

333 Investigations arising from request from members

- (1) Where documents have been lodged in the Industrial Registry under section 268, at least:
 - (a) if the reporting unit has more than 5,000 members—250 members; or
 - (b) in any other case—5% of the members of the reporting unit;may request a Registrar to investigate the finances and the financial administration of the reporting unit.
- (2) On receipt of a request under subsection (1), a Registrar must investigate the finances and the financial administration of the reporting unit concerned. The Registrar, in conducting the investigation, is not limited to the most recent financial year for which documents have been lodged and may investigate years for which documents are yet to be lodged.
- (3) Where the Registrar receives more than one request in relation to a reporting unit during a financial year, the Registrar is only required to conduct one investigation but may conduct more than one investigation.

334 Investigations arising from referral under section 278

If a matter is referred to the Industrial Registrar under section 278, the Industrial Registrar must ensure that a Registrar conducts an investigation.

335 Conduct of investigations

- (1) This section applies to:
 - (a) a designated officer or employee of the reporting unit concerned; and
 - (b) a former designated officer or employee of the reporting unit; and
 - (c) a person who held the position of auditor of the reporting unit during the period that is the subject of the investigation;if a Registrar has reason to believe that the person:
 - (d) has information or a document that is relevant to the investigation; or
 - (e) is capable of giving evidence which the Registrar has reason to believe is relevant to the investigation.

- (2) For the purpose of making an investigation, the Registrar may, by written notice, require the person:
 - (a) to give to the Registrar, within the period (being a period of not less than 14 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the person; and
 - (b) to produce or make available to the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access; and
 - (c) to attend before the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, to answer questions relating to matters relevant to the investigation, and to produce to the Registrar all records and other documents in the custody or under the control of the person relating to those matters.
- (3) A notice requiring a person to attend must state that the person may be accompanied by another person. The other person may be, but does not have to be, a lawyer.

336 Action following an investigation

- (1) If, at the conclusion of an investigation, the Registrar who conducted the investigation is satisfied that the reporting unit concerned has contravened:
 - (a) a provision of Part 3 of Chapter 8; or
 - (b) the reporting guidelines; or
 - (c) a provision of the regulations; or
 - (d) a rule of the reporting unit relating to the finances or financial administration of the reporting unit;the Registrar must notify the reporting unit accordingly.
- (2) In addition to taking action under subsection (1), the Industrial Registrar 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 Director of Public Prosecutions for action in relation to possible criminal offences.

Note: In appropriate circumstances, the Registrar may also make a determination in accordance with section 247 (determination of reporting units).

- (3) The Registrar may, on application by the reporting unit, extend any periods specified in the notice issued under subsection (2).
- (4) The reporting unit must comply with the request made in the notice issued under subsection (2).
- (5) The Federal Court may, on application by the Registrar, make such orders as the Court thinks fit to ensure that the reporting unit complies with subsection (4).

337 Offences in relation to investigation by Registrar

- (1) A person commits an offence if:
- (a) the person does not comply with:
 - (i) a requirement under subsection 335(2) to attend before a Registrar; or
 - (ii) a requirement under subsection 335(2) to give information or produce a document; or
 - (b) the person gives information, or produces a document, in purported compliance with a requirement under subsection 335(2), and the person knows, or is reckless as to whether, the information or document is false or misleading; or
 - (c) when attending before a Registrar in accordance with a requirement under subsection 335(2), the person makes a statement, whether orally or in writing, and the person knows, or is reckless as to whether, the statement is false or misleading.
- Maximum penalty: 30 penalty units.
- (2) Strict liability applies to paragraph (1)(a).
- Note: For **strict liability**, see section 6.1 of the *Criminal Code*.
- (3) Paragraph (1)(a) does not apply if the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- (4) A person is not excused from giving information, or producing a document, that the person is required to give or produce under subsection 335(2) on the ground that the information, or the production of the document, might tend to incriminate the person or expose the person to a penalty.
- (5) However:
- (a) giving the information or producing the document; or
 - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;
- is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, paragraph (1)(b) or (c).

Reporting Units

34. Under Division 11 of Part IX of the WR Act, financial reporting obligations had been placed upon the registered organisation. Section 271 of the WR Act further provided that, where an organisation was divided into branches, Division 11 of Part IX applied as if each of the branches were an organisation itself.
35. A number of the provisions in Part 4 of Chapter 11 of the RAO Schedule refer to a 'reporting unit' - see, for example, paragraphs 330(1)(d) and 331(1)(d) and subsections 331(4) and 333(1). In a departure from the regulatory scheme under the WR Act previously, the RAO Schedule introduced the concept of 'reporting units'. Part 3 of Chapter 8 of the RAO Schedule places obligations upon 'reporting units' to keep proper financial records and to prepare a general purpose financial report

(**GPFR**) from those records. The reporting unit must also prepare an Operating Report. Once the financial report has been audited, the reporting unit must provide it to members and present it to a meeting before lodging it with the AIR.

36. 'Reporting units' are determined under section 242 of the RAO Schedule. Where an organisation is divided into branches, each branch is a separate reporting unit:

242 What is a reporting unit?

- (1) The requirements of this Part apply in relation to reporting units. A reporting unit may be the whole of an organisation or a part of an organisation.

Organisations not divided into branches

- (2) Where an organisation is not divided into branches, the **reporting unit** is the whole of the organisation.

Organisations divided into branches

- (3) Where an organisation is divided into branches, each branch will be a **reporting unit** unless a certificate issued by the Industrial Registrar stating that the organisation is, for the purpose of compliance with this Part, divided into reporting units on an alternative basis (see section 245) is in force.

...

- (5) For the purposes of this Part, so much of an organisation that is divided into branches as would not, apart from this subsection, be included in any branch, is taken to be a branch of the organisation.

37. Provisions concerning the membership of a reporting unit are set out in section 244 of the RAO Schedule:

244 Members, staff and journals etc. of reporting units

- (1) For the purposes of the application of this Part in relation to a reporting unit that is the whole of an organisation:
- (a) the members of the organisation are taken to be members of the reporting unit; and
 - (b) employees of the organisation are taken to be employees of the reporting unit; and
 - (c) the rules of the organisation are taken to be the rules of the reporting unit; and
 - (d) the financial affairs and records of the organisation are taken to be the financial affairs and records of the reporting unit; and
 - (e) conduct and activities of the organisation are taken to be conduct and activities of the reporting unit; and
 - (f) a journal published by the organisation is taken to be a journal published by the reporting unit.

- (2) For the purposes of the application of this Part in relation to a reporting unit that is not the whole of an organisation:
- (a) the members of the organisation constituting the branch or branches that make up the reporting unit are taken to be members of the reporting unit; and
 - (b) employees of the organisation employed in relation to the branch or branches that make up the reporting unit (whether or not they are also employed in relation to any other branch) are taken to be employees of the reporting unit; and
 - (c) if the reporting unit consists of one branch—the rules of the branch are taken to be the rules of the reporting unit; and
 - (d) if the reporting unit consists of more than one branch—the rules of the branches (including any rules certified under section 246, or determined under section 247, for the purpose of giving effect to the establishment of the reporting unit) are taken to be the rules of the reporting unit; and
 - (e) the financial affairs and records of the branch or branches that make up the reporting unit are taken to be the financial affairs and records of the reporting unit; and
 - (f) conduct and activities of the branch or branches that make up the reporting unit are taken to be conduct and activities of the reporting unit; and
 - (g) if the reporting unit consists of one branch—a journal published by the branch is taken to be a journal published by the reporting unit; and
 - (h) a journal published by the organisation is taken to be a journal published by the reporting unit.

...

38. Subsection 242(5) has the effect of making the National Office of the HSU a separate reporting unit for the purpose of Part 3 of Chapter 8 and Part 4 of Chapter 11 of the RAO Schedule.
39. Throughout this Report, the reporting unit which is the National Office of the HSU is referred to as '**the National Office**'.

The *Fair Work (Registered Organisations) Act 2009* - from 1 July 2009

40. With legislative changes that commenced on 1 July 2009, all of the provisions of the WR Act, with the exception of Schedules 1 (the RAO Schedule) and 10, were repealed and the WR Act was renamed the *Fair Work (Registered Organisations) Act 2009*.
41. From 1 July 2009 the new statutory body of Fair Work Australia was created. Although the AIR continued until 31 December 2009 in order to complete residual functions, most of the statutory functions that had previously been carried out by the AIR and by the Industrial Registrar were transferred to FWA and to its General Manager respectively from 1 July 2009.

42. Under transitional provisions, a document that had been lodged with the AIR under, or for the purposes of, a provision of the RAO Schedule (including financial and other documents that were lodged with the AIR by registered organisations) has effect after 1 July 2009 as if it had been lodged with FWA.²³
43. Since the RAO Schedule was not repealed, the provisions set out in sections 330 to 337 of the RAO Schedule with respect to inquiries and investigations continued from 1 July 2009²⁴ but with the following substitutions:

Term in RAO Schedule	Substituted Term
Industrial Registry or Australian Industrial Registry	Fair Work Australia or FWA
Industrial Registrar	the General Manager
a Registrar	the General Manager
a Registry official	the General Manager

44. All of the conduct that is the subject of this Report occurred prior to 1 July 2009 when requirements with respect to financial records, accounting and auditing were set out in the RAO Schedule. As set out below, the Industrial Registrar had commenced an inquiry under section 330 of the RAO Schedule into the National Office of the HSU on or about 6 April 2009 (**the Inquiry**).
45. Conduct that occurred prior to 1 July 2009 is dealt with by FWA in accordance with the processes contained in the RO Act. Transitional provisions²⁵ provide that the WR Act continues to apply, on and after 1 July 2009, in relation to conduct that occurred prior to 1 July 2009. To avoid doubt, however, regulation 5.11 of the *Fair Work (Transitional Provisions and Consequential Amendments Regulations 2009 (TPCA Regulations))* provides that such transitional provisions do not apply to the RAO Schedule, which was not repealed.
46. The Explanatory Statement to the TPCA Regulations explains the effect of regulation 5.11:
85. The effect of this regulation is to clarify that, from 1 July 2009, pre-repeal day conduct relating to Schedule 1 or Schedule 10 to the WR Act will be dealt with in accordance with the processes and institutions contained in the *Fair Work (Registered Organisations) Act 2009*. For example, from 1 July 2009, investigations under section 331 of Schedule 1 to the WR Act into the pre-repeal day conduct of an organisation will be conducted by the General Manager of FWA and not the Industrial Registrar.
47. As a result, the Inquiry that commenced under the RAO Schedule was continued by the General Manager of FWA under section 330 of the RO Act on and from 1 July 2009.

²³ See Item 621 of Schedule 22 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

²⁴ See Items 539 to 567 of Schedule 22 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

²⁵ See Item 11 of Schedule 2 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

48. Unlike the RAO Schedule, the RO Act allows the General Manager to delegate his or her functions in writing to a member of staff of FWA. Subsection 343A(3) of the RO Act, however, provides that the General Manager's functions and powers under Chapter 11 of the RO Act can only be delegated to a member of staff of FWA who is an SES employee or acting SES employee as defined in section 17AA of the *Acts Interpretation Act 1901*. The General Manager from time to time has accordingly delegated his or her functions and powers under Part 4 of Chapter 11 of the RO Act (with the exception of powers and functions under section 334 and subsections 336(2) and 337K(4)) to me in my capacity as the Director of the Tribunal Services and Organisations Branch, and subsequently as Director of the Organisations, Research and Advice Branch, of FWA²⁶ (**the Delegate**). Delegations have been made as follows:
- i. By Ms Marion van Rooden by instrument dated 13 July 2009;
 - ii. By Mr Tim Lee by instrument dated 10 August 2009; and
 - iii. By Ms Bernadette O'Neill by instruments dated 14 September 2011, 5 October 2011 and 6 March 2012.²⁷

Chronology of Events

Inquiry under section 330 of the RO Act

49. On 10 March 2009 a copy of a letter (HSUNO.018.0001) was anonymously delivered to the public counter of the AIR. The letter was dated 11 December 2008 and had been written by Ms Kathy Jackson, National Secretary of the HSU, to Mr Ken Fowlie of Slater & Gordon, lawyers. In that letter Ms Jackson stated that she wished to engage the services of Slater & Gordon to 'undertake an examination of possible irregularities in the expenditure of the Union for the period 16 August 2002 to 31 January 2008'. The letter described how, upon the resignation of Mr Thomson as National Secretary in December 2007, the National Executive had resolved that an exit audit would be conducted on the accounts of the Union as a 'routine procedure in the HSU'. As a result, a report from the Union's auditor, Mr Iaan Dick, for the period 1 July 2007 to December 2008 (sic) (**the Exit Audit**) had been provided to the National Executive in a letter dated 12 May 2008. That report identified 'what appeared to be a number of irregularities in the accounts of the Union and an apparent lack of documentation in support of some expenditure'. It was noted that 'The National Office appears to have no official Minute Book or electronic copies of minutes of meetings of the National Executive or National Council for the period that Mr Thomson held the position of National Secretary'.
50. Ms Jackson's letter to Mr Fowlie also stated that, in another letter from the auditor dated 12 May 2008, the National Executive had been advised that the auditor had become aware in the course of preparing the Exit Audit report of 'a Commonwealth Bank credit card and that in the 2006-2007 financial year a considerable number of

²⁶ This is an SES position, as required by subsection 343A(3) of the RO Act.

²⁷ A second delegation was made by Ms O'Neill to reflect a change in my title to 'Director, Organisations, Research and Advice Branch'.

cash withdrawals from ATM's had occurred'. Upon receipt of the report, National Executive had determined to investigate expenditure incurred on Union credit cards by Mr Thomson and two former employees of the Union, Mr Matthew Burke and Ms Criselee Stevens.

51. Ms Jackson sought the assistance of Mr Fowlie in engaging 'an appropriate forensic accounting firm' to examine financial documents of the Union and to report to National Executive any matters 'which in their opinion require action or attention by the National Executive' and to make recommendations as to the appropriate course of action. Advice was specifically sought regarding whether, amongst other things, Union funds were expended in accordance with the Rules of the Union, whether Union funds were misappropriated, any issues 'regarding the responsibility of the Union in relation to Schedule 1 of the *Workplace Relations Act 1996*' and whether it was possible to determine the sum of Union funds spent on Mr Thomson's campaign to win the seat of Dobell in the 2007 federal election.
52. In a letter dated 6 April 2009 the Industrial Registrar of the AIR, Mr Doug Williams, commenced an inquiry into the National Office. Mr Williams wrote to Ms Jackson (FWA.005.0082) requesting lodgement of outstanding financial returns for the years ended 30 June 2007 and 2008. The letter also referred to Ms Jackson's letter of 11 December 2008 to Mr Fowlie and advised Ms Jackson of the Registrar's power to make inquiries under (what was then) section 330 of the RAO Schedule and of provisions in the RAO Schedule regarding improper use by an officer or employee of an organisation of his or her position. That letter made six inquiries, namely:
 - a. Whether there are any grounds to believe that any officer or employee of the National Office may have contravened section 287 of the RAO Schedule (regarding improper use of position);
 - b. Whether there are any grounds to believe that the National Office may not have complied with the Rules of the HSU relating to its finances or financial administration between 2002 and 2007;
 - c. Whether there are any grounds to believe that the National Office may not have complied with the requirements of Part 3 of Chapter 8 of the RAO Schedule;
 - d. Whether there are any grounds to believe that the National Office may not have complied with the Reporting Guidelines issued under section 255 of the RAO Schedule;
 - e. Whether the National Office made any donations between 2002 and 2008 that were not approved under the HSU Rules; and
 - f. Whether the National Office made any donations for an amount exceeding \$1,000 that had not been disclosed to the AIR in a statement under section 237 of the RAO Schedule.
53. In a letter dated 7 April 2009 (FWA.005.0081) the Secretary of the Victoria No.4 Branch of the HSU, Dr Rosemary Kelly, wrote to the Industrial Registrar attaching a copy of Ms Jackson's letter to Mr Fowlie of 11 December 2008 and requesting that the Registrar conduct an investigation under section 331 of the RAO Schedule into 'a suspected failure to comply with Chapter 8 Part 3 of the Registration and

Accountability of Organisations Schedule (RAO) between 2002 and 2007 by the National Organisation of the Health Services Union'. Dr Kelly particularly requested that the Registrar investigate a suspected failure to keep and correctly record and explain the transactions and financial position of the National Office by the previous National Secretary between 2002 and 2007.

54. On 7 April 2009 Ms Jackson also sent a letter to the Registrar (HSUNO.019.0139) in response to the Registrar's letter of 6 April 2009. Ms Jackson advised the Registrar that failure to lodge the financial return for the year ended 30 June 2007 'appears to have been an oversight' and that she will 'set out to rectify this, urgently'. In terms of the outstanding financial report for the year ended 30 June 2008, Ms Jackson advised that an exit audit had been conducted within the National Office of the HSU in 2008 following her election as National Secretary. During that audit, the auditor of the National Office, Mr Iaan Dick, (**the National Auditor**) raised some issues of concern, specifically, the discovery of a credit card that he had hitherto been unaware of, which 'prompted an extensive review'. National Executive then unanimously resolved that certain matters required further independent investigation. The Union subsequently appointed Slater & Gordon to advise in relation to that investigation. In about February 2009 the Union also appointed an independent auditor (BDO Kendalls) to conduct the investigation and make recommendations with assistance from Slater & Gordon. Ms Jackson advised that the investigation was continuing but was expected to be completed shortly and that, consequently, she was not in a position to be able to answer the Registrar's inquiries. Ms Jackson continued:

However, given the seriousness of the matters under investigation the National Executive has been keen to ensure that the matters are fully and completely investigated. In this context I am confident that the National Executive would welcome your assistance in this matter, which may even extend to your undertaking your own investigation. Naturally, in that event, the Union would co-operate completely with your investigation and I would instruct Slater & Gordon and BDO Kendalls to brief you and provide you with all information they presently have and all documents they presently hold.

55. Ms Jackson sought the Registrar's advice regarding his 'preferred course' and continued that 'In the event that your preference is for our independent inquiries to be concluded, I will instruct Slater & Gordon and BDO Kendalls to provide information which will enable me to respond to your specific inquiries'. She further advised that that National Auditor had indicated that, in all the circumstances, he did not believe that it was appropriate to finalise the 2008 financial reports 'until the present inquiries have been completed'.
56. On 9 April 2009 (FWA.005.0078) the Registrar replied to Ms Jackson's letter of 7 April 2009 and noted his continuing expectation that the Union would lodge outstanding financial returns for years ended 30 June 2007 and 2008 by 14 April 2009. The Registrar advised that the auditor has a statutory obligation to make the audit report to the National Office or to report to him if constrained from doing so and noted that the statutory obligation remains whether subject to a modified audit opinion or not. With respect to whether the National Office should continue its own investigations, the Registrar advised Ms Jackson that the National Office must make

its own decision in this regard while noting that the issues addressed in any inquiry or investigation by the Registrar may, or may not, be the same as the issues which are the subject of any investigation that is undertaken by the National Office. The Registrar stated, however, that he would expect to results of any investigation by the National Office to be made available to him.

57. A letter of reply from Ms Jackson dated 30 April 2009 (FWA.005.0050) enclosed a copy of the financial report of the National Office for the year ended 30 June 2007 but noted that the designated officer's certificate and the committee of management statement had not been signed by the then National Secretary (Mr Thomson) and stated that 'I am not able to sign them as I was not the National Secretary at the time'. Ms Jackson was, however, able to confirm that the financial report consisted of copies of the documents that had been provided to a meeting of National Executive on 6 December 2007. Ms Jackson was not able to advise whether the documents had been provided to members but did advise that they had been posted to the Union's website. In terms of the financial report for the year ended 30 June 2008, Ms Jackson advised that she had asked the National Auditor to urgently prepare documents. Ms Jackson also advised that the investigation by Slater & Gordon and BDO Kendalls was continuing and that, although she had been advised that it was expected to be available in late April [2009], she had yet to receive a report.
58. Having yet to receive Ms Jackson's letter of 30 April 2009, on 1 May 2009 the Industrial Registrar wrote to Ms Jackson (FWA.010.0006) again requiring lodgement of outstanding financial returns for years ended 30 June 2007 and 30 June 2008 by close of business on 8 May 2009. The Registrar subsequently wrote again to Ms Jackson on 18 May 2009 (FWA.005.0075) acknowledging receipt of her letter of 30 April 2009 and of the documents that were lodged with that letter. The Registrar noted, however, that the designated officer's certificate, committee of management statement and operating report were all unsigned and undated and that, while the auditor's report had been signed (although not dated), it is unclear on what basis the auditor was able to form an audit opinion without viewing signed documents. With respect to Ms Jackson's view that she was unable to sign documents as she had not been the National Secretary at the time they were prepared and her advice that she did not know whether the financial report had been circulated to members, the Registrar noted that:

Part 3 of Chapter 8 of the RAO Schedule places upon the organisation accounting obligations including the obligation to prepare a general purpose financial report (**GPFR**) consisting of a Committee of Management Statement that has been prepared, signed and dated in accordance with the Industrial Registrar's Reporting Guidelines - see in particular paragraphs 24-26 of the Guidelines issued under section 253 of the RAO Schedule. In addition, there is a clear obligation under section 268 to lodge a Designated Officer's Certificate that is also signed and dated.

These obligations are placed upon the organisation as a 'reporting unit' (see section 242). A reporting unit must, by necessity, act through those elected officers who hold office from time to time. It is therefore unacceptable to fail to comply with such obligations because the office holders who represent the reporting unit have changed. The obligations contained in Part 3 of Chapter 8 remain.

Further, section 257 of the RAO Schedule places a clear obligation upon the auditor to audit the GPFR, including the properly executed Committee of Management Statement, and to prepare an audit report that is dated 'as at the date the auditor signs the report' (see section 257(9)).

It is not acceptable for either the organisation, or its auditor to seek to obviate compliance with their obligations under the RAO Schedule as has occurred to date.

59. The Industrial Registrar also sought in his letter of 18 May 2009 (FWA.005.0075) copies of 11 documents that were referred to in Ms Jackson's letter to Mr Fowle dated 11 December 2008.
60. On 18 May 2009 the Industrial Registrar also responded (WIT.KEL.001.0023) to Dr Kelly's letter of 7 April 2009 (FWA.005.0081) in which she had requested that an investigation be conducted into a suspected failure of the National Office to comply with its financial reporting obligations under Part 3 of Chapter 8 of the RAO Schedule. The Registrar noted that he was making inquiries into a number of issues relating to the National Office and requested that Dr Kelly provide a copy of the documents referred to in Ms Jackson's letter to Mr Fowle dated 11 December 2008. The Registrar noted that the requested documents would have a material bearing on any decision to instigate an investigation into the matters that had been raised by Dr Kelly.
61. All but two of the documents referred to in Ms Jackson's letter dated 11 December 2008 to Mr Fowle were provided to the Registrar by Ms Jackson in a letter dated 22 May 2009 (HSUNO.019.0134). With respect to the documents that were not provided, Ms Jackson sought further advice regarding the Registrar's requirements with respect to production of folders of credit card statements and of draft minutes. Ms Jackson also advised that she expected that Slater & Gordon would provide a report by the end of May or, at worst, shortly thereafter.
62. The documents that were provided by Ms Jackson under cover of her letter dated 22 May 2009 (HSUNO.019.0134) were:
 - a. copies of her letter to Mr Dick dated 9 April 2008 requesting that he conduct an exit audit (HSUNO.018.0058);
 - b. two letters from the auditor to the National Secretary dated 12 May 2008 (HSUNO.018.0009 and HSUNO.018.0023);
 - c. various schedules summarising expenditure incurred on credit cards and electronic banking transactions made by the National Office (HSUNO.018.0025);
 - d. a letter from the Australian Electoral Commission (**AEC**) to Mr Thomson dated 19 December 2007 regarding annual return relating to political expenditure (HSUNO.018.0051);
 - e. a copy of 2003 terms of reference of the finance committee (WIT.BRO.003.0051); and
 - f. a copy of financial governance procedures that were adopted by the National Executive meeting of 19 March 2008 (HSUNO.018.0073).

63. Mr Dick's Exit Audit had been provided to Ms Jackson in a letter dated 12 May 2008 (HSUNO.018.0009). A copy of the Exit Audit is included as Annexure I to the Report.

64. Mr Dick had also sent Ms Jackson a second letter dated 12 May 2008 (HSUNO.018.0023) in which he stated as follows:

In the course of the preparation of the exit audit we became aware of a Commonwealth Bank Credit account, and on request for statements for the period of the exit audit were provided with a folder of some statements for this account.

This account was incorporated in the general ledger of the Union as Commonwealth Bank entries, but it was not previously apparent from the ledger that there was a separate Credit account.

The statements only went to June 2007. We asked for the statements of the period after this, but in any event conducted a cursory examination of the statements we had been provided with.

Those statements revealed that there were a considerable number of cash withdrawals from ATMs in various locations. Whilst these entries have been entered in the Union's books and attributed to various purposes, we have not been provided with any documentary evidence to support these allocations. A schedule of cash withdrawals is attached.

We consider that failure to provide documentary evidence for these transactions may be a breach of the reporting guidelines or Schedule 1 to the Workplace Relations Act 1996.

We draw your attention to our obligations under Item 257(11) of the Schedule. Please advise us of the response of the National Executive to this matter.

65. On 26 May 2009 Dr Kelly emailed to the AIR (FWA.023.0010) copies that were in her possession of the following documents that were attached to Ms Jackson's letter of 11 December 2008 to Slater & Gordon:

- a. An copy of the letter (without attachments) from the National Auditor to the National Secretary dated 12 May 2008 (HSUNO.018.0009);
- b. A second letter from the National Auditor to the National Secretary dated 12 May 2008 (HSUNO.018.0023);
- c. A resolution of National Executive on 10 December 2008 regarding preparation of returns for the AEC (WIT.KEL.003.0228);
- d. Terms of reference of the Finance Committee included in National Executive minutes of 25 and 26 February 2003 (WIT.KEL.003.0032);
- e. 2008 Financial Governance Procedures included in National Executive minutes of 18 and 19 March 2008 (HSUNO.018.0073);
- f. Unconfirmed draft minutes of National Executive on:
 - i. 19 September 2002 (HSUNO.018.0461);
 - ii. 5 and 6 December 2002 (HSUNO.018.0413), including the Agenda for this meeting;

- iii. 25 and 26 February 2003 (including one attachment) that contained Terms of Reference of the Finance Committee (HSUNO.024.0055 and HSUNO.024.0062);
- iv. 5 May 2003 (HSUNO.018.0404);
- v. 30 June 2003 (HSUNO.024.0063);
- vi. 31 July and 1 August 2003 (HSUNO.018.0385);
- vii. 21 November 2003 (HSUNO.018.0382);
- viii. 17 December 2003 (HSUNO.018.0377);
- ix. 17 February 2004 (HSUNO.018.0370);
- x. 22 April 2004 (HSUNO.018.0358);
- xi. 14 and 15 July 2004 (HSUNO.018.0348);
- xii. 14 October 2004 (HSUNO.018.0345);
- xiii. 28 February and 1 March 2005 (HSUNO.024.0118) including the Agenda for this meeting;
- xiv. 7 April 2005 (HSUNO.018.0322);
- xv. 6 September 2005 (pages 1 and 3 only) (HSUNO.018.0286);
- xvi. 13 October 2005 (HSUNO.018.0281) including the Agenda for this meeting;
- xvii. 7 and 8 November 2005 (HSUNO.027.0014), including the Actions Arising from this Executive meeting;
- xviii. 16 December 2005²⁸ (HSUNO.018.0191);
- xix. 15 and 16 February 2006 (HSUNO.018.0259), including the Agenda for this meeting;
- xx. 15 and 16 May 2006 (HSUNO.018.0241);
- xxi. 30 May 2006 (HSUNO.024.0153), including the Agenda for this meeting;
- xxii. 7 and 8 August 2006 (HSUNO.018.0220) including the Agenda for this meeting;
- xxiii. 23 October 2006 (HSUNO.018.0200);
- xxiv. 7 December 2006 (HSUNO.018.0192) including the Agenda for this meeting;
- xxv. 2 February 2007 (HSUNO.018.0170) including the Agenda for this meeting;

²⁸ These minutes incorrectly record the date of the meeting as being 16 December 2006 - see the email correspondence from Mr Dan Hill to FWA on 30 August 2011 (FWA.021.0018) identifying the error in the dating of the minutes.

- xxvi. 28 and 29 March 2007 (HSUNO.018.0151) including the Agenda for this meeting; and
- xxvii. 22 and 23 August 2007 (Agenda only) (FWA.004.0060).
66. On or about 27 May 2009 Dr Kelly attended the AIR and provided, by hand, the following documents:
- a. National Executive minutes of 10 December 2008 that contained a resolution regarding preparation of returns for the AEC (HSUNO.018.0005); and
 - b. National Executive minutes of 18 and 19 March 2008 (including one attachment) that contained 2008 financial governance guidelines (HSUNO.010.0061 and HSUNO.018.0073).
67. On 1 June 2009, in my capacity as Acting Industrial Registrar, I wrote to Ms Jackson (FWA.005.0073) acknowledging receipt of documents that were provided under cover of her letter dated 22 May 2009 (HSUNO.019.0134) and requesting that she also provide credit card statements and draft minutes. I also sought production of documents relied upon by Mr Dick in making his conclusions in the Exit Audit, a copy (when available) of the report from Slater & Gordon and any documents relied upon in production of that report and a response to inquiries that had been made in the Registrar's letter of 6 April 2009. I also requested Ms Jackson, once she was in receipt of the report from Slater & Gordon, to lodge properly executed and dated financial documents for the year ended 30 June 2007 by 4 June 2009 and to inform the AIR when she expected to lodge a financial report for the year ended 30 June 2008.
68. I received a letter dated 3 June 2009 (HSUNO.018.0484) from Ms Jackson advising that the report from Slater & Gordon would not be available by 4 June 2009 but that she would endeavour to lodge the documents required with the AIR as soon as practicable. Under cover of this letter, Ms Jackson also provided me with the documents requested in my letter of 1 June 2009 (HSUNO.018.0170; HSUNO.018.0192; HSUNO.018.0220; HSUNO.018.0241; HSUNO.018.0281; HSUNO.018.0286; HSUNO.018.0322; HSUNO.018.0334; HSUNO.018.0335; HSUNO.018.0345; HSUNO.018.0348; HSUNO.018.0358; HSUNO.018.0370; HSUNO.018.0377; HSUNO.018.0382; HSUNO.018.0385; HSUNO.018.0404; HSUNO.018.0413; HSUNO.018.0461; HSUNO.024.0024; HSUNO.024.0140; HSUNO.024.0153; HSUNO.024.0155; HSUNO.024.0166; HSUNO.024.0167; HSUNO.024.0182; WIT.KEL.003.0032).
69. I also wrote to the National Auditor, Mr Iaan Dick, on 1 June 2009 (WIT.DIC.001.0006). In that letter I referred to Ms Jackson's advice that Mr Dick was not prepared to sign off on the auditor's report for the year ended 30 June 2008 and I drew Mr Dick's attention to the requirements of subsection 257(11) of the RAO Schedule. I requested that Mr Dick comply with the requirements of section 257 of the RAO Schedule and advise in writing:
- a. When the auditor's report for the year ended 30 June 2008 will be lodged;

- b. Whether the GPFR for any year does not comply with Australian Accounting Standards or any other requirements imposed by Part 3 of Chapter 8 of the RAO Schedule;
- c. If the GPFR does not comply, explain why and, to the extent it is practicable to do so, quantify the effect that non-compliance has on the GPFR;
- d. Of any defect or irregularity in the GPFR for any year;
- e. Of any deficiency, failure or shortcoming in respect of matters referred to in subsection 257(2) or section 252 of the RAO Schedule;
- f. If he suspects on reasonable grounds that there has been a breach of the RAO Schedule or the reporting guidelines;
- g. Whether he has received any response from the National Secretary, or on behalf of the committee of management of the National Office, to concerns raised by him in his letter to Ms Jackson of 12 May 2008; and
- h. How he was able to form an audit opinion with respect to the GPFR for the year ended 30 June 2007 without apparently viewing a signed committee of management statement, given that the GPFR that was lodged with the AIR on 30 April 2009 did not contain a signed committee of management statement.

Mr Dick was also required to provide a signed audit report for the year ended 30 June 2007 which had been dated in accordance with subsection 257(9) of the RAO Schedule.

70. Under cover of a letter dated 3 June 2009 from Slater & Gordon (HSUNO.014.0001), FWA was provided with three folders containing copies of (most of the) credit card statements pertaining to Diners Club cards that were held by Mr Thomson, Mr Matthew Burke and Ms Criselee Stevens and to a Commonwealth Bank Mastercard that had been held by Mr Thomson. In my capacity as Acting Industrial Registrar, on 15 June 2009 I sent a letter (FWA.014.0057) acknowledging receipt of these folders and, once again, sought copies of draft minutes from the National Office.
71. A letter dated 4 June 2009 (WIT.DIC.001.0005) was received from Mr Dick in reply to my letter of 1 June 2009 (WIT.DIC.001.0006). Mr Dick advised that:
- a-f We understand from Ms Jackson that you have been kept informed of the progress of the investigation by Slater and Gordon and BDO, and also understand that it is expected to be presented to a meeting of the National Executive next week. Our understanding is that until that report is received and considered, the GPFR cannot be completed by the Union, and the National Executive will not be in a position to complete the Committee of Management Statement as required by the Reporting Guidelines. Until the GPFR and the Statement are completed we cannot complete the audit. In the circumstances we would hope that this can be done shortly after the National Executive considers the report.
 - g. We have been advised by Ms Jackson that the National Executive instructed Slater and Gordon to commission accountants and to conduct an investigation in to the matters I raised. Consequently BDO were appointed. We have assisted BDO and Slater and Gordon with their enquiries.

- h. We did view a signed Committee of Management statement in about November of 2007. We are informed by Ms Jackson that she has not been able to find the signed Statement.
- 72. An email setting out a 'proposed sequence of action regarding HSU 2006-7 Financial Reports etc' was received from Mr David Langmead of counsel on behalf of the National Office on 9 June 2009 (FWA.024.0074 and FWA.024.0075). I wrote to Ms Jackson on 19 June 2009 (FWA.005.0071) setting out information regarding the financial reporting process and applicable time limits as set out in the RAO Schedule.
- 73. A copy of the report by Slater & Gordon and BDO Kendalls (HSUNO.019.0050) (**the BDO Kendalls Report**) was received by the AIR on 17 June 2009 under cover of a letter from Slater & Gordon dated 16 June 2009 (HSUNO.019.0049). A copy of the BDO Kendalls Report is included at Appendix J to this report.
- 74. On 17 June 2009 Ms Jackson also emailed to the AIR (FWA.023.0002) draft minutes and/or agendas of most (although not all) National Executive meetings during the period in which Mr Thomson was National Secretary. None of the minutes that were provided had been signed by the National President (in accordance with the requirements of Rule 30) after their confirmation. Draft minutes and/or agendas of the following meetings were attached to Ms Jackson's email and referenced above at paragraph 65.f:
 - a. 19 September 2002;
 - b. 5 and 6 December 2002;
 - c. 25 and 26 February 2003;
 - d. 5 May 2003;
 - e. 30 June 2003;
 - f. 31 July and 1 August 2003;
 - g. 21 November 2003;
 - h. 17 December 2003;
 - i. 17 February 2004;
 - j. 22 April 2004;
 - k. 14 and 15 July 2004;
 - l. 14 October 2004;
 - m. 28 February and 1 March 2005;
 - n. 7 April 2005;
 - o. 6 September 2005 (pages 1 and 3 only);
 - p. 13 October 2005
 - q. 7 and 8 November 2005;

- r. 16 December 2005²⁹;
 - s. 15 and 16 February 2006;
 - t. 15 and 16 May 2006;
 - u. 30 May 2006;
 - v. 7 and 8 August 2006;
 - w. 23 October 2006;
 - x. 7 December 2006;
 - y. 2 February 2007;
 - z. 28 and 29 March 2007;
 - aa. 22 and 23 August 2007 (Agenda only); and
 - bb. 3 June 2009.
75. Draft minutes of the following meetings of National Executive were provided by Ms Jackson on 17 June 2009:
- a. 22 and 23 August 2007;
 - b. 6 December 2007;
 - c. 14 December 2007; and
 - d. 20 December 2007.
76. On 18 June 2009 Ms Jackson provided the AIR with four boxes containing 12 folders of financial transaction documents, being the only documents that are able to be located by the National Office for the period during which Mr Thomson was National Secretary. A brief inventory of the records contained in each of those 12 folders (HSUNO.019.0103) was provided to the AIR together with a copy of a letter from Mr Fowlie of Slater & Gordon to Ms Jackson on 1 June 2009 (HSUNO.019.0101). On 30 October 2009 MYOB data files were also delivered to FWA containing transactions from 1 July 2006 to 3 March 2008 (FWA.005.0066).
77. On 23 June 2009 the Industrial Registrar, wrote to Mr Dick inviting him to attend an interview in his capacity as the auditor of the National Office (WIT.DIC.001.0003).
78. On 30 June 2009 (FWA.024.0076) the Industrial Registrar sent an email to me in relation to conduct of the Inquiry.³⁰

²⁹ These minutes incorrectly record the date of the meeting as being 16 December 2006 - see the email correspondence from Mr Dan Hill to FWA on 30 August 2011 (FWA.021.0018) identifying the error in the dating of the minutes.

³⁰ With the powers conferred by the Industrial Registrar under Part 4 of Chapter 11 of the RAO Schedule being transferred to the General Manager of Fair Work Australia the very next day, it is unclear what Mr Williams sought to achieve. While the email is expressed to be a "direction" to me, on 13 July 2009 I was delegated the General Manager's investigative powers under Part 4 of Chapter 11 of the RO Act by the Acting General Manager. In exercising those powers from that date, I did not, and could not, accept instructions from any other person about the exercise of those powers. In my view, it is clear that to do so would fundamentally compromise the conduct of any investigation. For the sake of completeness, I state that I have not taken Mr Williams' "direction" into account.

79. On 30 June 2009 the Secretary of the Victoria No.4 Branch, Dr Rosemary Kelly, delivered 268 pro forma letters that had been signed by members of that Branch (WIT.KEL.001.0021) to the public counter of the AIR. Those pro forma letters requested an investigation into the finances and financial administration of the National Office of the HSU during the period 2002-2007. The requests were made under section 333 of the RAO Schedule. I replied by letter dated 15 July 2009 (WIT.KEL.001.0018) advising Dr Kelly that the requests were not valid requests within the meaning of subsection 333(1) of the RO Act since that subsection is framed in such a way as to require those members who are requesting an investigation to be members of the reporting unit regarding which the investigation is sought. In other words, in order to be valid, a request must be made by members of the reporting unit that is constituted by the National Office of the HSU. My letter continued:

I have formed the view that the National Office as a 'reporting unit' for the purposes of the [Fair Work (Registered Organisations)] Act does not have any members and that, as a result, it is not possible for a request to be made under section 333 with respect to the National Office.

Section 242 of the RO Act sets out what constitutes a 'reporting unit' for the purposes of financial reporting. Subsection (3) provides that, where an organisation is divided into branches, each branch will constitute a reporting unit. Further, subsection (5) provides that 'so much of an organisation that is divided into branch as would not, apart from this subsection, be included in any branch, is taken to be a branch of the organisation'.

In looking at the HSU Rules, it is necessary to determine whether the National Office forms part of one of the HSU branches or, if not, whether it constitutes a separate reporting unit by virtue of section 242(5) of the RO Act. My examination of rule 48 of the HSU rules shows that all members of the HSU are allocated to a branch on a geographical (or, in the case of Victoria and Tasmania, a geographical and occupational) basis. The National Office is not expressly recognised in the rules as a branch or as part of a branch. The National Office is therefore only treated as a branch for the purposes of financial reporting as a result of the operation of section 242(5) of the [Fair Work (Registered Organisations)] Act. Further, while it is a separate reporting unit, the National Office as a reporting unit has no members.

A request by members of the Victoria No.4 Branch for an investigation into the National Office can only be valid under section 333 if the National Office is part of the Victoria No.4 Branch or the members of the Victoria No.4 Branch who made the request are also members of a branch that includes the National Office. As it does not appear that either of these options is the case, a request by members of the Victoria No.4 Branch for an investigation into the National Office is not a valid request for the purposes of section 333 of the [Fair Work (Registered Organisations)] Act.

80. Although the Industrial Registrar continued to hold office under Item 7 of Schedule 18 to the TPCA until 31 December 2009, from 1 July 2009 the provisions of the RO Act came into operation. From that date the powers which had previously been exercised by the Registrar under section 330 of the RAO Schedule were exercised by the General Manager of FWA under section 330 of the RO Act. As at 1 July 2009 the Acting General Manager of FWA was Ms Marion von Rooden. Mr Tim Lee was appointed to the position of General Manager of FWA from 27 July 2009.

81. On 2 July 2009 I received a letter from Mr Fowlie of Slater & Gordon (HSUNO.019.0046) advising that Mr Dick had provided the Union with written notice of his intention to resign as auditor of the National Office pursuant to section 264(1) of the RAO Schedule, to take effect once the Union appointed a successor. On 11 May 2009 the National Executive of the Union appointed Clements Dunne & Bell as the new National Auditor. Mr Fowlie advised that the Union 'is concerned to seek guidance from you in relation to how you would like the Union to meet its obligations under the Schedule in relation to the 2007 GPFR and the 2008 GPFR'. I replied to Mr Fowlie in a letter dated 15 July 2009 (FWA.005.0069) in which I drew his attention to the provisions of the RO Act regarding the appointment, resignation and duties of auditors and advised that the National Office could either locate and lodge original signed and dated financial documents that were prepared while Mr Thomson was National Secretary or prepare a fresh set of financial documents that have been audited by the new National Auditor.
82. I interviewed Mr Dick, the former auditor of the National Office, on 24 July 2009 (WIT.DIC.002.0006). A copy of the sound recording of the interview was sent to Mr Dick on 30 July 2009 (FWA.008.0009).
83. As with all other interviews that I conducted during the Inquiry, Mr Dick was advised at the commencement of our interview that he was under no obligation to answer any questions and that he was able to leave at any time.
84. I received a letter from Mr Fowlie of Slater & Gordon dated 11 August 2011 (HSUNO.019.0045) requesting a meeting between Ms Jackson and FWA due to the 'number of real practical difficulties' that the Union was experiencing. I replied to Mr Fowlie in a letter dated 13 August 2009 (FWA.023.0020) requesting that Ms Jackson attend an interview with FWA. Having received no reply, I sent a further request that Ms Jackson attend an interview to Mr Fowlie in a letter dated 27 August 2009 (FWA.023.0019).
85. On 19 August 2009 Mr Andrew Wehrens, a partner of Clements Dunne & Bell, wrote to me informing me that they had been appointed as the auditors of the National Office of the HSU (FWA.005.0068). In that letter Mr Wehrens noted the status of lodgements of financial returns by the National Office with FWA:

Year	Status
2006 Financial Statements	Lodged and accepted
2007 Financial Statements	Lodged but have now been requested to reodge in light of subsequent events
2008 Financial Statements	Not yet lodged
2009 Financial Statements	Not yet required to be lodged but must do so by 30th November 2009

86. I interviewed Ms Jackson, who was accompanied by Mr David Langmead of counsel, on 8 September 2009 (WIT.JAC.002.0016). Ms Jackson was given a copy of the sound recording of the interview on CD at its conclusion.

87. I wrote a letter dated 18 September 2009 (WIT.KEL.001.0016) to Dr Kelly in which I requested that she also attend an interview with FWA. That invitation was refused in a letter in reply dated 21 October 2009 (WIT.KEL.001.0011) from J Bremner, the Acting Secretary of the Victoria No.4 Branch, on behalf of Dr Kelly, in which it was stated that:

[Dr Kelly] has instructed me to decline the invitation contained in the above-mentioned correspondence.

Should you commence an investigation under s333 as requested by the members of the HSU, [Dr Kelly] instructs that she will be more than happy to consider an invitation to participate.

88. I received a second letter dated 21 October 2009 (WIT.KEL.001.0012) from J Bremner, Acting Secretary of the Victoria No.4 Branch, on behalf of Dr Kelly. That letter was in reply to my letter of 15 July 2009 to Dr Kelly regarding the requests that had been lodged under section 333 of the RO Act, which is set out in detail at paragraph 78 above. J Bremner's reply stated:

I wish to place on record that the underlying premise of your correspondence is fundamentally flawed and inconsistent with the previous approach of the Australian Industrial Relations Commission. You will note from your own files that on a previous occasion annual returns of the National Union have not been accepted by the Registrar because they have not been approved by the members.

Further your interpretation would appear to be inconsistent with parliament's intentions as set out in the FW(RO) Act and in particular:

- (a) encouraging members to participate in the affairs of the organisation to which they belong;
- (b) encouraging high standards of accountability of organisations to their members; and
- (c) providing for the democratic functioning and control of organisations.

It appears to me that your interpretation of the HSU rules results in the National Office operating unchecked. How do you reconcile the role of the National Council and the National Executive if the reporting unit has not members? I would be interested in your response.

I ask you to reconsider your refusal to undertake an investigation under s333.

89. On 27 November 2009 I sent a letter to Mr Fowlie (FWA.005.0066) following a review by FWA of the National Office MYOB data files and of transactional documents contained in boxes that were provided to FWA on 18 June 2009. Attached to the letter were worksheets that FWA had prepared as a result of its examination of the expenditure documentation. I advised the Union that the results of FWA's testing were that:

- a. The balances on the 2007 audited financial statements differ by approximately \$12,000 from the MYOB data file. The differences were in accounts payable or creditors and in expenses. For the purposes of FWA's testing, this is not significant;

- b. Not one single transaction tested appeared to be supported by evidence of authorisation by way of a signature to indicate approval for that transaction or of payment;
 - c. The filing was erratic with few items in chronological order;
 - d. Many transactions are not supported by any documentation at all within the files supplied.
90. I further advised the Union in the same letter that, on the basis of this analysis, it appeared that the following conclusions can be drawn:
- a. Throughout the period tested, the National Office paid invoices and expenses without requiring proof of authorisation;
 - b. Many expenses were paid either without production of an invoice or appropriate expense claim, or alternatively without such documentation being retained; and
 - c. Such transactional records as were retained were not filed in any consistent manner.
91. My letter of 27 November 2009 also requested that the National Office make further searches to identify relevant transactional documents and/or relevant documents which evidence authorisation of expenditure by the National Office for the 2006/2007 and 2007/2008 financial years. I also sought clarification regarding the extent of records that have been kept by the National Office for the period that was the subject of the BDO Kendalls investigation, namely from 2002 to 2007. I requested that Mr Fowlie confirm in writing my understanding that all of the records that exist for the period from 2002 to 2007 are those that were contained in the four boxes that had been examined by FWA. I also requested the National Office to provide FWA with the MYOB data files for the entire period of the BDO Kendalls investigation.
92. On 3 December 2009 Ms Ailsa Carruthers of FWA sent a further letter to Mr Fowlie (FWA.005.0065) in relation to my letter (FWA.005.0066) advising that the transactional documents contained in boxes that were provided to FWA on 18 June 2009 were available for collection from FWA by the HSU or approved third party.
93. On 14 December 2009 the Australian Government Solicitor (**AGS**) engaged a private investigator to locate Ms Belinda Ord for the purpose of attending an interview.
94. I received a response from Mr Fowlie dated 14 December 2009 (HSUNO.019.0034) to my letter of 27 November 2009 (FWA.005.0066) and Ms Carruthers' letter of 3 December 2009 (FWA.005.0065). That response stated that:

I am instructed that to the best of the knowledge of the current officers of the Union:

- 1. The Union has provided to you, all those documents which are currently available to it for the period 2006/2007 and 2007/2008; and
- 2. All of the records that currently exist for the period 2002 to 2007 are contained within the boxes that have been provided to you and that despite searches undertaken by current officers, no further documents have been able to be located.

In terms of the provisional conclusions set out at page 2 of your...letter, we are instructed to draw your attention to the observations made and conclusions drawn in the BDO Kendalls report, in relation to the same matters.

95. I sent a further letter dated 15 December 2009 to Mr Fowlie (FWA.005.0064) noting that I had not received a response to my request that the National Office provide FWA with MYOB data files for the entire period of the BDO Kendalls investigation. A letter in reply from Mr Fowlie dated 18 December 2009 (HSUNO.019.0033) advised that he had been instructed that, to the best of the knowledge of the current officers of the Union, there are no further MYOB data files available to be provided.
96. On 8 January 2010 I sent a letter (WIT.KNI.001.0005) to Ms Iris Knight, National Trustee and member of the National Executive, inviting her to attend an interview before FWA. Having received no response, I sent a further letter of invitation on 4 February 2010 (WIT.KNI.001.0004). An email in reply was received on 5 February 2010 from Mr Fowlie agreeing to Ms Knight attending an interview (FWA.023.0018). On 15 February 2010 I sent a further letter to Ms Knight (WIT.KNI.001.0001) confirming arrangements for an interview on 1 March 2010.
97. On 8 January 2010 the four boxes containing 12 folders of financial transaction documents that had been provided to the AIR by Ms Jackson on 18 June 2009 were collected by the new National Auditor, Mr Wehrens of Clements Dunne & Bell (FWA.023.0025), following consent by the Union to FWA releasing the documents to Mr Wehrens (see the letter from Mr Fowlie to FWA dated 14 December 2009 (HSUNO.019.0034)).
98. On 16 February 2010 I wrote to Ms Jackson (WIT.JAC.001.0013) advising her that I had become aware that on 13 October 2009 she had lodged with the AEC an annual return relating to political expenditure for the 2006/2007 and 2007/2008 financial years and a donor to political party return for the 2007/2008 financial year. I sought an itemised breakdown from the National Office of all expenditure falling within categories listed in the two annual returns relating to political expenditure and to know whether each such expense was authorised by the HSU (and, if so, how and when such authorisation occurred). I also attached separate annual returns relating to political expenditure for the 2006/2007 (WIT.JAC.001.0016) and 2007/2008 (WIT.JAC.001.0019) financial years that had been signed by Mr Michael Williamson, in his capacity as General Secretary of the 'Health Services Union' (being the union that is registered under the *Industrial Relations Act* 1996 (NSW) (**NSW Union**)), and sought an explanation of the differing amounts declared by Mr Williamson and Ms Jackson for those two years. I also sought details of the two gifts or donations to the 'ALP (NSW)' that were listed in the 2008 Donor Return.
99. In a letter in reply dated 26 February 2010 (HSUNO.019.0031), Mr Fowlie advised me that:
- The Union has co-operated fully with your inquiries. Officers of the Union have freely made themselves available for interview. A detailed independent investigative report has been furnished (Report).
- The matter the subject of the Letter [from me to Ms Jackson of 16 February 2010], including the matters about which questions have been raised in the Letter, are matters that are canvassed in detail within the Report.
- Further, no claim or allegation has, to the Union's knowledge, been levelled against it by the AEC in relation to the returns the subject of the Letter, nor have any further particulars of those returns been sought. I am instructed that the Union has lodged no

other returns for the financial years ending 2007 and 2008 and has no present intention of lodging any further returns.

To the extent that the RO Act requires certain disclosures, those matters will be dealt with, as required by the RO Act, when the audit for the 2007 and 2008 financial years have been completed by the Union's auditors.

In all the circumstances, I am instructed that the Union has nothing to add to the material that it has already provided in relation to the matters the subject of the Letter, with one exception.

In respect of the issue of separate Annual Returns lodged by Mr Michael Williamson with the AEC on 21 January 2008 and 17 November 2008 I advise that these are Annual Returns lodged by the Health Services Union which is an organisation of employees registered under the provision of the of the (sic) Industrial Relations Act 1996 (NSW). It is a separate and distinct organisation from that of the Federally registered Health Services Union. Mr Williamson is the General Secretary of the State registered Health Services Union and you will note from the Annual Returns attached to your letter that the postal address provided is different to that of the registered office of the Federally registered Health Services Union. Of course you would no doubt be aware of the existence of the State registered Health Services Union as it is a transitionally registered association under the Fair Work Act 2009. I trust this explains the differing amounts you have referred to.

100. I interviewed Ms Knight, who was accompanied by Mr David Langmead of counsel, on 1 March 2010 (WIT.KNI.003.0001).
101. On 1 March 2010 I wrote to Mr Fowlie (FWA.005.0062) seeking any information that the National Office may have regarding the contact details of Ms Belinda Ord, the former National Finance Officer. Having interviewed Ms Knight earlier that same day, I also sought copies of agendas, meeting papers and minutes of the Finance Committee between 1 July 2002 and 30 June 2008. I sent a further letter on 11 March 2010 to Mr Fowlie (FWA.005.0061) noting that no reply had been received and seeking confirmation that a response had not been forwarded. In a letter in reply dated 12 March 2010 (HSUNO.019.0030) which was received by FWA on 17 March 2010, Mr Fowlie provided information regarding Ms Ord and a folder containing the agendas, meeting papers and minutes of the Finance Committee from July 2002 to December 2007, which represents 'the totality of those papers now available to the Union'.
102. On 16 March 2010 the National Auditor, Mr Wehrens, spoke to Ms Carruthers of FWA (WIT.WEH.002.0001) and advised that he would be unable to form an opinion regarding the National Office's financial report for the year ended 30 June 2007 as there are so few documents available. Mr Wehrens also advised that he expected to give a qualified audit report for the year ended 30 June 2008 (given his inability to verify the 'opening position' of the ledgers as at 1 July 2007) but that he did not anticipate any problems with the report for the year ended 30 June 2009. Mr Wehrens also advised that he did not expect the outstanding financial reports to be lodged with FWA before early May 2010 as he was currently undertaking a large number of audits at Catholic schools but that he would need to speak to Ms Jackson in this regard. Mr Wehrens was advised during that telephone conversation that the National Office was already in breach of the requirements of the RO Act regarding

lodgement of financial reports for each of the financial years ended 30 June 2007, 30 June 2008 and 30 June 2009 and that each day on which the National Office failed to lodge the outstanding returns was another day on which it continued to be in breach.

103. Following on from the telephone conversation with Mr Wehrens, copies of the unsigned financial report of the National Office for the year ended 30 June 2007 and of the Reporting Guidelines were emailed to Mr Wehrens on 16 March 2010 (FWA.023.0030) by FWA. Mr Wehrens was also advised by Ms Carruthers that I had been informed that it was not anticipated that the outstanding financial reports would be lodged until early May 2010 but that it was 'a matter for you to determine, with your client, the HSU's priorities and timeframes in terms of lodging the outstanding financial reports in light of the fact that the HSU is already in breach of the requirements of the *Fair Work (Registered Organisations) Act 2009* for 06/07, 07/08 and 08/09.'

Investigation under section 331 of the RO Act

104. On 26 March 2010 I wrote to Ms Jackson (WIT.JAC.001.0010) informing her that I had commenced an investigation (**the Investigation**) under section 331 of the RO Act. My letter advised Ms Jackson that:

I, Terry Nassios, have been delegated by the General Manager of Fair Work Australia the powers and functions conferred by sections 331 and 335 of the *Fair Work (Registered Organisations) Act 2009*. Pursuant to section 331 of that Act I am investigating whether the provisions of:

- (i) Part 3 of Chapter 8 of Schedule 1 to the *Workplace Relations Act 1996*;
- (ii) the Reporting Guidelines made by the then Industrial Registrar on 12 October 2004 under Part 3 of Chapter 8 of Schedule 1 to the *Workplace Relations Act 1996*;
- (iii) the rules of the Health Services Union relating to its finances or financial administration; or
- (iv) section 237 and sections 285-287 of Schedule 1 to the *Workplace Relations Act 1996*

have been contravened by the National Office of the Health Services Union, and/or by officials or employees of the National Office of the Health Services Union in relation to transactions occurring between 16 August 2002 and 1 March 2008 and record keeping, reporting and auditing issues arising from transactions during this period. In particular I am examining whether:

- officers of the National Office exercised their powers and discharged their duties with reasonable care and diligence, in good faith for the best interests of the organisation and for a proper purpose during this period;
- officers or employees of the National Office have improperly used their position to gain an advantage for themselves or someone else, or to cause detriment to the organisation during this period;
- transactions of the National Office of the Health Services Union made during this period were properly authorised;

- proper financial records were kept of such transactions by the National Office,
- proper financial, expenditure, donation and audit reports were approved by the National Office and filed with the Australian Industrial Registry or Fair Work Australia (as appropriate) in respect of the 2002/03 to 2008/09 financial years.

I am also investigating whether the Auditor of the National Office of the Health Services Union has complied with his obligations under sections 256 and 257 of Part 3 of Chapter 8 of Schedule 1 to the *Workplace Relations Act 1996* in relation to his audit reports in respect of the 2002/03 Financial Year through to the 2006/07 Financial Year.

105. I decided to commence an investigation under section 331 of the RO Act because, by this time, I was satisfied that I had reasonable grounds to conduct an investigation into the matters which I set out in my letter to Ms Jackson.
106. I sent a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act to Dr Kelly on 26 March 2010 (WIT.KEL.001.0003 and WIT.KEL.001.0005). The Notice required the attendance of Dr Kelly on 15 April 2010.
107. Two copies of a letter and Notice and to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act were prepared for Ms Belinda Ord, a former employee of the National Office. These two letters and Notices (FWA.014.0047 and FWA.014.0049; FWA.014.0052 and FWA.014.0054) had each been prepared for a separate address where FWA now suspected Ms Ord may be residing. Each Notice required Ms Ord to attend for an interview on 4 May 2010. The private investigator, retained on behalf of FWA, confirmed service on Ms Ord had been effected on 27 April 2010 at one of these two addresses (WIT.ORD.001.0001).
108. I interviewed Dr Kelly, who was accompanied by Mr Edward Liu of Anderson Rice Lawyers, on 15 April 2010 (WIT.KEL.004.0006).
109. Dr Kelly was the first elected officer (as defined in section 6³¹ of the RAO Schedule) I interviewed during the Investigation. As Branch Secretary of the Victoria No.4 Branch, Dr Kelly is a member of National Executive by virtue of Sub-rule 26(a). During each of the interviews that were conducted with officers of the National Office under paragraph 335(2)(c) of the RO Act, I advised the interviewee at the commencement of the interview that:

My name is Terry Nassios, and I have been delegated by the General Manager of Fair Work Australia the powers and functions conferred by sections 331 and 335 of the *Fair Work (Registered Organisations) Act 2009* to conduct investigations into a range of matters arising under that Act. You have received a Notice to attend for interview which sets out some information about the scope of my investigation into the National Office of the Health Services Union in relation to transactions occurring between 16 August 2002 and 1 March 2008 and record keeping, reporting and auditing issues arising from transactions during this period.

³¹ The term 'officer' is defined in section 6 to mean, in relation to an organisation, 'a person who holds an office in the organisation...(including such a person when performing duties as a designated officer under Part 3 of Chapter 8)'. While the definition of 'office' in subsection 9(1) of the RAO Schedule is quite lengthy, it includes 'the office of a voting member of a collective body of the organisation or branch, being a collective body that has power in relation to any of the following functions: (i) the management of the affairs of the organisation; and (ii) the determination of policy for the organisation.'

Section 335 of the Act gives me certain powers (as delegate of the General Manager) which include the power to require persons such as yourself who are designated officers of a reporting unit such as the HSU National Office to attend before me to answer questions relating to matters relevant to my investigation. This morning's interview is being conducted pursuant to the power conferred on me by paragraph 335(2)(c).

The Notice provided to you informed you of your right to choose to be accompanied by another person when you attend to answer questions.

You should be aware that:

- by reason of section 337 of the *Fair Work (Registered Organisations) Act 2009* it is an offence to:
 - fail to comply with a requirement under subsection 335(2); or
 - to knowingly or recklessly make a statement when attending before a delegate of the General Manager of Fair Work Australia which is false or misleading,
without a reasonable excuse.
- Subsection 337(4) of the *Fair Work (Registered Organisations) Act 2009* provides that a person is not excused from giving information that they are required to give under subsection 335(2) on the ground that the information might tend to incriminate them or expose them to a penalty.
- However the information and any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document is not admissible in evidence against that person in criminal proceedings or in proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, paragraph (1)(b) or (c) of section 337 of the *Fair Work (Registered Organisations) Act 2009*.
- You will not be required to disclose any legal advice you have received, or communications you have had for the purpose of obtaining legal advice.

110. On 22 April 2010 AGS, acting on behalf of FWA, instructed a process server (FWA.020.0017) to serve a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act dated 21 April 2010 (FWA.020.0019 and FWA.020.0021) on Ms Criselee Stevens, a former employee of the National Office. The Notice required Ms Stevens to attend the interview on 18 May 2010. On 28 April 2010 the process server attempted to serve Ms Stevens at her last known address but the current occupant was not Ms Stevens. The process server was advised by the real estate agents that Ms Stevens was the previous tenant and they did not have any forwarding address or contact number for Ms Stevens (FWA.020.0011). The process server confirmed service on Ms Stevens had been effected on 3 May 2010 at a work address (WIT.STE.002.0001).
111. On 23 April 2010 I sent by facsimile transmission (FWA.020.0072) a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act (FWA.020.0073 and FWA.020.0075) to Mr Chris Brown, Secretary of the Tasmania No.1 Branch and a member of National Executive. The Notice required Mr Brown to attend for interview on 12 May 2010.

112. On 29 April 2010 the process server instructed by AGS, on behalf of FWA, attempted to serve (WIT.BUR.002.0001) a letter and a Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act (WIT.BUR.002.0003 and WIT.BUR.002.0005) on Mr Matthew Burke, a former employee of the National Office. The Notice required Mr Burke to attend for interview on 18 May 2010. The process server was advised that Mr Burke was on extended leave. On 3 May 2010 Mr Burke was faxed the letter and Notice to Attend (WIT.BUR.002.0002).
113. On 29 April 2010 I sent a letter and Notice to Provide Information under paragraph 335(2)(a) of the RO Act (WIT.JAC.001.0002 and WIT.JAC.001.0003) to Ms Jackson by facsimile transmission (WIT.JAC.001.0001) requiring production by 14 May 2010 of information regarding expenditure falling within amounts disclosed by the National Office in its annual returns relating to political expenditure for the financial years ended 30 June 2007 and 30 June 2008 that were lodged with the AEC on 13 October 2009. Information was also required regarding details of two gifts or donations that were disclosed by the National Office in its donor to political party return for the financial year ended 30 June 2008 that was lodged with the AEC on 13 October 2009 and regarding whether the National Office lodged a donor to political party return for the financial year ended 30 June 2007 with the AEC.
114. I interviewed Ms Ord on 4 May 2010 (WIT.ORD.002.0001). An audio recording of the interview was sent to Ms Ord under cover of a letter dated 4 May 2010 (FWA.007.0008).
115. Ms Ord was the first (former) employee of the National Office who I interviewed during the Investigation. As with officers of the Union, at the commencement of each of the interviews with (current or former) employees of the Union, I advised them of the same matters that are set out above at paragraph 109, except that I advised them that they were being interviewed in their capacity as a (current or former) employee of the National Office rather than as an officer.
116. On 11 May 2010 Dr Kelly sent an email to FWA (FWA.023.0022) attaching two invoices for \$2,400 (FWA.023.0024) and \$1,200 (FWA.023.0023) for tickets to the Julie Williamson MS Race Day held on 29 November 2008 at the Australian Jockey Club, Randwick. Also attached to the email were draft unconfirmed minutes of meetings of National Executive on 18 and 19 March 2008 (HSUNO.018.0061) and on 9 September 2009 (HSUNO.019.0035).
117. I interviewed Mr Brown on 12 May 2010 (WIT.BRO.002.0001). An audio recording of the interview was sent to Mr Brown under cover of a letter dated 17 May 2010 (FWA.007.0007).
118. On 14 May 2010 FWA received a reply from Slater & Gordon (HSUNO.016.0001) to its Notice to Provide Information dated 29 April 2010. That response included the following attachments:
 - a. Attachments A to C contained an itemised breakdown of all expenditure that was disclosed by the National Office in its Annual Return Relating to Political Expenditure Financial Year 2006/2007 (HSUNO.016.0003 at 0004);

- b. Attachments D to G contained an itemised breakdown of all expenditure that was disclosed by the National Office in its Annual Return Relating to Political Expenditure Financial Year 2007/2008 (HSUNO.016.0003 at 0009); and
 - c. A tax invoice from the Australian Labor Party (**ALP**) - NSW Branch made out to the HSU for \$12,511.40 dated 14 May 2007 (HSUNO.016.0003).
119. The response from Slater & Gordon (HSUNO.016.0001) also advised that:
- a. no Donor to Political Party Return had been lodged by the National Office for the 2006/2007 financial year;
 - b. wages of Mr Burke and Ms Stevens were disclosed on the basis that both were primarily engaged in activities connected with the public expression of views on an issue in a federal election during the relevant period;
 - c. some expenditure declared and paid in 2008 concerns liabilities of the Union incurred in prior periods. An example of this is the payment to Central Coast Rugby League dated 30 June 2008;
 - d. the Union's capacity to provide further particulars of political expenditure has been impacted by certain record keeping matters which are described in the BDO Kendalls Report; and
 - e. aware of these limitations and guided by the findings of the BDO Kendalls Report, the Union resolved in preparation of the returns to err on the side of greater, rather than lesser, disclosure. Consequently, in circumstances where, while uncertain, it was plausible given the material available to it that expenditure may have been political expenditure within the meaning of the Electoral Act, the Union chose to disclose that expenditure.
120. I interviewed Ms Stevens on 18 May 2010 (WIT.STE.004.0001). An audio recording of the interview was sent to Ms Stevens under cover of a letter dated 20 May 2010 (FWA.007.0006).
121. I also interviewed Mr Burke on 18 May 2010 (WIT.BUR.003.0001). An audio recording of the interview was sent to Mr Burke under cover of a letter dated 20 May 2010 (FWA.007.0005).
122. On 20 May 2010 FWA received an email from Mr Wehrens of Clements Dunne & Bell, attaching a draft 'template' of accounts for the year ended 30 June 2009 (FWA.023.0006). Mr Wehrens was seeking comment from FWA regarding whether the template included all of the information that is required under the RAO Schedule and/or RO Act. A letter in reply providing comments was sent to Mr Wehrens by FWA on 24 May 2010 (FWA.001.0001).
123. On 26 May 2010 I sent a letter and Notice to Produce Documents under paragraph 335(2)(b) of the RO Act to Ms Jackson (HSUNO.017.0061 and HSUNO.017.0062) requiring production by 11 June 2010 of:
- a. All documents relating to the accrual of, application for, or taking of, leave by Mr Thomson whilst National Secretary;

- b. All documents which record any leave balances relating to Mr Thomson whilst he was National Secretary;
 - c. All correspondence between the National Office and Mr Thomson concerning Mr Thomson's leave balances at the time of his resignation as National Secretary;
 - d. Documents circulated to a meeting of National Executive on 18 and 19 March 2008 (including two folders of credit card statements and tax invoices);
 - e. Any correspondence recording claims, demands or requests by Mr Thomson for payment by the National Office of monies to Mr Thomson.
124. On 31 May 2010 AGS, on behalf of FWA, sent a letter to a process server (FWA.020.0012) instructing them to serve a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act dated 31 May 2010 to Ms Karene Walton, a former employee of the National Office (FWA.020.0014 and FWA.020.0015). The Notice required Ms Walton to attend for interview on 23 June 2010.
125. On 31 May 2010 AGS, on behalf of FWA, instructed a process server (FWA.020.0023) to serve a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act dated 31 May 2010 on Ms Nurten Ungun, a former employee of the National Office (FWA.020.0025 and FWA.020.0026). The Notice required Ms Ungun to attend for interview on 22 June 2010.
126. On 1 June 2001 FWA received a telephone call from Ms Stevens (WIT.STE.001.0001) in which she advised that Matthew Burke is related to Senator Stephen Hutchins who has been the Duty Senator for Dobell since 2004.
127. The General Manager of FWA, Mr Tim Lee, was served on 3 June 2010 with a subpoena dated 1 June 2010 (**the first subpoena**) requiring him to produce documents (FWA.014.0078 and FWA.014.0079) in defamation proceedings that had been brought by Mr Thomson in the matter of Fairfax Media Publications Pty Limited (**Fairfax**) ats Craig Thomson in the Supreme Court of New South Wales (proceedings number 56481/10) (**the defamation proceedings**). After negotiations between Fairfax and a number of parties upon whom subpoenas had also been served (including FWA), the first subpoena was not called upon.
128. On 11 June 2010 FWA received a letter from Mr Phillip Pasfield of Slater & Gordon dated 11 June 2010 (HSUNO.017.0055) seeking an extension of time until 18 June 2010 to provide documents that were sought in the Notice to Produce dated 26 May 2010 (HSUNO.017.0061 and HSUNO.017.0062) and seeking advice regarding whether documents which were said to have been previously provided to FWA needed to be provided again.
129. I replied to Mr Pasfield's letter on 15 June 2010 (HSUNO.017.0056) noting the advice that the documents would be provided by 18 June 2010. In terms of the provision of documents, I requested that Mr Pasfield either provide the documents specified in the Notice once again or provide a sufficiently detailed description of the documents as to enable FWA to identify them from amongst the copies of documents that have been retained by FWA. On 18 June 2010 under cover of a letter of that date from

Ms Jackson (HSUNO.017.0001), the National Office provided FWA with documents in response to the Notice of 26 May 2010 (HSUNO.017.0061). Further, on or about 18 June 2010 two folders of credit card statements were provided to FWA. The following documents were attached to Ms Jackson's letter of 18 June 2010 (HSUNO.017.0001):

- a. Craig Thomson's employee history and leave record card (HSUNO.017.0003);
- b. Document entitled 'Long Service Leave - Termination' (HSUNO.017.0004);
- c. Document entitled 'Accrued Annual Leave - Termination' (HSUNO.017.0005)
- d. Annual leave requests for Mr Thomson (HSUNO.017.0006, HSUNO.017.0007, HSUNO.017.0009, HSUNO.017.0010, HSUNO.017.0011, HSUNO.017.0012);
- e. Document entitled 'Annual Leave Calculation Projected - 6/12/07' (HSUNO.017.0008);
- f. Document entitled 'Long Service Calculations projected to 6/12/07' (HSUNO.017.0013);
- g. Pay Slips for Mr Thomson (HSUNO.017.0015; HSUNO.017.0016, HSUNO.017.0018, HSUNO.017.0019);
- h. Email on 19 April 2010 from Jane Holt to Kathy Jackson under subject heading 'Historical data for Craig Thomson' (HSUNO.017.0023);
- i. Document, the first line of which states 'Opening balance of Craig Thomson Accruals' (HSUNO.017.0027);
- j. Email on 19 April 2010 from Jane Holt to Kathy Jackson under subject heading 'Craig Thompson' (HSUNO.017.0028);
- k. Document entitled 'Payroll Advice 01/10/07 To 10/12/07' (HSUNO.017.0029);
- l. Document identified with a handwritten annotation '4(b)' (HSUNO.017.0036);
- m. Document identified with a handwritten annotation '4(c)' and entitled 'H.S.U.A (All figures GST inclusive)' (HSUNO.017.0037);
- n. Tax invoice dated 15 January 2008 from ACTU Trade Union Industrial Campaign to the Union for \$398,502.50 for annual contribution of IR levy for 2008 (HSUNO.017.0038);
- o. Letter dated 11 October 2002 from the ACTU to Mr Thomson regarding the subject 'HSUA Affiliation Fees' (HSUNO.017.0039);
- p. Minutes of a teleconference of HSU National Executive meeting on 25 February 2008 (HSUNO.017.0041);
- q. Email from Mr Thomson to Ms Jackson on 5 August 2008 with the subject heading 'Entitlements' (HSUNO.017.0046);
- r. Letter dated 7 July 2009 from Mr Thomson to Ms Jackson with the subject heading 'NSW Health Services Union - Employment entitlements' (HSUNO.017.0048);

- s. Letter dated 16 March 2010 from Kalantzis Lawyers to Ms Jackson and Mr Williamson with the subject heading 'Defamatory allegations concerning Mr CRAIG THOMSON' (HSUNO.017.0049);
 - t. Letter dated 16 March 2010 from Kalantzis Lawyers to Mr Ken Fowlie of Slater & Gordon with the subject heading 'Mr CRAIG THOMSON' (HSUNO.017.0052).
130. On 22 June 2010 FWA made an application under freedom of information (**FOI**) to Gosford City Council (FWA.021.0009) requesting documents relating to erection of a marquee on Terrigal Beach on or about 27 May 2006. On 19 August 2010 FWA received a letter from Gosford City Council dated 16 August 2010 attaching the requested documents (GOS.001.0001, GOS.001.0002 and GOS.001.0004).
131. I interviewed Ms Ungun on 22 June 2010 (WIT.UNG.003.0001). An audio recording of the interview was sent to Ms Ungun under cover of a letter dated 22 June 2010 (WIT.UNG.003.0001).
132. On 24 June 2010 I sent a letter and Notice to Attend to Answer Questions was under paragraph 335(2)(c) of the RO Act (WIT.WIL.001.0001 and WIT.WIL.001.0002) to Mr Michael Williamson, President of the Union. The Notice required Mr Williamson to attend for interview on 22 July 2010.
133. The process server retained on behalf of FWA effected service of Ms Karene Walton on 26 June 2010 (FWA.020.0005) of a letter and Notice to Attend to Answer Question under paragraph 335(2)(c) of the RO Act dated 24 June 2010 (FWA.002.0001 and FWA.002.0002). The Notice required Ms Walton to attend for interview on 22 July 2010.
134. I interviewed Ms Walton on 22 July 2010 (WIT.WAL.003.0001). An audio recording of the interview was sent to Ms Walton under cover of a letter dated 2 August 2010 (FWA.007.0003).
135. Due to personal circumstances, Mr Williamson was unable to attend the interview which had been scheduled for 22 July 2010. I interviewed Mr Williamson, who was accompanied by Mr David Langmead of counsel, on 26 July 2010 (WIT.WIL.003.0001). An audio recording of the interview was sent to Mr Williamson under cover of a letter dated 2 August 2010 (FWA.007.0002).
136. On 23 August 2010 I sent a letter of invitation to Mr Thomson (WIT.THO.002.0001) requesting that he attend an interview with FWA. Mr Thomson replied by email on 30 August 2010 (WIT.THO.004.0003) agreeing to attend an interview before FWA on 15 September 2010. Mr Thomson also stated in that email that 'Mr Nassios has outlined general areas of questioning which is helpful. However in relation to specifics of questions you may ask, I request those be provided to me in writing by the 8th September so as to be able to assist you more fully with your investigation'.
137. On 8 September 2010 I sent a letter (FWA.014.0061) in response to Mr Thomson's email of 30 August 2010 (WIT.THO.004.0003) advising that I would be asking questions during interview regarding:
- a. Mr Thomson's responsibilities as National Secretary and his approach to the exercise of those responsibilities;

- b. The process by which expenditure of the National Office was incurred, documented and approved;
 - c. The role of the National Executive and Finance Committee;
 - d. The role of Criselee Stevens, Matthew Burke and Karene Walton as employees of the National Office, including the decision to engage Ms Stevens and Mr Burke and the decision to second Ms Walton to the ACTU and to continue to remunerate her after her resignation from the HSU;
 - e. Particular transactions of the National Office including the purpose of such transactions and the process by which they were authorised, including:
 - i. Expenditure which appears to be associated with the 2007 federal election campaign;
 - ii. Expenditure related to National Council;
 - iii. Expenditure on spousal travel;
 - iv. Expenditure on credit cards issued by the National Office to Mr Thomson, Ms Stevens, Mr Burke and Ms Walton;
 - v. Cash withdrawals made using a CBA mastercard issued to Mr Thomson by the National Office;
 - f. Policies within the National Office about the authorisation of leave, leave taken by Mr Thomson and records relating to leave; and
 - g. The preparation and lodgement of financial, expenditure, donation and audit reports.
138. I interviewed Mr Thomson on 15 September 2010 (WIT.THO.001.0001) commencing at 10.00AM. Transcript of his interview on 15 September 2010 was mailed to Mr Thomson by FWA on 19 October 2010 (FWA.007.0010).
139. At the commencement of my interview with Mr Thomson, I read out the following introductory statement regarding the terms under which the interview was being conducted:

My name is Terry Nassios, and I have been delegated by the General Manager of Fair Work Australia the powers and functions conferred by sections 331 and 335 of the *Fair Work (Registered Organisations) Act 2009* to conduct investigations into a range of matters arising under that Act. You have accepted an invitation to attend for interview contained in a letter from me dated 23 August 2010 which sets out some information about the scope of my investigation into the National Office of the Health Services Union in relation to transactions occurring between 16 August 2002 and 1 March 2008 and record keeping, reporting and auditing issues arising from transactions during this period. I subsequently provided further information to you in a letter dated 8 September 2010.

The letter sent to you dated 23 August 2010 invited you to choose to be accompanied by another person when you attend to answer questions. I note that you are accompanied today by your solicitor, Dr J Cusick.

Section 335 of the Act gives me certain powers (as delegate of the General Manager) which include the power to require persons such as yourself who are designated officers of a reporting unit such as the HSU National Office to attend before me to answer

questions relating to matters relevant to my investigation. However this morning's interview is being conducted on a voluntary basis, and not pursuant to the power conferred on me by paragraph 335(2)(c). This means that your participation today is entirely voluntary, and that you are free to decline to answer any or all of my questions, and to terminate the interview at any time.

This obviously means that you are free to refuse to answer any question I might ask on grounds such as:

- that the answer might incriminate you or expose you to liability for a civil penalty; or
- legal professional privilege.

However it is important to stress that you are not confined to these grounds - indeed you are free to decline to answer any question on any ground at all or indeed on no ground at all. This means that the provisions of section 337 of the *Fair Work (Registered Organisations) Act 2009* which make it an offence to refuse to comply with a requirement made under section 335, and provide certain protections to information provided in accordance with a requirement made under section 335 do not apply to this interview.

I have a number of questions to ask you today, and I anticipate that the interview will take between four and six hours. I will offer you a break at regular intervals, but you should feel free to request a break at any time. We will obviously take a meal break at lunchtime.

140. In the event, the interview concluded at 6.13PM on 15 September 2010.
141. On 11 October 2010 I received a letter dated 6 October 2010 from Ms Jackson (HSUNO.019.0001) stating 'I write to advise that the Health Services Union has resolved all claims asserted against it by Mr Craig Thomson on terms that are not to be disclosed'.
142. On 15 November 2010 the General Manager of FWA was served with a second subpoena dated 11 November 2010 (**the second subpoena**) (FAI.003.0001, FAI.003.0002 and FAI.003.0005) by Fairfax, being the defendants in the defamation proceedings, requiring production of documents to the Supreme Court of New South Wales. Documents were produced to the Court on 17 and 24 March 2011.
143. On 20 December 2010 I sent a letter and Notice to Provide Information and to Produce Documents under paragraphs 335(2)(a) and (b) of the RO Act to Ms Jackson (FWA.005.0013 and FWA.005.0014) requiring production by 21 January 2011 of:
 - a. Schedule 1: Details of each meeting of National Executive or of a subcommittee of National Executive which was held in 2007;
 - b. Schedule 2: Any document recording or referring to a meeting of the National Executive or of any subcommittee of the National Executive of the National Council held between 16 August 2002 and 1 March 2008 including formal minutes, agenda, draft motions and resolution, file note, diary notes or similar and audio recordings or transcripts;
 - c. Any document which refers to the overseas travel undertaken by Mr Thomson in May to July 2004 including any document recording any itinerary, request for

- approval of travel, approval of such travel by National Executive or report concerning the travel or Mr Thomson's activities;
- d. Any documents relating to or recording any car leases held by the National Office which were renewed between July and December 2007.
144. I received a letter dated 13 January 2011 on that date by email from Mr Phillip Pasfield of Slater & Gordon (FWA.005.0012) advising that Ms Jackson received the letter and Notice to Attend dated 20 December 2010 (FWA.005.0013 and FWA.005.0014) on 23 December 2010, that the Union's office closed on 24 December 2010 and that Ms Jackson 'has been on leave from that time and will not return to the office until the end of January.' The letter also said that Ms Jackson was 'presently overseas' and not able to provide instructions to enable compliance with the Notice requirements until after her return'. I sent a reply on 31 January 2011 (FWA.005.0011) to Mr Philip Pasfield of Slater & Gordon which stated that the period for compliance with the Notice had been extended to 7 February 2011.
145. On 31 January 2011 I sent a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act (FWA.014.0040 and FWA.014.0041) to Ms Jackson . The Notice required Ms Jackson to attend for interview on 21 February 2011.
146. Also on 31 January 2011 I sent a letter and Notice to Produce Documents under paragraph 335(2)(b) of the RO Act to the former National auditor, Mr Dick, (FWA.014.0043 and FWA.014.0044) requiring production by 18 February 2011 of:
- a. Any document containing data generated using Manage Your Own Business (**MYOB**) software relating to expenditure and revenue of the National Office between 1 July 2002 and 31 March 2008;
- b. Any documents, such as transaction records or similar, which record or related to transactions of the National Office between 1 July 2002 and 31 March 2008;
- c. Any documents prepared by Mr Dick in the course of auditing the National Office in respect of the financial years ended 30 June 2003 through to 30 June 2007 inclusive; and
- d. Any document which records any authorisation of any financial transaction entered into by or on behalf of the National Office between 1 July 2002 and 31 March 2008.
147. On 2 February 2011 I sent a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act (WIT.ORD.005.0001 and WIT.ORD.005.0003) to Ms Ord. The Notice required Ms Ord to attend a telephone conference on 18 February 2011.

148. On 8 February 2011 I sent a letter to Mr Pasfield (WIT.JAC.003.0085) noting that I was yet to receive a response to the Notice to Ms Jackson dated 20 December 2010 (FWA.005.0014) even though on 29 January 2011 Ms Jackson was quoted in The Age newspaper in relation to an action before the Supreme Court of Victoria brought by the HSU and other unions. Nevertheless, I extended the period of time for compliance with the Notice until 11 February 2011. I sent a further letter to Mr Pasfield on 16 February 2011 (FWA.014.0059) noting the following:
- For your information, in a telephone conversation with this office yesterday, Ms Jackson appeared to advise Ailsa Carruthers that she was unaware of the Notice having been sent until Monday, 14 February 2011. Ms Jackson also appeared to advise that she had only been informed on that same day of the extension of time by Mr David Langmead of counsel. Further, Ms Jackson did not have a complete copy of Notice dated 20 December 2010 and it was necessary for this office to email the Notice to her directly so that she could view Schedule 1 to the Notice.
149. I interviewed Ms Ord on 18 February 2011 (WIT.ORD.005.0006). Transcript of the interview was sent to Ms Ord under cover of a letter dated 25 February 2011 (FWA.007.0001).
150. I received a letter dated 18 February 2011 from Mr Pasfield (HSUNO.030.0001) in response to my letter of 8 February 2011 (WIT.JAC.003.0085). Mr Pasfield stated that:
- I am instructed that Ms Jackson did not advise Ms Carruthers that she had not been informed of the extension until Monday 14 February 2011. Ms Jackson was informed of the extension of time but was unable to meet with Mr David Langmead of Counsel until 14 February 2011. It was only at that stage that it became apparent that Schedule 1 to your letter of 20 December 2011 was missing. I have reviewed the document received in Ms Jackson's office on or about 23 December 2010 and it indeed did not contain Schedule 1. It was for that reason that Ms Jackson made the request that she did for a copy of Schedule 1.
151. On 18 February 2011 a response to the Notice dated 31 January 2011 (FWA.014.0021) was received from Mr Dick attaching copies of emails and correspondence between Mr Dick and the Union with regards to 2003, 2004, 2005, 2006 and 2007 audits (FWA.014.0022, FWA.014.0023, FWA.014.0026, FWA.014.0027, FWA.014.0028, FWA.014.0030, FWA.014.0031, FWA.014.0033, FWA.014.0034, FWA.014.0035, FWA.014.0036, FWA.014.0037 and FWA.014.0021). Mr Dick also provided a CD 'with copies of my computer work papers' however, upon opening the CD, it was determined that the files on that CD related to Mr Dick's audit of the Victoria No.1 Branch of the Union rather than the National Office. Under cover of a letter dated 22 February 2011 (FWA.014.0058), I returned the CD to Mr Dick and requested that he immediately forward his 'computer work papers' for the National Office between 1 July 2002 and 31 March 2008.
152. No response has been received from Mr Dick to my letter of 22 February 2011 (FWA.014.0058).
153. On 18 February 2011 some of the documents required by the Notice to Ms Jackson of 20 December 2010 were delivered to FWA. In a letter dated 18 February 2011 (WIT.JAC.003.0072), I acknowledged receipt of some documents in partial response

to the Notice but noted that the information that was sought in Schedule 1 to that Notice and some of the documents that were sought in Schedule 2 to that Notice were still to be provided. Given that FWA was still awaiting receipt of information and some documents that were required by the Notice dated 20 December 2010 (FWA.005.0014), I also advised of my decision to postpone my interview with Ms Jackson until after I had had an opportunity to examine all of the information and documents that had been sought by FWA.

154. On 25 February 2011 Mr Thomson rang Ms Carruthers of FWA (FWA.007.0011) advising that he had confirmed some flight details with Qantas. Mr Thomson provided written advice that same day in an email to FWA (WIT.THO.004.0005) as follows:

Craig Thomson Flight

Melbourne - Perth Flight QF 769 21st February 2003

Perth - Melbourne Flight QF 776 27th February 2003

Simply not in Sydney at all.

Regards

Craig Thomson

155. Still not having received a reply to my letter of 18 February 2011 (WIT.JAC.003.0072), I wrote again on 7 March 2011 to Ms Jackson (WIT.JAC.003.0084) noting that the information that was sought in Schedule 1 and some of the documents that were sought in Schedule 2 of the Notice dated 20 December 2010 (FWA.005.0014) had still not been provided to FWA. The letter went on 'As it is now six weeks since the date upon which I originally sought your compliance on 21 January 2011, the outstanding documents must be forwarded by Friday, 11 March 2011'.
156. On 11 March 2011 I received a letter from Mr Pasfield of Slater & Gordon (WIT.JAC.003.0089) providing the following information as specified in Schedule 1 to the Notice of 20 December 2010. That letter stated as follows:
- a. I have provided your office a draft of Minutes for a meeting on 28-29 March 2007. I did not attend a meeting of National Executive on those dates, and do not know whether the time and date recorded is correct. The HSU does not have minutes for the meeting on 22-23 August 2007, and I cannot recall if I attended a meeting in August or indeed whether it occurred. The minutes of the meeting in November/December 2007 correctly record the time and date.
 - b. I do not know whether the draft Minutes/Agendas correctly record the location of the meetings in March and August but have no reason to doubt them. The Minutes of the meeting on 6 December correctly record the location which was level 2, 109 Pitt Street Sydney. The meeting on 14 December 2007 was conducted by a telephone hook up.
 - c. I have no information about who was invited to the meetings in March, August and 6 December. Delegates to National Executive were invited to participate in the December meeting.

- d. I cannot confirm the accuracy of the persons recorded by the draft minutes as attending the meetings in March, but have no reason to doubt them. I do not know who if anybody attended a meeting in August if it occurred. The minutes of the 6 December meeting do not record the attendees and I do not know who attended apart from those referred to in the Minutes who moved and seconded resolutions or were recorded as having voted against. The minutes of the 20 December meeting accurately record the participants.
 - e. I cannot confirm whether the agendas provided to your office are accurate, and am unable to provide any further information.
 - f. The only minutes HSU has of the March and August meetings are the unsigned drafts provided to your office. I do not know whether official Minutes were taken, but if so HSU does not have them. Minutes were kept of the meetings in November/December and have been provided to your office.
157. The letter from Mr Pasfield dated 11 March 2011 (WIT.JAC.003.0089) also attached a 'Schedule of Documents Provided to FWA' (WIT.JAC.003.0091) concerning documents required to be produced under Schedule 2 to the Notice dated 20 December 2010 (FWA.005.0014).
158. On 7 April 2011 Mr Thomson left a voicemail message with FWA (FWA.013.0001) stating that the information that he provided to FWA 'the other day' has also now been provided to Fairfax, who have made an offer with the result that they have settled the defamation claim that Mr Thomson had brought against Fairfax in the Supreme Court of New South Wales. Mr Thomson stated that the information that he had provided about his whereabouts had led to that settlement and that he has settled with both Fairfax and the Union. Mr Thomson offered to confirm this information in writing if it was considered necessary by FWA.
159. I interviewed Ms Jackson on 11 April 2011 (WIT.JAC.003.0036) with Mr David Langmead of counsel accompanying her.
160. After Ms Jackson's interview on 11 April 2011, Ms Frances Lindsey from the National Office forwarded to FWA by email on that same day (HSUNO.030.0002) minutes of meetings of National Executive on 14 December 2007 (HSUNO.030.0010), 23 January 2008 (HSUNO.030.0006) and 25 February 2008 (HSUNO.030.0003). On 12 April 2011 Ms Carruthers sent an email to Ms Jackson (FWA.021.0006) acknowledging receipt of these minutes and requesting that, following on from her interview on 11 April 2011, the National Office again check to see whether it has any of the following outstanding records:
- a. The resolution that was attached to minutes of national executive on 7 April 2005;
 - b. A complete set of minutes of national executive on 6 September 2005 (the copy that has been provided to FWA is missing a page);
 - c. Minutes of national executive teleconference on 16 December 2005;
 - d. Summary that was attached to minutes of national executive meeting on 16 May 2006;

- e. Minutes (if any) of a national executive teleconference on 7 February 2007;
 - f. Minutes of a national executive meeting on 22-23 August 2007; and
 - g. Minutes of a national executive meeting on 20 December 2007.
161. On 12 April 2011 I sent a letter and Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act (WIT.MCL.001.0001 and WIT.MCL.001.0002) to Mr Mark McLeay, National Industrial Officer of the HSU. The Notice required Mr McLeay to attend an interview on 3 May 2011. Having already discussed the matter by telephone, a letter was subsequently sent to Mr McLeay on 4 May 2011 (WIT.MCL.001.0004) regarding postponement of the interview until 20 May 2011 due to my unavailability on 3 May 2011 for personal reasons.
162. In a letter dated 12 April 2011, I wrote to Mr Thomson (FWA.014.0017) referring to the voicemail message that had been left on 7 April 2011 (FWA.013.0001) and setting out the text of the email message that he had sent Ms Carruthers on 25 February 2011 (WIT.THO.004.0005). I advised him that the only information of which I was aware that had been provided to FWA since Mr Thomson's interview on 15 September 2010 was the contents of Mr Thomson's email message of 25 February 2011. I said that if Mr Thomson believed that there was further information beyond that which was contained in his email of 25 February 2011 which has resulted in the settlement with Fairfax and the HSU then he was requested to provide that further information to FWA.
163. A file note taken by Ms Carruthers (WIT.THO.005.0005) records that on 12 April 2011 the following exchange of text messages occurred between Mr Thomson and Ms Carruthers:
- At 8.32 pm AEST on Tuesday, 12 April 2011 I received a text message to my mobile phone [number] from telephone number +61 428 469 577 stating the following:
- Hi Ailsa it is Craig Thomson here. I am still away and will be for a few more weeks o/s in different time zones. Is it convenient for me to call you on this number about 4.30pm your time tmw? Regards Craig
- Shortly thereafter I responded as follows:
- Hi Craig. That would be fine to speak tomorrow on this number at 4.50 AEST.
Regards, Ailsa
- Shortly thereafter, I received a further message from telephone number +61 428 469 577 as follows:
- Thanks. Talk tmw regards Craig
164. Mr Thomson rang Ms Carruthers on 13 April 2011 from Paris (WIT.THO.005.0003) to advise that he had received my letter of 12 April 2011 via email. Mr Thomson advised that he had accepted an offer to settle defamation proceedings that he had brought against Fairfax. Although a date had been set down for hearing in June 2011, Mr Thomson advised that he had been able to provide further evidence to Fairfax which had not been provided to FWA concerning people who are able to corroborate his whereabouts on different dates in 2007. Mr Thomson said he also had further evidence concerning a 3rd date that had been provided to Fairfax showing that he was staying in Sydney with people rather than in a hotel, meaning

that he has evidence of three dates (other than Perth) from people who can corroborate his whereabouts on that particular date. Mr Thomson also advised that he understands from his lawyers that Fairfax obtained an opinion from a handwriting expert regarding signatures on transactions slips but Mr Thomson was unable to provide that evidence to FWA as it is not in his possession. Mr Thomson stated that he was reluctant to take the settlement offer but that, for someone in his position, winning would not have been great publicity either. Mr Thomson said that his wife was pregnant and he did not wish to cause her stress. Ms Carruthers advised Mr Thomson that it would be best to provide any evidence about the three dates in question in writing, including any supporting documentation. Mr Thomson advised that he would provide such written information either in the next week or so or upon his return to Australia.

165. Mr Thomson also stated during his telephone call with Ms Carruthers on 13 April 2011 (WIT.THO.005.0003) that 'people from time to time' had raised with him the fact that Ms Jackson has a relationship with a member of the FWA Tribunal. Mr Thomson stated that he understood that the process is 'totally separate'. Ms Carruthers advised Mr Thomson that the power to conduct investigations into the financial affairs of a registered organisation resides with the General Manager of FWA and that the General Manager is not a member of the Tribunal. Ms Carruthers advised that the General Manager's powers of investigation have been delegated to the Delegate to the extent that is it permissible to do so under the RO Act.
166. On 28 April 2011 a letter was sent by AGS on behalf of FWA to Fairfax regarding material that Fairfax had obtained in the defamation proceedings (FAI.001.0001). It was noted that, according to articles that had appeared in *The Age* and the *Sydney Morning Herald* newspapers on 6 and 7 December 2010 respectively, counsel for Fairfax informed the Supreme Court that:
- a. Credit card statements for \$2,475 and \$385 in the name of Mr Thomson showed two entries in the name of Keywed Restaurant in Surry Hills on 9 April 2005 and 16 August 2007;
 - b. Credit card vouchers for these transactions were issued in Mr Thomson's name, were signed, and listed a driver's licence number;
 - c. According to the subpoenaed Road Transport Authority (RTA) records, a licence with the same number was issued to Craig Robert Thomson of Bateau Bay;
 - d. Mobile phone records for a number listed as Mr Thomson's on a 2006 union press release showed two calls to phone numbers associated with the 'Sydney Outcalls' escort agency on 8 April 2005 and 16 August 2007; and
 - e. Mobile phone records also show a telephone call placed in Bateau Bay in the morning of 15 August 2007.
167. The letter of 28 April 2011 to Fairfax (FAI.001.0001) noted that it was apparent from the account of Court proceedings in newspaper articles that Fairfax had obtained documents which may assist FWA in its own investigation. Accordingly, Fairfax was requested to provide FWA with copies of any documents which it had obtained in the course of its own inquiries into the National Office and/or its current or former officials

and copies of any documents obtained during the course of the defamation proceedings brought against Fairfax by Mr Thomson.

168. On 18 May 2011 FWA received an email from Mr Thomson (FWA.021.0007) following on from his telephone call on 13 April 2011. In that email Mr Thomson made the following points 'in particular in relation to the use of the HSU credit card at escort agencies':

- I did not and have not used my HSU credit card for escort services. Moreover;
- Mr Jeff Jackson, former HSU executive member, settled and repaid the HSU in 2009 an undisclosed amount in a confidential settlement following allegations of using a union credit card at the name escort agencies in Sydney;
- The allegations made by the SMH were presented to the SMH by Ms Kathy Jackson, former wife of Mr Jeff Jackson, and head of the HSU, and referred to use of my credit card on specific dates and times in Sydney. These dates and times are inconsistent with my travel records and eyewitness statements which establish that on these dates I was not in Sydney.
- My action against the HSU was settled on a confidential basis against the HSU which specifically included a claim against Ms Kathy Jackson and others - which reflects the credibility of the claims;
- Fairfax publications has also agreed to a confidential settlement of the defamation action I brought against them.

In relation to the Fairfax settlement I was asked by your agency what issues in addition to the Perth flight information may have influenced the Fairfax decision to reach settlement. I am not in a position because of the confidential nature of the agreement to provide specific reasons as to why Fairfax settled. However in relation to the proposed defamation action and the planned hearing I can indicate the following additional information that would have formed part of my defence:

- Amongst others my (former) wife, Christa, was prepared to provide evidence as to my whereabouts that would prove it was impossible for me to be at the escort agencies on the dates specified; including being with me on the trip to Perth. Other direct evidence was to be adduced that Christa was with me at the precise times the card was being used in locations in Sydney; and
- That I understand that my 'signature' and the signatures on the credit card forms were forged. A handwriting expert was to be called as a witness.

The terms of the settlement preclude me from making any further comment.

169. I interviewed Mr McLeay on 20 May 2011 (WIT.MCL.002.0001) with Mr David Langmead of counsel accompanying him. Transcript of the interview was sent to Mr McLeay under cover of a letter dated 2 June 2011 (FWA.021.0025).

170. In an email to FWA on 6 June 2011 (FAI.003.0014) Fairfax attached a copy of an affidavit that had been sworn by Paul Svilans on 20 October 2010 (FAI.002.0001) and that had been requested in FWA's correspondence dated 28 April 2011 (FAI.001.0001).

171. On 17 June 2010 FWA received an email from the National Auditor, Mr Wehrens (FWA.020.0070), advising that 'field work' regarding the HSU had been completed

and that they were finalising the 2007, 2008 and 2009 accounts for presentation to a meeting on 22 June 2011. In response to his request, Ms Carruthers telephoned Mr Wehrens on 17 June 2011 and subsequently sent an email on that same day (FWA.020.0070) summarising the points discussed regarding the chronology of events that must occur in the reporting process that is prescribed by the RO Act. The email also noted that Mr Wehrens had sought advice regarding whether it is necessary for the National Office Committee of Management to modify any resolutions it may pass under the Reporting Guidelines in light of the paucity of documents supporting financial transactions that occurred in some years, particularly 2007. Ms Carruthers drew Mr Wehrens' attention to the requirement that financial records be retained for seven years and to the fact that FWA has examined what are said to be all of the financial documents for 2007 and suggested that Mr Wehrens obtain independent legal advice regarding the wording of any resolutions that are to be passed by the Committee of Management, particularly with respect to record keeping.

172. On 7 July 2011 Ms Carruthers received an email from Mr Thomson (FWA.021.0021) under the subject heading 'Dry July - Thommo's Teetotallers' stating as follows:

Hi,

I am participating in Dry July - the charity that helps adults living with cancer all over Australia - and have sworn off drinking alcohol for the whole month.

My team includes an ambulance paramedic, a police officers and a firefighter, all of whom see as part of their jobs some of the worst results of excessive alcohol consumption. The team is called 'Thommo's Teetotallers'.

My profile page link should you wish to make a donation and leave a message of support is: <http://www.dryjuly.com/profiles/craigthomson>

Cheers

Craig

173. On 18 July 2011 FWA returned a call to Mr Wehrens (FWA.014.0018), who was seeking advice regarding the wording of the Committee of Management resolution with respect to record keeping that must be passed under the requirements of the Reporting Guidelines. Legal advice had apparently been provided to the National Office that a resolution should be passed stating that during the 2007 financial year 'and since the end of that year' the National Executive cannot be satisfied that financial records have been kept appropriately. Mr Wehrens was concerned that such a resolution would be inaccurate if the resolution passed with respect to the 2006/2007 financial year has relevance for all financial years thereafter. Ms Carruthers advised Mr Wehrens that the HSU should not be constrained by the wording set out in the Reporting Guidelines but should draft a paragraph that gives a true and accurate statement of the situation for the National Office even if such a statement departs from the wording set out in the Reporting Guidelines.
174. On 25 July 2011 Mr Wehrens sent an email to FWA (FWA.020.0064) seeking advice regarding appropriate references to legislation from time to time. Ms Carruthers replied by email on 25 July 2011 (FWA.020.0064).

175. On 26 July 2011 Mr Wehrens emailed to FWA (FWA.020.0077) a set of 'draft' accounts for the year ended 30 June 2010 for comment. FWA provided comments to Mr Wehrens by email (FWA.020.0077) attaching a letter dated 4 August 2011 (FWA.008.0003).
176. Mr Thomson was interviewed by Mr Michael Smith on in the radio interview on 1 August 2011 (PUB.005.0011). In the radio interview Mr Thomson was asked various questions regarding credit card expenditure whilst he was National Secretary of the Union and related topics. During that interview Mr Thomson confirmed that he had approved payment of credit card bills that included charges by brothels because 'on the face of it, I didn't understand what it was'. Mr Thomson went on to state that the HSU had reached a settlement 'with another gentleman who paid back fifteen-thousand dollars in relation to use of credit cards at an escort agency'. Mr Thomson also stated that he had ordered 'a complete review of what was happening' while he was National Secretary.
177. On 8 August 2011 the financial report for the National Office for the year ended 30 June 2007 (FWA.009.0001) was lodged with FWA. The documents contained:
- a. An operating report signed by Ms Jackson and dated 21 July 2011 (FWA.009.0001 at 2);
 - b. A committee of management statement which was signed by Ms Jackson on 21 July 2011 and which states that a resolution was passed by the committee of management on 21 June 2011 (FWA.009.0001 at 19);
 - c. An auditor's report that was signed by Mr Wehrens on 28 July 2011 (FWA.009.0001 at 22); and
 - d. A Secretary's certificate that was signed by the Senior National Assistant Secretary, Ms Natalie Bradbury, on 28 July 2011 (FWA.009.0001 at 21).
178. Following the radio interview, media interest in allegations regarding Mr Thomson that are the subject of the Investigation increased considerably. It was reported that the federal opposition had called on the NSW Director of Public Prosecutions to launch criminal proceedings against Mr Thomson (Phillip Coorey, 'DPP urged to act against Thomson', SMH, 4 August 2011). It was also reported that the New South Wales Fair Trading Minister, Anthony Roberts, had told NSW Parliament that his department had served notice to deregister Coastal Voice Community Group, which had been registered by Mr Thomson in 2006, and that the group had failed to file its financial statements over the past three years (Imre Salusinszky, 'Trading Authority Checks on MP', The Australian, 11 August 2011). The Sydney Morning Herald reported on 10 August 2011 in a story entitled 'MP may face police probe' that 'A member of the Health Services Union had lodged a complaint with NSW police that could trigger a criminal investigation into the actions of the Labor MP Craig Thomson' as 'he believed the MP may have defrauded the union while he worked there'. It was subsequently reported in the Sydney Morning Herald in an article entitled 'Thomson inquiry shelved' on 15 August 2011, however, that this complaint was no longer being investigated by NSW Police as the individual who had made the complaint 'had not been involved in the financial dealings which gave rise to the complaint and had no evidence to offer'.

179. It was also reported in the media that Mr Thomson had 'dropped' the defamation proceedings and that subsequently the NSW ALP had paid more than \$90,000 of Mr Thomson's legal fees associated with the defamation proceedings 'with tens of thousands more as a loan' in order to avoid Mr Thomson being declared bankrupt, which would render him ineligible to remain in Parliament (Andrew Clennell, 'MP paid to save Gillard', Daily Telegraph, 17 August 2011). The Daily Telegraph reported in an article 'Thomson admits breaking the rules' on 18 August 2011 that Mr Thomson admitted that he had broken parliamentary rules and amended the pecuniary interests register to declare more than \$90,000 he received from the Labor Party outside the 28 day time limit set out in standing orders.
180. Matters that are the subject of the Investigation were also raised in Parliament during this period. On 17 August 2011 Senators Brandis and Ronaldson made statements in the Senate³² regarding matters discussed by Mr Thomson in his radio interview on 1 August 2011 (PUB.005.0011) and the defamation proceedings. On 23 August 2011 the NSW Police Force issued a media release (FWA.021.0003) stating that 'Shadow Attorney-General George Brandis has provided information to police in relation to a number of matters concerning a Federal Labor MP. This correspondence has now been referred for internal assessment to determine whether a criminal offence has occurred'.
181. On 24 August 2011 the National Secretary of the HSU, Ms Jackson, issued a statement to HSU members from the National Executive (HSUNO.027.0007) in which she noted that 'the allegations against Craig Thomson, the former National Secretary, have been a matter of intense and growing media scrutiny in recent weeks'. Further:
- Although we continue to believe that Fair Work Australia is the appropriate investigatory body, and we will continue to cooperate fully with its investigation, we recognise that the NSW Police are currently assessing whether criminal offences may have occurred. In these circumstances and based on the new material that has come to light in recent weeks, and to remove any suggested impediment to the investigations of NSW Police, the National Executive has today resolved to refer the matter to the NSW Police and cooperate with any subsequent investigation.
182. On 24 August 2011 FWA received from the National Assistant Secretary of the HSU a copy of a letter from Ms Jackson to Commissioner Andrew Scipione, NSW Commissioner of Police (FWA.020.0057) dated 24 August 2011. In that letter Ms Jackson stated that she had been authorised by National Executive to write to Commissioner Scipione 'to pledge the full co-operation of the Union to any investigation that NSW Police may elect to make' into the financial affairs of the National Office between 2002 and 2007. Ms Jackson attached to her letter to Commissioner Scipione a copy of the letter sent to FWA on 16 June 2009 (HSUNO.019.0049) and advised that she had directed that relevant source documents be collected for provision to NSW Police. The letter went on:
- Further, I encourage your investigating officers to contact the offices of FWA in Melbourne; contact Ailsa Carruthers [phone number], who I understand also holds some of the Union's relevant documents and have naturally been engaged with the Matter for

³² <http://aph.gov.au/hansard/senate/dailys/ds170811.pdf>

some time. I have written to FWA enclosing a copy of this letter and indicated that, to the extent necessary, the Union consent to FWA sharing with you any of the material held by FWA pertaining to its investigation of the Matter.

183. On 24 August 2011 the Acting Commander of the Fraud Squad, New South Wales Police, wrote to the General Manager (FWA.014.0020) advising that the Fraud Squad had recently commenced an assessment of transactions charged to a HSU credit card. Commander Watson sought advice from FWA regarding the nature of its investigation and its current status. A further letter was received on 25 August 2011 (FWA.014.0019) via email (FWA.021.0031) proposing a meeting between the Fraud Squad and FWA. On 26 August 2011 FWA emailed (FWA.021.0036) a letter in reply from the General Manager of FWA (FWA.021.0037), who advised Commander Watson of the powers conferred upon him under the RO Act and of the scope of the Investigation that was being conducted. The letter concluded:

It follows from the above analysis that neither I, nor FWA, has power to inquire into, or investigate, nor reach conclusions about whether a reporting unit (or anybody) may have contravened a NSW criminal law.

Accordingly, I regret to advise that I do not consider it would be appropriate for me, or for any of my staff, to meet with you to discuss FWA's investigation into the HSU National Office.

Nevertheless, I wish to cooperate with your investigation to the extent that this would be appropriate with the powers and functions conferred upon the General Manager of FWA by the RO Act. To this end I note that in addition to your letter we have received advice from the National Secretary of the HSU that the HSU consents to FWA sharing any of the HSU's records which are held by FWA with the NSW Police. We are currently reviewing whether FWA holds any of the HSU's records and will respond to you separately shortly on this question.

184. It was also reported on 24 August 2011 that Mr Thomson had stepped down as Chair of the House Economic Committee (Steve Lewis and Andrew Clennell, 'MP feels the head Besieged Thomson quits key parliamentary committee', Daily Telegraph, 24 August 2011).
185. FWA received a telephone call from Mr Dan Hill, Secretary of the Western Australian Branch, on 24 August 2011. FWA returned Mr Hill's call that same day and Mr Hill advised that, although he had been on sick leave earlier in the year, he was available for interview should that be desired by FWA.
186. On 30 August 2011 I wrote to Mr Thomson (WIT.TH0.006.0003)³³ inviting him to answer further questions arising from his radio interview on 1 August 2011 regarding the reported payment by Mr Jeff Jackson of \$15,000 to the Victoria No.1 Branch. It was reported in a newspaper article appearing in *The Age* on 4 July 2009 that repayment of the \$15,000 concerned events in which Mr Jackson was accused of 'dishonestly claiming the money as back pay'. I also sought a response to questions concerning Mr Thomson's claim that he had ordered 'a complete review of what was happening' and concerning authorisation of various expenditures incurred on

³³ Attached to this letter were the following documents: WIT.TH0.006.0009, WIT.TH0.006.0016, WIT.TH0.006.0017, WIT.TH0.006.0029, WIT.TH0.006.0030, WIT.TH0.006.0041, WIT.TH0.006.0043, WIT.TH0.006.0045, WIT.TH0.006.0046, WIT.TH0.006.0048 and WIT.TH0.006.0049.

- Mr Thomson's credit cards whilst travelling interstate. A response was sought from Mr Thomson by 13 September 2011.
187. On 30 August 2011 FWA received an email (FWA.021.0018) from Mr Dan Hill, Secretary of the Western Australian Branch, in response to the email that Ms Carruthers had sent to Ms Jackson on 11 April 2011 requesting that the National Office attempt to locate various documents which had not been made available to FWA. Mr Hill advised that:
- a. he had been unable to locate any minutes of a meeting of National Executive on 16 December 2005 and stated that 'I note from the minutes for the meeting on the 15-16 February 2006 that I am listed as moving the acceptance of minutes for the 16 December 2005 so I expect that a meeting was held. Mr Hill offered to contact his IT department to see whether any records of that meeting could be retrieved from the server;
 - b. he does not believe that a formal meeting of National Executive was held by teleconference on 7 February [2007] therefore there are no minutes;
 - c. Whilst the National Executive gathered in Melbourne on 22-23 August 2007, he is not certain that a meeting was formally held and that is the reason there are no recorded minutes. He went on 'I believe that Craig Thomson had by that time gained pre-selection for the seat of Dobell. National Executive members were engaged in intense caucusing over who should replace Mr Thomson in the event that he was elected to Federal Parliament'.
 - d. According to his records, no meeting of National Executive was held on 20 December 2007. A meeting was held on 14 December 2007 and a scheduled teleconference for 19 December 2007 was cancelled due to the fact that the requested clearance audit had not been completed.
188. FWA sent an email in response to Mr Hill on 5 September 2011 (FWA.020.0067) asking him to contact his IT department to determine whether it was possible to locate minutes of the National Executive meeting on 16 December 2005. Ms Carruthers also advised Mr Hill that she had informed the Delegate of Mr Hill's availability for interview and stated that, if Mr Hill has any information that he wishes to provide to FWA and which he considers would assist it in its investigation, she could arrange a telephone conference between the Delegate and Mr Hill.
189. The General Manager of FWA, Mr Tim Lee, was appointed as a Commissioner of the FWA Tribunal from 8 September 2011. From that date, Ms Bernadette O'Neill was appointed Acting General Manager of FWA.
190. Mr Thomson replied to my letter of 30 August 2011 (WIT.THO.006.0003) by email on 13 September 2011 (FWA.021.0028) as follows:
- I refer to your letter of 30 August which asks for my response to a number of matters. I am aware that both the NSW Police and the Victorian Police are investigating matters that may overlap with your inquiry. In those circumstances I have been advised by my lawyers to decline the opportunity to respond to your specific questions.
191. On 20 September 2011 FWA returned a call to Mr Hill (FWA.021.0004), who advised that he had examined correspondence from FWA regarding outstanding

- documentation and was not able to provide FWA with any further documents. Mr Hill again advised of his availability for interview by FWA should that be of assistance to the investigation.
192. Under cover of a letter dated 23 September 2011 (FWA.021.0005) FWA returned to HSU all of the remaining source documents that had been provided by the National Office for the purpose of conducting its Inquiry and Investigation.
193. On 26 September 2011 FWA emailed Ms Ord (FWA.021.0026) copies of transcripts of her interviews on 4 May 2010 (WIT.ORD.002.0001) and 18 February 2011 (WIT.ORD.005.0006) in response to a telephone request on the same day from Ms Ord.
194. On 27 September 2011 Ms Carruthers returned a call to Detective Sergeant Tyquin of the Victoria Police Fraud and Extortion Squad (FWA.021.0001). Det Sgt Tyquin was requested to put any requests for assistance from FWA in writing. He also inquired whether FWA had returned all of the original source documents to the HSU. Following up on information about the date of return of HSU source documents, Ms Carruthers left voicemail messages for Det Sgt Tyquin later on that same day on 27 September 2011 and again on 28 September 2011 (FWA.021.0001).
195. Ms Carruthers received a telephone call from Mr Thomson on 28 September 2011 (WIT.006.0002) in which he advised that Ruth Kershaw (a former National Office employee) had reportedly given a statement to police in which she said that Ms Jackson has been 'openly gloating' about destroying National Office records. Mr Thomson stated that this information validates information that he provided to FWA in interview about the location of records at the time he left the National Office. Mr Thomson also stated that, although Ms Kershaw's statement to police dealing with matters concerning the former Victoria No.3 Branch of the HSU (of which Ms Jackson was the Secretary) were 'very serious', they did not concern the National Office investigation
196. An email was received from Det Sgt Tyquin of Victoria Police Fraud and Extortion Squad on 6 October 2011 (FWA.023.0004) formally requesting assistance from FWA in providing material relating to the FWA investigation into the National Office of the HSU 'to assist in the progress of the current Victoria Police criminal investigation'. FWA was specifically asked to provide the following:
- a. Was Craig Thomson interviewed by FWA over allegations that he misused a credit card issued to him?
 - b. If so how was it recorded (Tape/Video/Notes/Statement) and where was this interview or statement made?
 - c. If so was this done under coercive powers?
 - d. If so was it conducted under oath?
 - e. If such interview/s occurred or a statement obtained from Thomson can Victoria Police obtain copies of them or view such material that is in FWA's possession?
197. As Acting General Manager, you sent a letter in response to Det Sgt Tyquin on 14 October 2011 (FWA.020.0001) setting out the powers conferred upon you under

the RO Act and the scope of the Investigation that was being conducted under the RO Act. The letter concluded:

Consistent with the functions and powers conferred on the General Manager of FWA by the RO Act, Mr Nassios' investigation does not extend to considering whether the National Office of the HSU (or any person) may have contravened a Victorian criminal law.

It follows from the above analysis that neither I, nor FWA, have power to inquire into, or investigate, nor reach conclusions about whether a reporting unit (or anybody) may have contravened a Victorian criminal law. Nor do I or FWA have power to refer a 'matter' arising from an inquiry or investigation conducted under sections 330 or 331 of the RO Act to a Victorian law enforcement body such as Victoria Police.

Accordingly I regret to advise that I do not consider it would be appropriate for me, or for any of my staff, to respond to the questions set out in your email of 6 October 2011.

198. In a letter dated 24 November 2011 (PUB.009.0001) the New South Wales Office of Fair Trading advised FWA of action which it had taken, in its role in administering the *Associations Incorporation Act 2009* (NSW), in relation to Coast Voice Community Group Inc. The letter advised that the association's recorded public officer was Mr Craig Thomson and that the association had failed to comply with its financial reporting obligations under the *Associations Incorporation Act 2009* as it had not lodged the required annual summary of financial affairs since incorporation. On this basis, action to cancel the incorporation was initiated on the grounds of failure to meet financial reporting obligations for the previous three years under section 76 of the *Associations Incorporation Act 2009*. As a result of the association's failure to respond to any correspondence, Fair Trading subsequently commenced an investigation into whether the association had maintained financial records as required by the legislation. On 23 September 2011 Mr Thomson provided a statutory declaration to the effect that he held on information about the association. Consequently, Fair Trading made further inquiries of the former secretary of the Association, Ms Criselee Stevens, whose details were provided by Mr Thomson. Ms Stevens subsequently advised that the association effectively ceased operation in 2007 due to insufficient numbers and failure to make a quorum. Ms Stevens also confirmed that the association did not open a bank account and never raised any funds. On this basis, Fair Trading closed its investigation and the incorporation of the association was cancelled on 11 November 2011 by notice in the NSW Government Gazette.
199. On 13 December 2011 Mr Thomson was served (FWA.014.0012) with a letter dated 12 December 2011 (FWA.018.0001) and five schedules to the letter and a number of annexures to the schedules, in addition to a folder of supplementary documents (FWA.018.0004, FWA.018.0050, FWA.018.0277, FWA.018.0294, FWA.018.0296, FWA.018.0305, FWA.018.0477, FWA.018.0478, FWA.018.0481, FWA.018.0709, FWA.018.0751 and FWA.018.0785). In that letter I advised Mr Thomson that I had reached a preliminary view that it was open to me to make adverse findings against him in respect of various conduct that has been the subject of the Inquiry and Investigation. The letter advised Mr Thomson that I would take into account any considerations that he may wish to put and invited Mr Thomson to provide his responses to the proposed findings by 13 February 2012. Mr Thomson was

subsequently also provided with an electronic copy of the materials on CD that was delivered by registered post.

200. On 14 December 2011 FWA contacted Mr Williamson in order to arrange for personal service of a letter and materials to him. Mr Williamson requested that the letter and materials be emailed to him that day, in addition to arrangements being made for service. FWA emailed to Mr Williamson (FWA.021.0030) a letter dated 14 December 2011 (FWA.019.0001) and the accompanying Schedules (FWA.019.0004 and FWA.019.0046) (although not supporting documentation that is referred to in Schedule 1). That letter advised Mr Williamson that I had reached a preliminary view that it was open to me to make adverse findings in respect of various conduct that has been the subject of the Inquiry and Investigation. Mr Williamson was also advised that I would take into account any considerations that he may wish to put to me and sought any response from Mr Williamson by 20 January 2012. The original letter, Schedules, supporting documents and CD containing electronic copies of the documents were served upon Mr Williamson on 15 December 2011 (FWA.014.0013).
201. On 15 December 2011 documents were also served upon Ms Jackson (FWA.014.0064 and FWA.014.0065) and Mr Dick (FWA.014.0063) enclosing letters dated 14 December 2011 and supporting materials. Ms Jackson was served with two letters, one of which concerned her role as National Assistant Secretary of the Union whilst Mr Thomson was National Secretary and the other of which concerned the Reporting Unit. Each of the letters to Mr Dick (FWA.017.0001, FWA.017.0004 and FWA.017.0030), Ms Jackson (FWA.015.0001, FWA.015.0004 and FWA.015.0025) and the Reporting Unit (FWA.016.0001, FWA.016.0004, FWA.016.0096, FWA.016.0118 and FWA.016.0152) advised the recipients that I had reached a preliminary view that it was open to me to make adverse findings in respect of various conduct that has been the subject of the Inquiry and Investigation. The recipients were also advised that I would take into account any considerations that they may wish to put to me. Responses were invited from Ms Jackson and Mr Dick by 20 January 2012 and from the National Office by 27 January 2012.
202. On 9 January 2012 I received a letter from Holding Redlich, lawyers, (FWA.022.0002) advising that they act on behalf of Mr Thomson and requesting an extension of time until 13 March 2012 in which to respond to my letter of 12 December 2011 (FWA.018.0001). Holding Redlich also requested that FWA provide:
- a. All minutes of meetings of the HSU during the period covered by the Investigation;
 - b. The report commissioned by the HSU from BDO Kendalls and Slater & Gordon; and
 - c. A copy of delegations from the General Manager to the Delegate.

203. In a letter in reply dated 11 January 2012 (FWA.022.0003), I granted an extension from 13 February 2012 until 5 March 2012. Enclosed with my letter was a CD containing electronic copies of the following³⁴:
- a. Minutes of meetings of National Council, National Executive and the Finance Committee between 23 July 2002 and 19 March 2008 that were held by FWA. I advised Holding Redlich that FWA did not hold any minutes of meetings of National Council after 2002 and that many documents that have been provided to FWA concerning the Finance Committee were informal in nature (such as email exchanges) and that it was not clear that formal minutes were taken of meetings of the Finance Committee. I nevertheless provided documents which appear to be 'minutes' of meetings of the Finance Committee on 14 July 2004 and 30 March 2005;
 - b. The BDO Kendalls Report; and
 - c. Delegations under section 343A of the RO Act by:
 - i. Ms Marion van Rooden dated 13 July 2009;
 - ii. Mr Tim Lee dated 10 August 2009; and
 - iii. Ms Bernadette O'Neill dated 14 September 2011 and 5 October 2011.
204. On 9 January 2012 Ms Jackson emailed me (FWA.022.0481) seeking a copy of the sound file for her second interview of 11 April 2011 and copies of the transcript of her two interviews. On 11 January 2012 I sent a letter to Ms Jackson (FWA.022.0388), enclosing a CD-ROM of transcripts (FWA.022.0389 and WIT.JAC.002.0016) and a CD-ROM of the sound recording.
205. On 10 January 2012 Ms Jackson sent a further email to FWA (FWA.022.0482) seeking a copy of a letter from her to Mr Doug Williams dated 7 April 2009 referred to in Schedule 1 of my letter to the National Office dated 14 December 2011 (FWA.016.0001), but not in Schedule 1 of my letter to Ms Jackson of 14 December 2011 (FWA.015.0001). Ms Jackson sought the letter in her personal capacity and not in order to respond to my letter to the National Office. I responded to Ms Jackson in a letter dated 17 January 2012 (FWA.022.0425) attaching a copy of Ms Jackson's letter to Mr Williams on 7 April 2009 (FWA.022.0426). I also provided this document to the National Office through Slater & Gordon in a letter dated 17 January 2012 (FWA.022.0433).
206. On 12 January 2012 I received an email from Mr Michael Williamson (FWA.022.0480) requesting an extension of time until 3 February 2012 to make his submission in response to the preliminary views formed in the letter dated 14 December 2012 (FWA.019.0001). I responded on the same day by letter

³⁴ FWA.022.0005, FWA.022.0017, FWA.022.0031, FWA.022.0039, FWA.022.0058, FWA.022.0073, FWA.022.0075, FWA.022.0076, FWA.022.0080, FWA.022.0090, FWA.022.0093, FWA.022.0100, FWA.022.0105, FWA.022.0112, FWA.022.0117, FWA.022.0120, FWA.022.0139, FWA.022.0145, FWA.022.0152, FWA.022.0173, FWA.022.0174, FWA.022.0206, FWA.022.0219, FWA.022.0222, FWA.022.0229, FWA.022.0231, HSUNO.018.0151, HSUNO.018.0191, HSUNO.018.0200, HSUNO.018.0239, HSUNO.018.0259, HSUNO.024.0014, HSUNO.024.0063, HSUNO.025.0012, HSUNO.025.0018, HSUNO.025.0022.

- (FWA.022.0387) acceding to Mr Williamson's request for an extension of time until 3 February 2012.
207. On 16 January 2012 I provided you, in your capacity as Acting General Manager, with an Interim Report (FWA.025.0001) which included copies of my correspondence to Mr Thomson dated 12 December 2011,³⁵ and of my correspondence dated 14 December to Mr Dick,³⁶ Mr Williamson,³⁷ Ms Jackson³⁸ and the National Office reporting unit.³⁹ The Interim Report appears as Annexure M to this report. In my Interim Report I advised that:
- Given the extensive amount of material, I provide this interim report for your information only so as to enable you to start to familiarise yourself with the range of material which is likely to be provided to you in a final report. It is not given to you for the purpose of enabling you to provide input or direction into the investigation. Insofar as the interim report attaches material which discloses to you the findings I propose to make, those findings are necessarily preliminary findings only, and will be reviewed, and possibly changed, in light of any response made by the recipients of the letters of proposed findings.
208. On 16 January 2012 I received a letter from Slater & Gordon, solicitors, (FWA.022.0477) advising that they act on behalf of the National Office of the HSU. The letter raised three preliminary matters regarding which they sought clarification before responding to my letter of 14 December 2011 (FWA.016.0001, FWA.016.0004, FWA.016.0096, FWA.016.0118 and FWA.016.0152). Detailed information regarding the letter from Slater & Gordon is set out in chapter 9.
209. On 17 January 2012 I responded to Slater & Gordon (FWA.022.0433). Details of my response are also set out in chapter 9.
210. On 18 January 2012 I received a letter from Toomey Pegg, lawyers, (FWA.022.0430) advising that they act on behalf of Ms Jackson and that they had retained Mr John Trew QC to advise and assist Ms Jackson. The letter sought an extension of time until up to 10 February 2012 for Ms Jackson to respond.
211. On 19 January 2012 I replied to Toomey Pegg (FWA.022.0432) granting to Ms Jackson an extension of time in which to respond until 3 February 2012.
212. On 24 January 2012 I received a further letter from Slater & Gordon on behalf of the National Office (FWA.022.0484) which raised a preliminary matter about the 'scope' of their response on behalf of the National Office and then set out submissions regarding particular allegations that had been put to the National Office. These matters are discussed in detail at paragraphs 7 and 8 of chapter 9.
213. On 25 January 2012 I sent a letter to Slater & Gordon (FWA.022.0466) setting out my response to matters that they had raised regarding the 'scope' of their response

³⁵ FWA.018.0001, FWA.018.0004, FWA.018.0050, FWA.018.0277, FWA.018.0294, FWA.018.0296, FWA.018.0305, FWA.018.0477, FWA.018.0478, FWA.018.0481, FWA.018.0709, FWA.018.0751 and FWA.018.0785

³⁶ FWA.017.0001, FWA.017.0004 and FWA.017.0030

³⁷ FWA.019.0001, FWA.019.0004 and FWA.019.0046

³⁸ FWA.015.0001, FWA.015.0004 and FWA.015.0025

³⁹ FWA.016.0001, FWA.016.0004, FWA.016.0096, FWA.016.0118 and FWA.016.0152

- in their letter of 24 January 2012. Details of my response are set out at paragraphs 13 to 15 of chapter 9.
214. On 31 January 2012 I sent a letter to Holding Redlich advising them that, since providing Mr Thomson with my letter of 12 December 2011, I had identified a number of errors contained in the Schedules to that letter (FWA.022.0353). Enclosed with my letter of 31 January 2012 were amended pages for each page of the Schedules that were affected by error together with a table summarising each error (FWA.022.0354). While the majority of errors related to numbering and formatting, two further proposed findings numbered 8 and 29 in Schedule 4 to my letter of 12 December 2011 were also set out.
215. On 3 February 2012 I received a letter from Uther Webster & Evans, solicitors, (FWA.022.0556) who act on behalf of Mr Williamson making submissions in response to my letter of 14 December 2011 (FWA.019.0001). Information regarding FWA's further correspondence with Uther Webster & Evans concerning this matter is set out in chapter 11.
216. On 3 February 2012 I also received a response from Ms Jackson (FWA.022.0489) to my letter of 14 December 2011 (FWA.015.0001, FWA.015.0004 and FWA.015.0025). Immediately following, an email was sent by Toomey Pegg Lawyers to FWA (FWA.022.0565) attaching a copy of the supporting material marked as 'KJ-Bundle' in Ms Jackson's response (FWA.022.0566). Toomey Pegg sent a further email (FWA.022.0475) attaching a recording of Ms Jackson's interview referred to in her response. Ms Jackson's response is discussed in detail in chapters 10, 13 (under the heading 'Failure of Ms Jackson to produce a GPFR and an operating report for the 2007 financial year as soon as practicable' at page 953) and 19.
217. On 24 February 2012 you were appointed as the General Manager of Fair Work Australia.
218. On 2 March 2012 I received a letter from Holding Redlich (FWA.024.0001) attaching Mr Thomson's submissions (FWA.024.0002) in response to the alleged contraventions that were put to him in my letter of 12 December 2011 (FWA.018.0001) and the accompanying schedules and annexures (FWA.018.0004, FWA.018.0050, FWA.018.0277, FWA.018.0294, FWA.018.0296, FWA.018.0305, FWA.018.0477, FWA.018.0478, FWA.018.0481, FWA.018.0709, FWA.018.0751 and FWA.018.0785).
219. The response from Holding Redlich was set out in two parts, the first part of which dealt with introductory matters (which are considered in chapter 3) and the second part of which gave detailed responses to the alleged contraventions that I had put to Mr Thomson. Mr Thomson's detailed responses are considered at each of the findings in chapters 4 to 8.

Chapter 2 - The Compliance Framework

The Legislative Scheme

Background

1. When Mr Thomson first became National Secretary on 16 August 2002 of what was then known as the Health Services Union of Australia⁴⁰, obligations with respect to financial records, accounting and auditing of registered organisations were set out in Division 11 of Part IX of the WR Act. Obligations with respect to the keeping of records, and in particular regarding notification of loans, grants and donations, were set out in Division 10 of Part IX of the WR Act.
2. The WR Act was amended by the *Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002*, which commenced on 12 May 2003. Under the amendments, requirements with respect to financial records, accounting and auditing were set out in Part 3 of Chapter 8 of a separate schedule to the WR Act. At that point in time the schedule (which was referred to as the 'RAO Schedule') was 'Schedule 1B - Registration and Accountability of Organisations'. The numbering of Schedule 1B was, however, changed to Schedule 1 to the WR Act with effect from 27 March 2006 as a result of the *Workplace Relations Amendment (Work Choices) Act 2005*.⁴¹ The re-numbering of the RAO Schedule from Schedule 1B to Schedule 1 did not, however, affect the provisions that were contained within the RAO Schedule.
3. While the RAO Schedule commenced on 12 May 2003, transitional provisions⁴² provided that Part 3 of Chapter 8 of the RAO Schedule applied to each financial year of an organisation that started on or after the commencement of the Reporting Guidelines⁴³ on 1 July 2003.⁴⁴ Sub-rule 36(f) of the HSU Rules provides that the financial year of the Union shall end on 30th June in each year. As a result, the effect of the transitional provisions is that Part 3 of Chapter 8 of the RAO Schedule applied to each financial year of the HSU National Office from 1 July 2003 onwards.

⁴⁰ The organisation's name was changed to 'Health Services Union' with effect from 4 September 2006 - see the decision of Watson VP of the Australian Industrial Relations Commission in D2006/54, 29 August 2006, PR973803

⁴¹ Item 2 of Schedule 5

⁴² Transitional provisions are set out in the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

⁴³ Item 44 of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

⁴⁴ The Reporting Guidelines that were made by the Industrial Registrar under section 255 of the RAO Schedule were published in the Commonwealth Notices Gazette on 25 June 2003. Paragraph 4 of the Guidelines provided that they apply to each financial year of an organisation that starts on or after 1 July 2003.

Division 11 of Part IX of the WR Act continued to apply to the financial year that ended on 30 June 2003.⁴⁵

4. The requirements regarding notification of particulars of loans, grants and donations which are set out in section 237 of the RAO Schedule also applied in relation to each financial year of an organisation that started on or after commencement of the RAO Schedule on 12 May 2003.⁴⁶ As a result, section 237 applied to the HSU in relation to the financial year commencing on 1 July 2003. Division 10 of Part IX of the WR Act continued to apply with respect to lodging particulars of loans, grants and donations made in the financial year that ended on 30 June 2003.⁴⁷
5. On 20 June 2003 the Industrial Registrar issued Reporting Guidelines (**the first Reporting Guidelines**) that were made under section 255 of the RAO Schedule with effect from 1 July 2003. These Reporting Guidelines were replaced by a subsequent set of Guidelines that were made on 12 October 2004 and which applied to each financial year of an organisation that started on or after 1 November 2004 (**the second Reporting Guidelines**). The second Reporting Guidelines reflect new requirements regarding the reporting of activities concerning the recovery of wages by reporting units. Given that the Union's financial year ends on 30 June each year, the second Reporting Guidelines applied to the HSU from the financial year commencing 1 July 2005.
6. Since the reporting requirements that were placed upon the Union for the majority of the period during which Mr Thomson was National Secretary were set out in the RAO Schedule, this report sets out legislation as it appeared in the RAO Schedule.
7. Further legislative changes commenced, however, on 1 July 2009 when all of the provisions of the *Workplace Relations Act 1996*, with the exception of Schedules 1⁴⁸ and 10, were repealed and the WR Act was renamed the *Fair Work (Registered Organisations) Act 2009*. While this legislative change did not alter the nature of the requirements placed upon registered organisations, the AIR ceased to exist (on 31 December 2009) and a new regulatory body known as Fair Work Australia came into being. Further, the office of the Industrial Registrar was replaced with the office of General Manager of FWA and, for the first time, the General Manager was given specific powers of delegation of certain functions (see section 343A of the RO Act).
8. Under transitional provisions, financial documents that were lodged with the AIR under the RAO Schedule have effect as if they were lodged with FWA.⁴⁹

⁴⁵ Item 3 of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

⁴⁶ Item 43(1) of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

⁴⁷ Under Item 43(2) of Schedule 1 to the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*, section 269 of the *Workplace Relations Act 1996* continued to apply in relation to the financial year of an organisation that had started, but had not ended, before commencement of the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*.

⁴⁸ That is, the RAO Schedule

⁴⁹ Item 621 of Schedule 22 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (TPCA Act)*, which commenced on 1 July 2009, provides that a document that was lodged

The National Office of the HSU is a reporting unit

9. Information is set out at paragraphs 34 to 39 of chapter 1 about the National Office of the HSU being a separate reporting unit under the RAO Schedule.

Extracts from the RAO Schedule, Reporting Guidelines and RAO Regulations

10. “Financial records” are defined in section 6 of the RAO Schedule as follows:

In this Act, unless the contrary intention appears:

financial records includes the following to the extent that they relate to finances or financial administration:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;
- (d) a document.

Organisations are required to have rules

11. Sections 140 to 142 of the RAO Schedule set out requirements regarding the rules of registered organisations:

140 Organisations to have rules

- (1) An organisation must have rules that make provision as required by this Schedule.
- (2) A rule of an organisation making provision required by this Schedule to be made may be mandatory or directory.

141 Rules of organisations

- (1) The rules of an organisation:
 - (a) must specify the purposes for which the organisation is formed and the conditions of eligibility for membership; and
 - (b) must provide for:
 - (i) the powers and duties of the committees of the organisation and its branches, and the powers and duties of holders of offices in the organisation and its branches; and
 - (ii) the manner of summoning meetings of members of the organisation and its branches, and meetings of the committees of the organisation and its branches; and

- (iii) the removal of holders of offices in the organisation and its branches; and
 - (iv) the control of committees of the organisation and its branches respectively by the members of the organisation and branches; and
 - (v) the manner in which documents may be executed by or on behalf of the organisation; and
 - (vi) the manner of notifying the Commission of industrial disputes; and
 - (vii) the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members; and
 - (viii) the resignation of members under section 174; and
 - (ix) the manner in which the property of the organisation is to be controlled and its funds invested; and
 - (x) the yearly or other more frequent audit of the accounts; and
 - (xi) the conditions under which funds may be spent; and
 - (xii) the keeping of a register of the members, arranged, where there are branches of the organisation, according to branches; and
 - (xiii) the manner in which its rules may be altered; and
- (c) may provide for the removal from office of a person elected to an office in the organisation only where the person has been found guilty, under the rules of the organisation, of:
- (i) misappropriation of the funds of the organisation; or
 - (ii) a substantial breach of the rules of the organisation; or
 - (iii) gross misbehaviour or gross neglect of duty;
- or has ceased, under the rules of the organisation, to be eligible to hold the office; and
- (d) must require the organisation to inform applicants for membership, in writing, of:
- (i) the financial obligations arising from membership; and
 - (ii) the circumstances, and the manner, in which a member may resign from the organisation.

Note 1: Section 166 deals with entitlement to membership of organisations.

Note 2: See also section 179 (liability for arrears).

- (2) The rules of an organisation of employees may include provision for the eligibility for membership of the organisation of independent contractors who, if they were employees performing work of the kind which they usually perform

as independent contractors, would be employees eligible for membership of the organisation.

(3) The rules of an organisation may also provide for any other matter.

(4) In this section:

committee, in relation to an organisation or branch of an organisation, means a collective body of the organisation or branch that has powers of the kind mentioned in paragraph (1)(b) of the definition of office in section 9.

142 General requirements for rules

(1) The rules of an organisation:

(a) must not be contrary to, or fail to make a provision required by this Schedule, the Workplace Relations Act, an award, a certified agreement or an old IR agreement, or otherwise be contrary to law; and

(b) must not be such as to prevent or hinder members of the organisation from:

(i) observing the law or the provisions of an award, an order of the Commission, a certified agreement or an old IR agreement; or

(ii) entering into written agreements under an award, an order of the Commission, a certified agreement or an old IR agreement; and

(c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to the objects of this Schedule and the Workplace Relations Act and the purposes of the registration of organisations under this Schedule, are oppressive, unreasonable or unjust; and

(d) must not discriminate between applicants for membership, or members, of the organisation on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

(2) For the purposes of paragraph (1)(d), rules of an organisation are taken not to discriminate on the basis of age if the rules do not prevent the organisation setting its membership dues by reference to rates of pay even where those rates are set by reference to a person's age.

...

Lodgement with the AIR of particulars of loans, grants and donations

12. The organisation, and each of its branches, is required by section 237 of the RAO Schedule to lodge particulars of each loan, grant and donation of an amount exceeding \$1,000 that has been made during the financial year:

237 Organisations to notify particulars of loans, grants and donations

- (1) An organisation must, within 90 days after the end of each financial year (or such longer period as the Registrar allows), lodge in the Industrial Registry a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A statement lodged in the Industrial Registry under subsection (1) must be signed by an officer of the organisation.
- (3) An organisation must not, in a statement under subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

- (4) A statement lodged in the Industrial Registry under subsection (1) may be inspected at any registry, during office hours, by a member of the organisation concerned.
- (5) The relevant particulars, in relation to a loan made by an organisation, are:
- (a) the amount of the loan; and
 - (b) the purpose for which the loan was required; and
 - (c) the security given in relation to the loan; and
 - (d) except where the loan was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.
- (6) The relevant particulars, in relation to a grant or donation made by an organisation, are:
- (a) the amount of the grant or donation; and
 - (b) the purpose for which the grant or donation was made; and
 - (c) except where the grant or donation was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.
- (7) Where an organisation is divided into branches:
- (a) this section applies in relation to the organisation as if loans, grants or donations made by a branch of the organisation were not made by the organisation; and
 - (b) this section applies in relation to each of the branches as if the branch were itself an organisation.

- (8) For the purposes of the application of this section in accordance with subsection (7) in relation to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.

The Keeping of Financial Records

13. A reporting unit is required to keep records, and to retain such records for a period of seven years, as follows:

252 Reporting unit to keep proper financial records

- (1) A reporting unit must:
- (a) keep such financial records as correctly record and explain the transactions and financial position of the reporting unit, including such records as are prescribed; and
 - (b) keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253; and
 - (c) keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited under this Part.
- ...
- (5) An organisation must retain the financial records kept under subsection (1) for a period of 7 years after the completion of the transactions to which they relate.

Preparation of GPFR and Operating Report

14. Each year a reporting unit is required to prepare a GPFR from the financial records that have been kept under section 252:

253 Reporting unit to prepare general purpose financial report

- (1) As soon as practicable after the end of each financial year, a reporting unit must cause a general purpose financial report to be prepared, in accordance with the Australian Accounting Standards, from the financial records kept under subsection 252(1) in relation to the financial year.
- (2) The general purpose financial report must consist of:
- (a) financial statements containing:
 - (i) a profit and loss statement, or other operating statement; and
 - (ii) a balance sheet; and
 - (iii) a statement of cash flows; and
 - (iv) any other statements required by the Australian Accounting Standards; and
 - (b) notes to the financial statements containing:
 - (i) notes required by the Australian Accounting Standards; and

- (ii) information required by the reporting guidelines (see section 255); and
 - (c) any other reports or statements required by the reporting guidelines (see section 255).
 - (3) The financial statements and notes for a financial year must give a true and fair view of the financial position and performance of the reporting unit. This subsection does not affect the obligation for a financial report to comply with the Australian Accounting Standards.
 - Note 1: This section is a civil penalty provision (see section 305).
 - Note 2: The Australian Accounting Standards may be modified for the purposes of this Act by the regulations.
 - Note 3: If the financial statements and notes prepared in compliance with the Australian Accounting Standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph (2)(b).
- 15. Paragraphs (b) and (c) of subsection 253(2) refer to requirements of the Reporting Guidelines that were issued by the Industrial Registrar as set out in paragraph 5. The Guidelines prescribe certain disclosure requirements that are in addition to those prescribed by Australian Accounting Standards, having in mind the nature of registered organisations. Disclosure requirements prescribed by the Reporting Guidelines are directed towards providing members of a reporting unit with information to enable them to gauge the performance of the committee of management and other office holders in relation to the financial management of the reporting unit. Each reporting unit is required to cause to be prepared a Committee of Management Statement containing declarations by the committee of management in relation to the GPFR, as follows⁵⁰:
 - 24. For purposes of paragraph 25(2)(c) of the RAO Schedule the reporting unit must cause to be prepared a committee of management statement containing declarations by the committee of management in relation to the GPFR.
 - 25. The committee of management statement must include declarations by the committee of management as to whether in the opinion of the committee of management that:
 - (a) the financial statements and notes comply with the Australian Accounting Standards;
 - (b) the financial statements and notes comply with the reporting guidelines of the Industrial Registrar;
 - (c) the financial statements and notes give a true and fair view of the financial performance, financial position and cash flows of the reporting unit for the financial year to which they relate;
 - (d) there are reasonable grounds to believe that the reporting unit will be able to pay its debts as and when they become due and payable; and
 - (e) during the financial year to which the GPFR relates and since the end of that year:

⁵⁰ These requirements were set out at paragraphs 16 to 18 of the first Reporting Guidelines and at paragraphs 24 to 26 of the second Reporting Guidelines.

- (i) meetings of the committee of management were held in accordance with the rules of the organisation including the rules of a branch concerned; and
 - (ii) the financial affairs of the reporting unit have been managed in accordance with the rules of the organisation including the rules of a branch concerned; and
 - (iii) the financial records of the reporting unit have been kept and maintained in accordance with the RAO Schedule and the RAO Regulations; and
 - (iv) where the organisation consists of 2 or more reporting units, the financial records of the reporting unit have been kept, as far as practicable, in a consistent manner to each of the other reporting units of the organisation; and
 - (v) the information sought in any request of a member of the reporting unit or a Registrar duly made under section 272 of the RAO Schedule has been furnished to the member or Registrar; and
 - (vi) there has been compliance with any order for inspection of financial records made by the Commission under section 273 of the RAO Schedule.
26. The committee of management statement must:
- (a) be made in accordance with such resolution as is passed by the committee of management of the reporting unit in relation to the matters requiring declaration;
 - (b) specify the date of passage of the resolution;
 - (c) be signed by a designated officer within the meaning of section 243 of the RAO Schedule; and
 - (d) be dated as at the date the designated officer signs the statement.
16. The Reporting Guidelines also require disclosure of additional information in a reporting unit's Profit and Loss Statement, including the following⁵¹:
11. Balances for the following items of expense must be disclosed by the reporting unit in the notes to the financial statements unless already disclosed on the face of the profit and loss statement in accordance with Australian Accounting Standards:
- ...
 - (f) grants or donations;
 - (g) employee benefits to holders of office of the reporting unit;
 - (h) employee benefits to employees (other than holders of office) of the reporting unit;

⁵¹ This requirement is set out in paragraph 11 of both the first and second Reporting Guidelines.

- (i) fees or allowances (other than expenses included in an amount referred to in subparagraphs (g) or (h) of this paragraph) to persons in respect of their attendances as representatives of the reporting unit at conferences or other meetings.

17. The reporting unit is also required to prepare an operating report as soon as practicable after the end of each financial year:

254 Reporting unit to prepare operating report

- (1) As soon as practicable after the end of each financial year, the committee of management of a reporting unit must cause an operating report to be prepared in relation to the financial year.
- (2) The operating report must:
 - (a) contain a review of the reporting unit's principal activities during the year, the results of those activities and any significant changes in the nature of those activities during the year; and
 - (b) give details of any significant changes in the reporting unit's financial affairs during the year; and
 - (c) give details of the right of members to resign from the reporting unit under section 174; and
 - (d) give details (including details of the position held) of any officer or member of the reporting unit who is:
 - (i) a trustee of a superannuation entity or an exempt public sector superannuation scheme; or
 - (ii) a director of a company that is a trustee of a superannuation entity or an exempt public sector superannuation scheme; andwhere a criterion for the officer or member being the trustee or director is that the officer or member is an officer or member of a registered organisation; and
 - (e) contain any other information that the reporting unit considers is relevant; and
 - (f) contain any prescribed information.
- (3) To avoid doubt, the operating report may be prepared by the committee of management or a designated officer.

Note: This section is a civil penalty provision (see section 305).

18. The information that is prescribed for the purposes of paragraph 254(2)(f) and which must also be included in an Operating Report, is set out in regulation 159 of the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003 (RAO Regulations)*:

159 Prescribed information contained in operating report (s 254 (2) (f))

For paragraph 254(2)(f) of the Act, the following information is prescribed:

- (a) the number of persons that were, at the end of the financial year to which the report relates, recorded in the register of members for section 230 of the Act,

and who are taken to be members of the reporting unit under section 244 of the Act;

- (b) the number of persons who were, at the end of the financial year to which the report relates, employees of the reporting unit, where the number of employees includes both full-time employees and part-time employees measured on a full-time equivalent basis;
- (c) the name of each person who has been a member of the committee of management of the reporting unit at any time during the reporting period, and the period for which he or she held such a position.

Provision of Financial Documents to Members and Presentation to a Meeting

19. Each year an 'approved auditor' must audit the financial report of a reporting unit and make a report in relation to the year to the reporting unit (see section 257). Once this has occurred, the 'full report' must be provided by the reporting unit to its members, free of charge. The 'full report' consists of the auditor's report, the GPFR (which includes the committee of management statement⁵²) and the operating report (**the full report**). Alternatively, a concise report may be provided to members if the requirements of subsections 265(2) and (3) and regulation 161 of the RAO Regulations have been met:

265 Copies of full report or concise report to be provided to members

- (1) A reporting unit must provide free of charge to its members either:
 - (a) a full report consisting of:
 - (i) a copy of the report of the auditor in relation to the inspection and audit of the financial records of the reporting unit in relation to a financial year; and
 - (ii) a copy of the general purpose financial report to which the report relates; and
 - (iii) a copy of the operating report to which the report relates; or
 - (b) a concise report for the financial year that complies with subsection (3).

Note: This subsection is a civil penalty provision (see section 305).

- (2) A concise report may only be provided if, under the rules of the reporting unit, the committee of management of the reporting unit resolves that a concise report is to be provided.
- (3) A concise report for a financial year consists of:
 - (a) a concise financial report for the year drawn up in accordance with the regulations; and
 - (b) the operating report for the year; and

⁵² See paragraph 253(2)(c) of the RAO Schedule and the Reporting Guidelines that were made under section 255 of the RAO Schedule.

- (c) a statement by the auditor:
 - (i) that the concise financial report has been audited; and
 - (ii) whether, in the auditor's opinion, the concise financial report complies with the relevant Australian Accounting Standards; and
 - (d) a copy of anything included under subsection 257(5), (6) or (7) in the auditor's report on the full report; and
 - (e) a statement that the report is a concise report and that a copy of the full report and auditor's report will be sent to the member free of charge if the member asks for them.
- ...
- (5) The copies referred to in subsection (1) must be provided within:
 - (a) if a general meeting of members of the reporting unit to consider the reports is held within 6 months after the end of the financial year—the period starting at the end of the financial year and ending 21 days before that meeting; or
 - (b) in any other case—the period of 5 months starting at the end of the financial year.

A Registrar may, upon application by the reporting unit, extend the period during which the meeting referred to in paragraph (a) may be held, or the period set out in paragraph (b), by no more than one month.

Note: This subsection is a civil penalty provision (see section 305).

20. Regulation 161 of the RAO Regulations prescribes the following for concise reports:

- (1) For subsection 265(3) of the RAO Schedule, a concise financial report must include:
 - (a) the following financial statements presented as in the full report except for the omission of cross-references to notes to the financial statements in the full report:
 - (i) a profit and loss statement for the financial year;
 - (ii) a balance sheet for the end of the financial year;
 - (iii) a statement of cash flows for the financial year; and
 - (b) disclosure of information for the preceding financial year corresponding to the disclosures made for the current financial year; and
 - (c) discussion and analysis of the principal factors affecting the financial performance, financial position and financial and investing activities of the reporting unit to assist the understanding of members; and
 - (d) any reports or statements mentioned in paragraph 253(2)(c) of the RAO Schedule; and
 - (e) in addition to the statement required by paragraph 265(3)(e) of the RAO Schedule, a statement that the concise financial report has been

derived from the full report and cannot be expected to provide as full an understanding of the financial performance, financial position and financial and investing activities of the reporting unit as the full report; and

- (f) the notice mentioned in subsection 272(5) of the RAO Schedule.
 - (2) A concise report may include any other information consistent with the full report.
21. While a reporting unit may provide a concise report, rather than the full report, to its members under subsection 265(1) of the RAO Schedule, it must be the full report that is presented to a meeting under section 266. Where a concise report was provided to members, a copy of both the concise report and the full report must be lodged with the AIR under section 268 of the RAO Schedule.
22. The full report must be presented to a meeting of members of the reporting unit or to the committee of management. This must occur within six months of the end of the financial year (unless an extension of time has been given, in which case the meeting must occur within seven months of the end of the financial year):

266 Full report to be presented to meetings

- (1) Subject to subsection (2), the reporting unit must cause the full report to be presented to a general meeting of the members of the reporting unit within the period of 6 months starting at the end of the financial year (or such longer period as is allowed by a Registrar under subsection 265(5)).

Note: This subsection is a civil penalty provision (see section 305).

...

- (3) If the rules of the reporting unit provide for a specified percentage (not exceeding 5%) of members to be able to call a general meeting of the reporting unit for the purpose of considering the auditor's report, the general purpose financial report and the operating report, the full report may instead be presented to a meeting of the committee of management of the reporting unit that is held within the period mentioned in subsection (1).

Lodgement with the Australian Industrial Registry

23. A reporting unit has 14 days after the date of the meeting at which the full report was presented in which to lodge documents with the AIR (or with FWA, as appropriate):

268 Reports etc. to be lodged in Industrial Registry

A reporting unit must, within 14 days (or such longer period as a Registrar allows) after the general meeting referred to in section 266, lodge in the Industrial Registry:

- (a) a copy of the full report; and
- (b) if a concise report was provided to members—a copy of the concise report; and
- (c) a certificate by a prescribed designated officer that the documents lodged are copies of the documents provided to members and presented to a meeting in accordance with section 266.

Note: This section is a civil penalty provision (see section 305).

A reporting unit must have an auditor

24. A reporting unit must ensure that there is an auditor of the reporting unit as required by section 256(1) of the RAO Schedule:

256 Auditors of reporting units

- (1) A reporting unit must ensure that there is an auditor of the reporting unit at any time when an auditor is required for the purposes of the operation of this Part in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (2) The position of auditor of a reporting unit is to be held by:
- (a) a person who is an approved auditor; or
 - (b) a firm, at least one of whose members is an approved auditor.
- (3) A person must not accept appointment as auditor of a reporting unit unless:
- (a) the person is an approved auditor; and
 - (b) the person is not an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (4) A member of a firm must not accept appointment of the firm as auditor of a reporting unit unless:
- (a) at least one member of the firm is an approved auditor; and
 - (b) no member of the firm is an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (5) A person who holds the position of auditor of a reporting unit must resign the appointment if the person:
- (a) ceases to be an approved auditor; or
 - (b) becomes an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (6) A member of a firm that holds the position of auditor of a reporting unit must take whatever steps are open to the member to ensure that the firm resigns the appointment if the member:
- (a) ceases to be an approved auditor and is or becomes aware that no other member of the firm is an approved auditor; or
 - (b) becomes an excluded auditor in relation to the reporting unit; or
 - (c) becomes aware that another member of the firm is an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (7) The auditor of a reporting unit must use his or her best endeavours to comply with each requirement of this Schedule that is applicable to the auditor in that capacity.

...

25. A discussion of the powers and duties of auditors under the RAO Schedule is set out in chapter 12.

Timeframes for compliance

Order of signing of committee of management statement and auditor's report

26. In understanding the legislative framework that is established by the RAO Schedule (as summarised below in the table at paragraph 33 of this chapter), it is necessary to appreciate the importance of the order of events that must occur:
- a. At a first meeting, the committee of management must pass resolutions in accordance with paragraph 17 of the first Reporting Guidelines or paragraph 25 of the second Reporting Guidelines (as applicable);
 - b. Having viewed the signed committee of management resolution, the auditor must then sign and date his or her auditor's report; and
 - c. A second meeting of either the committee of management or of members⁵³ must be held at which the full report (including the signed auditor's report) is presented.
27. It is necessary for the auditor to view a signed committee of management statement before signing the auditor's report⁵⁴ because this informs the auditor of the date upon which the governing body approved, and thereby took responsibility for, the financial report.⁵⁵ By viewing the signed committee of management statement, an auditor can obtain 'sufficient appropriate audit evidence' on which to base his or her opinion on the financial report. 'Sufficient appropriate audit evidence' is 'evidence that the entity's financial report has been prepared and that those charged with governance have asserted that they have taken responsibility for it'.⁵⁶

The 5% Rule

28. The timing of a number of key events in the financial reporting timeframe set out in Part 3 of Chapter 8 of the RAO Schedule turns upon whether the reporting unit is permitted by its Rules to present financial documents to a meeting of the committee of management or whether it is required to present them to a general meeting of members.

⁵³ See paragraphs 30 and 31

⁵⁴ Subsection 257(8) of the RAO Schedule requires the form and content of the auditor's report to be in accordance with Australian Auditing Standards.

⁵⁵ See paragraph 35 of Australian Auditing Standard AUS 702 *The Audit Report on a General Purpose Financial Report*. From 1 July 2006, an equivalent provision is set out in paragraph 54 of Australian Auditing Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*.

⁵⁶ These words are taken from paragraph 54 of Australian Auditing Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*.

29. The RAO Schedule requires a reporting unit to provide the full report (that is, the auditor's report, the GPFR (which includes the committee of management statement⁵⁷) and the operating report) to its members, free of charge.⁵⁸ No less than 21 days after it was provided to members⁵⁹, but nevertheless within six months of the end of financial year⁶⁰, the full report must subsequently be presented to a general meeting of members. Within 14 days after the general meeting of members, the reporting unit must lodge with the AIR a copy of the full report and a Secretary's certificate (or 'designated officer's certificate') stating that the documents lodged are copies of the documents provided to members and presented to a meeting in accordance with section 266.⁶¹
30. In the alternative, it is possible for the full report to be presented to a meeting of the committee of management of a reporting unit but only where the rules of that reporting unit make provision as required by subsection 266(3) of the RAO Schedule. That subsection provides that, where the rules provide that not more than 5% of members are able to call a general meeting of the reporting unit for the purpose of considering the auditor's report, GPFR and operating report, the full report may be presented to a committee of management meeting rather than to a general meeting (**the 5% rule**).
31. A 5% rule for the HSU National Office was not inserted into the Rules until certification of Rule 35A on 12 November 2009.⁶² As a result, during the period in which Mr Thomson was National Secretary the reporting unit that is constituted by the HSU National Office was required both to provide its full report to members and to present the full report to a meeting of members (rather than to the National Council or National Executive) under sections 265 and 266 of the RAO Schedule respectively (but see the discussion in chapter 13 under the heading 'A reporting unit with no members') on page 935).

Timelines applying to the HSU National Office

32. A diagrammatic summary of the reporting process and its timeframes is set out at Annexure K to this report.

⁵⁷ See paragraph 253(2)(c) of the RAO Schedule and the Reporting Guidelines made under section 255 of the RAO Schedule.

⁵⁸ See subsection 265(1)(a) of the RAO Schedule

⁵⁹ See paragraph 265(5)(a) of the RAO Schedule

⁶⁰ See subsection 266(1) of the RAO Schedule.

⁶¹ See section 268 of the RAO Schedule.

⁶² R2009/10049

33. Sub-rule 36(f) of the HSU Rules provides that the financial year of the Union shall end on 30th June in each year. In applying those timelines to the HSU, the National Office must:

Deadline	Requirement
<i>As soon as practicable after 30 June of each year:</i>	Committee of management must cause a GPFR to be prepared. As the committee of management statement is a constituent part of the GPFR, the committee of management must hold a meeting at which it passes resolutions required by paragraph 17 of the first Reporting Guidelines/paragraph 25 of the second Reporting Guidelines (the first meeting)
	After preparation of GPFR (including signing of committee of management statement), auditor must audit GPFR and date and sign the auditor's report
	Operating report must be prepared
<i>By 10 December each year:</i>	Circulate full report to members of the reporting unit
<i>By 31 December each year:</i>	Present full report to a general meeting of members (the second meeting)
<i>Within 14 days of the meeting and, in any event, by 14 January immediately following:</i>	Lodge full report and designated officer's (Secretary's) certificate with AIR

General Duties in relation to the Financial Management of Organisations

34. Division 2 of Part 2 of Chapter 9 of the RAO Schedule sets out general duties in relation to the financial management of organisations:

285 Care and diligence—civil obligation only

- (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
- (a) were an officer of an organisation or a branch in the organisation's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer.

Note: This subsection is a civil penalty provision (see section 305).

- (2) An officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their

equivalent duties at common law and in equity, in respect of the judgment if he or she:

- (a) makes the judgment in good faith for a proper purpose; and
- (b) does not have a material personal interest in the subject matter of the judgment; and
- (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
- (d) rationally believes that the judgment is in the best interests of the organisation.

The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Schedule or under any other laws.

286 Good faith—civil obligations

- (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties:
 - (a) in good faith in what he or she believes to be the best interests of the organisation; and
 - (b) for a proper purpose.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

287 Use of position—civil obligations

- (1) An officer or employee of an organisation or a branch must not improperly use his or her position to:
 - (a) gain an advantage for himself or herself or someone else; or
 - (b) cause detriment to the organisation or to another person.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

Relevant provisions of the HSU Rules

Background

35. Below are extracts of those Rules of the HSU which are discussed throughout this report.
36. Organisations that were registered under the WR Act were required by subsection 194(1) to have rules that made provision as required by that Act.⁶³ As at 16 August 2002 the Rules were set out in a rule book that had been certified on 24 May 2002.
37. While Mr Thomson was National Secretary, various alterations to the Rules were certified under section 159 of the RAO Schedule on seven occasions between 21 November 2003 and 4 September 2006. For a brief period between 30 March 2006 and 8 June 2006, the numbering of most rules set out in the rule book changed. With alterations that were certified on 9 June 2006, however, most of the rule numbering returned to the numbering that had been in place when Mr Thomson assumed office in August 2002.
38. Changes that were made to rule numbering while Mr Thomson was National Secretary are noted in footnotes.

Extracts of the Rules

National Council

...

Rule 20 - National Council⁶⁴

- (a) The National Council shall consist of -
 - (i) the Officers of the Union, and,
 - (ii) delegates elected by and from each branch on the basis of one delegate for every 1000 members or part thereof.
- (b) For the purposes of this Rule, the membership of a branch shall be the membership of that branch certified as such by the Branch Committee as at 31st December, in the year immediately preceding an ordinary election of delegates to National Council pursuant to Rule 52⁶⁵ of these rules; provided that:-
 - (i) if, as at the 31st December, in any subsequent year prior to the year immediately preceding the next following ordinary election of delegates to National Council pursuant to Rule 52 of these rules, the membership

⁶³ The equivalent provision to the RAO Schedule was subsection 140(1).

⁶⁴ This rule was numbered Rule 21 between 30 March 2006 and 8 June 2006.

⁶⁵ Between 16 August 2002 and 8 June 2006 Rule 52 provided for Branch elections. With rules that were certified on 9 June 2006, a new Rule 29 provided for elections at both the Branch and National level. References to Rule 52 in Sub-rule 20(b) were therefore replaced with references to Rule 29.

of a Branch certified as such by the Branch Committee has increased to such an extent as would increase the number of delegates to which that Branch would be entitled pursuant to paragraph (a) (ii) of this Rule, that Branch shall be entitled to elect or appoint extra delegate or delegates in accordance with Rule 52(g)⁶⁶ of these Rules as if it were filling an extraordinary or casual vacancy or vacancies, and,

- (ii) if, as at the 31st December, in any subsequent year prior to the year immediately preceding the next following ordinary election of delegates to National Council pursuant to Rule 52 of these Rules, the membership of a Branch certified as such by the Branch Committee decreases the number of delegates to which that Branch is entitled shall not thereby decrease.
- (c) Where a delegate of a branch becomes an Officer of the Union, he/she shall cease to be and act as a delegate of that branch and that branch shall be entitled to elect or appoint a delegate in his/her place in accordance with Rule 41 of these Rules.
- (d) The Officers of the Union shall be ex-officio members of any committee or sub-committee of the National Council or National Executive.
- (e) Unless a branch has prior to the commencement of a meeting of the National Council paid to the National Council all monies owing by it to the National Council pursuant to these Rules, its delegates to the National Council shall not be entitled to participate in such meeting.

Rule 21 - Powers and duties of National Council⁶⁷

The National Council shall, subject to these Rules and the control by the members as hereinafter mentioned, be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, shall in particular have power:-

- (a) to determine and direct the policy of the Union in all matters affecting the National Council or the Union as a whole;
- (b) to make, add to, amend, rescind and/or otherwise alter these Rules;
- (c) to fix the remuneration and terms and conditions of employment of the Officers of the Union;
- (d) to fix the remuneration to be paid to any National Returning Officer;
- (e) to appoint and remove such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary and to fix the remuneration and terms and conditions of employment of the same;
- (f) to resolve that the Union affiliate with or amalgamate with or absorb any other organisation or body;
- (g) to hear and determine appeals from Branches and members;

⁶⁶ The rules that were certified on 9 June 2006 provided for election of Branch officers in Part A of Rule 29. The reference in Sub-rule 20(b)(i) to Rule 52(g) was therefore replaced with a reference to Sub-rule 29A(j).

⁶⁷ This rule was numbered Rule 22 between 30 March 2006 and 8 June 2006.

- (h) to appoint any person to represent the Union before any Court, Commission, Board, Tribunal or other authority.
- (i) to appoint a National Auditor and to fix the remuneration to be paid to the same;
- (j) to delegate its authority on all routine or other matters to the National Executive;
- (k) to establish any committees or sub-committees as it may from time to time determine provided that any such committee or sub-committee shall not exercise any executive powers but shall have and exercise only advisory powers;
- (l) to interpret these Rules;
- (m) to direct the investment of the funds of the Union; and,
- (n) to dispose of or transfer any of the funds of the Union or any securities in which the funds of the Union have been invested.
- (o) All decisions of the National Council shall be final and shall remain in force unless and until varied, amended or rescinded by it or by a plebiscite of members of the Union.⁶⁸
- (p) Provided that none of the powers conferred on the National Council by these Rules shall enable the National Council to alter an Entrenched Rule as defined herein.⁶⁹

Rule 22 - Meetings of National Council⁷⁰

- (a) The National Council shall meet biennially⁷¹ in the month of October on a date and time as is determined by the National Council or the National Executive or the National Secretary in conjunction with the National President.
- (b) Notwithstanding anything in the Rules to the contrary, a meeting of National Council shall be held in October 2000 and shall be deemed to be a biennial meeting of National Council, and biennial meetings of National Council shall be scheduled at two yearly intervals thereafter in accordance with paragraph (a).⁷²

⁶⁸ The words contained in sub-paragraph (o) appeared in the rulebook at the end of Rule 21 as at 16 August 2002 but were not set out in a separately numbered paragraph. The numbering of this paragraph as sub-paragraph 21(o) was introduced with rule changes that were certified on 9 June 2006.

⁶⁹ The words contained in sub-paragraph (p) appeared in the rulebook at the end of Rule 21 as at 16 August 2002 but were not set out in a separately numbered paragraph. The numbering of this paragraph as sub-paragraph 21(p) was introduced with rule changes that were certified on 9 June 2006.

⁷⁰ This rule was numbered Rule 23 between 30 March 2006 and 8 June 2006.

⁷¹ From 30 March 2006 this Rule was altered to require that National Council shall meet 'annually in the month of September, October or November'.

⁷² Sub-rule 22(b) was deleted with rule alterations that were certified on 30 March 2006. As a consequence, between 30 March 2006 and 8 June 2006 Sub-rules 23(c) and (d) were renumbered to Sub-rules 23(b) and (c). From 9 June 2006 Sub-rules 22(c) and (d) were renumbered as Sub-rules 22(b) and (c).

- (c) Special meetings of the National Council shall be held by resolution of the National Council or National Executive or by decision of the National Secretary in conjunction with the National President.
- (d) The National Secretary shall give each Branch Secretary and each member of the National Council at least two months' clear notice of the biennial meeting of National Council and fourteen days' clear notice of any special meeting thereof.

...

Fares and expenses

Rule 24 - Fares and Expenses⁷³

National Executive shall determine from time to time the fares and expenses to be paid to or on behalf of members of the National Executive when attending meetings of the same or when attending to the business of the Union. In the case of Branch delegates to National Council, such fares and expenses shall be paid by the Branch concerned and in the case of National Executive members such fares and expenses shall be paid out of the funds of the Union.

...

National Executive

Rule 26 - National Executive⁷⁴

- (a) The National Executive shall consist of the Officers of the Union and the Branch Secretary of each Branch.⁷⁵

Rule 27 - Powers of the National Executive⁷⁶

- (a) The National Executive shall, subject to these Rules and to the decisions of National Council and to the control of members as hereinafter mentioned, have power (in addition to powers conferred on it elsewhere in these Rules) to conduct and manage the affairs of the Union including the power to set the wages and conditions of the National Office Staff and between meetings of the National Council may exercise all the powers of National Council except the power to grant life membership and the power to make, add to, amend, rescind and/or otherwise alter these Rules. Provided that none of the powers of the National Executive shall enable the National Executive to alter an Entrenched Rule as defined herein.
- (b) Where, at a meeting of the National Executive, delegates representing not less than four branches so request, a decision of that meeting shall be forthwith referred to the Committees of the branches for consideration and should the Committees of not less than five branches request the National Secretary in

⁷³ This rule was numbered Rule 25 between 30 March 2006 and 8 June 2006.

⁷⁴ This rule was numbered Rule 27 between 30 March 2006 and 8 June 2006.

⁷⁵ As at 16 August 2002, Rule 26 contained additional historical provisions in paragraphs (b) and (c) which were concerned with representation of Branch Secretaries on National Council as a result of a restructure of the Union. These historical provisions were not removed from the Union's Rules until rule alterations that were certified on 30 March 2006.

⁷⁶ This rule was numbered Rule 28 between 30 March 2006 and 8 June 2006.

writing or by telegram within fourteen days of such National Executive meeting that the decision of the National Executive not be implemented, then no action shall be taken on that decision until and unless ratified by the National Council either at a meeting of the National Council or pursuant to Rule 25 of these Rules as if the National Executive had determined that the matter required a decision of the National Council.

- (c) The National Council may review any act or decision of the National Executive.

Rule 28 - Meetings of National Executive⁷⁷

- (a) A meeting of the National Executive shall be held:
- (i) when decided by the National Council or National Executive;
 - (ii) when requested in writing by any four members of the National Executive;
 - (iii) upon petition from any branch or Branch Committee; or,
 - (iv) if considered necessary by the National Secretary in conjunction with the National President;
 - (v) But at least three such meetings shall be held each calendar year.⁷⁸

...

The National President

Rule 30 - National President⁷⁹

The National President shall attend all meetings of the National Council and National Executive and any meeting in the Union held by decision of the National Council and National Executive and preside at these meetings, and may, if he/she desires, preside over any other meeting of the Union or a Branch thereof at which he/she is present. He/she shall preserve order so that the business may be conducted in due form and with propriety and upon the minutes being confirmed shall sign the Minute Book in the presence of the meeting. He/she shall be impartial in all transactions and shall see that these Rules are rigidly adhered to. Upon taking office he/she shall immediately determine the order of precedence of the National Vice-Presidents and submit this in writing to the National Secretary, whereupon this order of precedence shall be and remain the same until one or more of the National Vice-Presidents ceases to hold such office either by effluxion of time or otherwise.

...

⁷⁷ This rule was numbered Rule 29 between 30 March 2006 and 8 June 2006.

⁷⁸ Paragraph (v) of Sub-rule 28(a) was introduced with rule alterations that were certified on 30 March 2006.

⁷⁹ This rule was numbered Rule 31 between 30 March 2006 and 8 June 2006.

The National Secretary - Rule 32

Rule 32 - National Secretary⁸⁰

The National Secretary shall -

- (a) Be the registered officer of the Union to sue and be sued on its behalf;
- (b) Summon by notice in writing to each member thereof and attend, unless excused, all meetings of the National Council and National Executive and keep or cause to be kept correct minutes of the same;
- (c) Have the right to speak at any general or special meeting of any branch or Branch Committee, but not to vote unless he/she is a member of such branch or Branch Committee;
- (d) Answer and file all correspondence;
- (e) Keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Industrial Relations Act 1988⁸¹ or as amended from time to time;
- (f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;
- (g) receive all monies on behalf of the Union and pay the same within seven days of receipt into the Commonwealth Bank⁸² account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;
- (h) Draw up a report and balance sheet to be submitted to the National Council at its biennial⁸³ Meeting and forward a copy of the same to each branch;
- (i) submit his/her books, accounts and receipts annually or as often as may be required by the National Council or National Executive to the auditors and to give them such assistance as they may require in the audit;
- (j) be responsible for the books, records, property and moneys of the Union and, within 48 hours of receiving a request from the National Council to do so, deliver to the National Council such books, records, property and moneys;
- (k) Take all reasonable steps to increase the membership of the Union and foster a branch of the Union in each State or Territory where members are employed;
- (l) Supply branches with information as to the proceedings of the National Council, National Executive and branches;

⁸⁰ This rule was numbered Rule 33 between 30 March 2006 and 8 June 2006.

⁸¹ This became a reference to the *Workplace Relations Act 1996* with rule alterations that were certified on 30 March 2006.

⁸² Paragraph (g) was altered with rule alterations that were certified on 30 March 2006 to require that monies be paid into 'the Union Bank account'.

⁸³ This became a reference to the annual meeting of National Council with rule alterations that were certified on 30 March 2006. Previously Rule 22 had provided for National Council meetings to be held biennially in the month of October in even years. With alterations that were certified on 30 March 2006, Sub-rule 22(a) provided for an annual meeting of National Council in September, October or November.

- (m) confer with Branch Secretaries as often as is necessary in the interests of the Union and assist as best he/she is able all Branch Secretaries and Committees;
- (n) Between meetings of the National Executive, control and conduct the business of the Union;
- (o) Between meetings of the National Council and National Executive, have power to call any meeting in the Union which the National Council has power to call;
- (p) Be ex-officio a member of all Committees of the National Council;
- (q) Be indemnified from the funds of the Union;
- (r) Provide the Returning Officer with such assistance as is necessary to enable him/her to conduct any election;
- (s) Have the power to submit any industrial dispute in which members of the Union are involved to Conciliation and Arbitration; and,
- (t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.

...

The National Assistant Secretary

Rule 33 - National Assistant Secretary⁸⁴

The National Assistant Secretary shall -

- (a) assist the National Secretary at all times in the execution of his/her duties; and,
- (b) be subject to the direction of the National Secretary and act in his/her stead whenever appointed to do so by the National Executive.

Trustees

Rule 34 - Trustees⁸⁵

The Trustees shall invest the funds of the Union and otherwise deal with the property and funds of the Union as they may from time to time be directed by the National Council or National Executive.

⁸⁴ This rule was numbered Rule 34 between 30 March 2006 and 8 June 2006. With rule alterations that were certified on 30 March 2006, these provisions became Sub-rule 34(a), which set out the duties of the Senior National Assistant Secretary. A new Sub-rule 34(b) setting out duties of the National Assistant Secretary was also certified on 30 March 2006.

⁸⁵ This rule was numbered Rule 35 between 30 March 2006 and 8 June 2006.

The National Auditor

Rule 35 - National Auditor⁸⁶

The National Auditor shall -

- (a) be appointed annually by the National Council or the National Executive;
- (b) be a competent person within the meaning of the Industrial Relations Act 1988⁸⁷ and the Industrial Relations Regulations;
- (c) perform such functions and duties as are prescribed by the Industrial Relations Act 1988 and the Industrial Relations Regulations and such other functions and duties not inconsistent with the Industrial Relations Act 1988 and the Industrial Relations Regulations as are required by the National Council or the National Executive;
- (d) have access to and examine if desired all books, papers, deeds, documents and accounts of the National Council, the National Executive and each branch and be empowered to question any office-bearer or officer or employee of the Union or any branch thereof with regard to the same and to obtain from any bank or other institution at which the funds of the Union or any branch thereof are deposited or invested such information as he/she may require; and,
- (e) have power to place before the National Executive any suggestion he/she may desire to make concerning the financial affairs of the Union or its branches and before the Committee of a branch any suggestion he/she may desire to make concerning the financial affairs of that branch.

National Funds and Property - Rule 36

36 - National Funds and Property⁸⁸

- (a) The funds and property of the Union shall consist of -
 - (i) any real or personal property of which the National Council or National Executive of the Union, by these Rules or by any established practice not inconsistent with these Rules, has, or, in the absence of any limited term lease bailment or arrangement, would have, the right of custody, control or management;
 - (ii) the amounts of the branch contributions payable to the National Council pursuant to this rule;
 - (iii) any interest, rents, dividends, or other income derived from the investment or use of such funds and property;
 - (iv) any superannuation or long service leave or other fund operated or controlled by the Union as a whole in accordance with these rules for the benefit of its officers or employees;

⁸⁶ This rule was numbered Rule 36 between 30 March 2006 and 8 June 2006.

⁸⁷ Unlike Rule 32, references to the *Industrial Relations Act 1988* in this rule were not replaced while Mr Thomson was National Secretary with references to the *Workplace Relations Act 1996*.

⁸⁸ This rule was numbered Rule 37 between 30 March 2006 and 8 June 2006.

- (v) any sick pay fund, accident pay fund, funeral fund or like fund operated by the Union as a whole in accordance with these rules for the benefit of its members;
 - (vi) any property acquired wholly or mainly by expenditure of the moneys of such funds and property or derived from other assets of such funds and property; and,
 - (vii) the proceeds of any disposal of parts of such funds and property.
- (b) The funds and property of the Union shall be controlled by the National Council and the National Executive both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union and all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee. For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.
- (c) Each Branch shall pay annually to the National Council capitation fees (which includes the Branches proportion of the National unions affiliation fee to the ACTU) being such amount per financial member as decided from time to time by two-thirds vote of National Council. Such capitation fees shall apply equally to branches.⁸⁹
- (d) Each Branch's capitation fees shall be calculated and payable on the basis of the number of financial members of the Union attached to that Branch as at the 30th June in the appropriate year certified as correct by the Branch Secretary and shall be paid in the case of capitation fees, by the 31st August next following, or, if a branch chooses to pay capitation fees on a quarterly basis, by 14 July, 14 October, 14 January and 14 April next following, or if the Branch chooses to pay monthly by the 14th of each month.⁹⁰
- (e) Any Branch which has failed to pay its capitation fees in accordance with this Rule shall not, unless the National Council otherwise decides, be entitled to any representation at any meeting thereof until such payment is made in full. Where any Branch has so failed to pay, its Branch Secretary shall not, unless the National Executive otherwise decides, be entitled to participate in any meeting of the National Executive until such payment is made in full.
- (f) The financial year of the Union and the Branches shall end on the 30th June in each year.
- (g) Subject always to paragraph (h) in this rule, but notwithstanding anything elsewhere contained in these rules, the Union shall not make any loan, grant or

⁸⁹ Prior to rule alterations that were certified on 30 March 2006, this sub-rule made equivalent provision but was divided up into paragraph (i) (which concerned capitation fees) and paragraph (ii) (which concerned ACTU affiliation fees).

⁹⁰ Prior to rule alterations that were certified on 30 March 2006, this sub-rule made equivalent provision but was divided up into paragraph (i) (which concerned payment of capitation fees on a yearly or quarterly basis) and paragraph (ii) (which concerned payment of ACTU affiliation fees on a yearly or half-yearly basis).

donation of any amount exceeding \$1,000 unless the National Council or the National Executive of the Union -

- (i) has satisfied itself -
 - (a) that the making of the loan, grant or donation would be in accordance with the other rules of the Union, and,
 - (b) in relation to a loan, that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory and,
- (ii) has approved the making of the loan, grant or donation.⁹¹
- (h) The provisions of paragraph (g)⁹² of this rule shall not apply to or in relation to payments made by the Union by way of provision for, or reimbursement of, out of pocket expenses incurred by persons for the benefit of the Union.

...

The Finance Committee

Rule 46 - Finance Committee⁹³

A Finance Committee consisting of the National Secretary, the National Trustees and two ordinary members of the National Executive shall meet regularly to receive a report and recommendations from the National Secretary in relation to the current state of the Union's finances. Such a report will include details of Union income and expenditure and set and monitor budget targets if necessary. The Finance Committee may refer a matter to the National Executive.

The two ordinary members of National Executive who form part of the finance committee shall be elected by National Executive at the first National Executive meeting after the annual Council meeting each year.

Preliminary Discussion of the Requirements of the Rules

- 39. The requirements of various of the Rules of the HSU are discussed in detail at many points throughout this Report.
- 40. The discussion this is set out below is a general discussion which is intended to underpin information and analysis that appears throughout this Report.

⁹¹ Until 30 March 2006 this sub-rule was numbered Sub-rule 36(f), with the result that there were two sub-rules 36(f), the first of which provided for the financial year and the second of which concerned the making of loans, grants and donations. This error was corrected by rule alterations that were certified on 30 March 2006.

⁹² As a result of the error in rule numbering that is referred to in the immediately preceding footnote, up until 30 March 2006 this cross-reference was to paragraph (f) of Sub-rule 36.

⁹³ Rule 46 was inserted into the HSU Rulebook with rule alterations that were certified on 9 June 2006.

Duties of National Council and National Executive.

Authorisation of Expenditure - control of funds and property

Requirements of the Rules

41. The HSU Rules create a framework for overall governance of the Union and for expenditure and control of its funds and property.
42. The power to manage the Union's general affairs is vested in both National Council and National Executive by Rule 21 and Sub-rule 27(a) respectively:
 - a. Rule 21⁹⁴ relevantly provides that the National Council 'shall, subject to these Rules and the control by the members as hereinafter mentioned, be the supreme governing body of the Union and have the management and control of the affairs of the Union...'
 - b. Sub-rule 27(a)⁹⁵ relevantly provides that the National Executive shall, 'subject to these Rules and to the decisions of National Council and to the control of members as hereinafter mentioned, have power (in addition to powers conferred on it elsewhere in these Rules) to conduct and manage the affairs of the Union...and between meetings of the National Council may exercise all the powers of National Council...'
43. National Council and National Executive are also vested by Sub-rule 36(b)⁹⁶ with the power 'to expend the funds of the Union for the purposes of carrying out the objects of the Union...'
44. Sub-rule 36(b) creates an exception, however, to the general power that is vested in National Council and National Executive regarding expenditure on the general administration of the Union:

... For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.
45. In addition to vesting powers in both bodies, Sub-rule 36(b) also requires National Council and National Executive to control the funds and property of the Union:

The funds and property of the Union shall be controlled by the National Council and the National Executive both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union...
46. The Rules also set out a practical requirement regarding day to day operations of the Union. Sub-rule 36(b) requires that:

all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee.

⁹⁴ This rule was numbered Rule 22 between 30 March 2006 and 8 June 2006.

⁹⁵ This rule was numbered Sub-rule 28(a) between 30 March 2006 and 8 June 2006.

⁹⁶ This rule was numbered Sub-rule 37(b) between 30 March 2006 and 8 June 2006.

47. Within this framework, Rule 32⁹⁷ sets out the obligations that are placed upon the National Secretary. Of particular significance are the following:

The National Secretary shall -

- (b) summon by notice in writing to each member thereof and attend, unless excused, all meetings of the National Council and National Executive and keep or cause to be kept correct minutes of the same;

...

- (e) Keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Workplace Relations Act 1996 or as amended from time to time;

- (f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;

- (g) receive all monies on behalf of the Union and pay the same within seven days of receipt into the Union Bank account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;

- (h) Draw up a report and balance sheet to be submitted to the National Council at its annual⁹⁸ Meeting and forward a copy of the same to each branch;

- (i) submit his/her books, accounts and receipts annually or as often as may be required by the National Council or National Executive to the auditors and to give them such assistance as they may require in the audit;

- (j) be responsible for the books, records, property and moneys of the Union and, within 48 hours of receiving a request from the National Council to do so, deliver to the National Council such books, records, property and moneys;

...

- (n) Between meetings of the National Executive, control and conduct the business of the Union;

Review or authorisation of expenditure by National Council or National Executive

Requirements placed upon the National Secretary

48. The obligation in Sub-rule 32(e) that the National Secretary keep records as required by the WR Act requires the National Secretary to keep financial records that correctly record and explain financial transactions of the National Office under subsection 252(1) of the RAO Schedule. The National Secretary is required by subsection 252(5) of the RAO Schedule to keep such records for seven years.

49. There is no general requirement specified in the HSU Rules, however, that the National Secretary report to, or seek authorisation or ratification from, National

⁹⁷ This rule was numbered Rule 33 between 30 March 2006 and 8 June 2006.

⁹⁸ Up until rule changes that were certified on 30 March 2006, Sub-rule 32(h) provided for a report and balance sheet to be submitted to National Council at its biennial meeting. Prior to 30 March 2006, Rule 22 had provided for National Council meetings to be held biennially in the month of October in even years. With alterations that were certified on 30 March 2006, Sub-rule 22(a) provided for an annual meeting of National Council in September, October or November.

Executive or National Council regarding expenditure by the National Secretary of Union funds.

50. Sub-rule 32(j) does require the National Secretary to deliver the Union's books, records, property and monies to National Council but only where National Council has made such a request.
51. My consideration of whether the National Secretary is able to expend funds of the Union on the general administration of the Union without prior authority of National Council or National Executive, and of the meaning of the requirement that he or she 'control and conduct' the business of the Union, is set out at paragraphs 14 to 26 of chapter 5.

Requirements placed upon National Council and National Executive

52. Sub-rule 36(b) requires National Council and National Executive to control the funds and property of the Union. The Rules do not specify, however, how such control is to be exercised by either body. In particular, there is no general express requirement that either body examine, authorise or ratify any of the expenditure of the National Office.
53. The one exception concerns authorisation of expenditure which is not expenditure on, or for the purpose of, the general administration of the Union. Although it is expressed as an exception to a rule which is itself not set out in the Rulebook, the practical effect of the exception within Sub-rule 36(b) is that the Rules require:
 - a. that National Executive or National Council authorise any expenditure of Union funds on matters that are not of a 'general administrative nature' (or incidental thereto) provided that such expenditure is expended for the purpose of carrying out the objects of the Union; and
 - b. such authorisation must be given prior to expenditure of funds on matters that are not of a 'general administrative nature'.
54. There is no express requirement in the Rules that National Council or National Executive scrutinise or authorise expenditure which is for the general administration of the Union or for purposes reasonably incidental thereto. However paragraph 141(b) of the RAO Schedule relevantly provides that the rules of an organisation must provide for:
 - (i) the powers and duties of the committees of the organisation and its branches and the powers and duties of holders of offices in the organisation and its branches;
 - ...
 - (iv) the control of committees of the organisation and its branches respectively by the members of the organisation and branches;
 - ...
 - (ix) the manner in which the property of the organisation is to be controlled and its funds invested;
 - ...
 - (xi) the conditions under which funds may be spent.

55. In *Griffiths v Ansett Pilots Association*⁹⁹ Ryan J found that the "control" required by (the predecessor provision to) subparagraph 141(b)(iv) must be available in a practical sense and must not be susceptible to obstruction or unreasonable delay by the committee, and that such control extends in a limited sense to control between elections. In *Boland v Munro*¹⁰⁰ Evatt and Northrop JJ held that the word "control" (in an even earlier predecessor provision to subparagraph 141(b)(iv):
- ... is to be construed in the sense of meaning the fact of checking and directing action, a method or means of restraint.
56. Such considerations could arguably support an implication into the Rules of the HSU that where expenditure has been authorised by the National Secretary for the purposes of the general administration of the Union, or for purposes reasonably incidental thereto, the National Secretary must nevertheless report such expenditure to National Council or National Executive so that (as the democratically elected organs charged with control of the funds and property of the Union) they may scrutinise such expenditure.
57. However Rule 32 (see in particular sub-rules 32(e), (g), (h), (i), (j) and (t)) already places a range of express obligations upon the National Secretary with respect to his or her accountability to National Council and National Executive for the manner in which the business of the Union is conducted. In my view these requirements are sufficient to meet the requirement (insofar as it relates to the activities of the National Secretary) of subparagraph 141(b)(i) that the Rules provide for control of committees of the organisation and its branches respectively by the members of the organisation and branches. Accordingly it is unnecessary (and arguably inconsistent with Rule 32) to imply an additional requirement that expenditure by the National Secretary for the general administration of the Union or for purposes reasonably incidental thereto be reported to, or scrutinised by, National Council or National Executive. Such an approach is consistent with *McLeish v Kane*¹⁰¹ where it was held that there must be a balancing between considerations of democratic control and those of efficient management:
- The court ... is concerned with all the objects of the Act and clearly it is fundamental to those objects that there be not only democratically controlled organisations but that these organisations should be viable. In other words, we must take care to ensure not only that democratic control is encouraged but also that the organisation remains viable.
58. This, however, is not to say that a National Secretary, acting reasonably and with appropriate diligence, would not provide some level of disclosure to National Executive of at least significant expenditure incurred for the general administration of the union or purposes reasonably incidental thereto.

⁹⁹ [2001] FCA 1215.

¹⁰⁰ (1980) 48 FLR 66.

¹⁰¹ (1978) 22 ALR 547.

What is the 'general administration of the Union'?

59. An understanding of what falls within the concept of the 'general administration of the Union' is central to understanding the circumstances in which the Rules require prior authorisation of expenditure by either National Council or National Executive.
60. An examination of the Rules suggests a number of matters that could reasonably be considered to be part of the organisation's general administration. By way of example:
- a. Rule 5 provides for a registered office of the Union. This could reasonably contemplate that the union will maintain premises (whether leased or purchased) and that those premises would require connection of, and payment for, services such as water and electricity;
 - b. Rule 21, which sets out the powers and duties of National Council, provides that National Council shall have power to appoint staff and to fix the remuneration of Officers of the Union, the National Returning Officer and National Industrial Officers and Research Officers, together with 'other types or category of officials as it deems necessary'. Payment by the National Office of wages and other associated benefits (such as allowances and long service leave) would, in my view, necessarily fall within the 'general administration' of the Union, provided that the employee had been employed, and wages and conditions determined, in accordance with the Rules;
 - c. Similarly, it would be reasonable to presume that the National Office would expend funds, as part of its general administration, on infrastructure that supports employment of its staff, such as office equipment, computers and telephones.
61. There is also a temporal element to any understanding of what would fall within the definition of the 'reasonable administration' of the Union. The rulebook that was in place when Mr Thomson assumed office as National Secretary in 2002 made reference to the recording of votes of National Council members by 'lettergram' and 'telegram'. This rule was altered on 30 March 2006 to refer to email and, almost a decade later, it is standard business practice not only to use email but also to maintain an organisational website. Similarly, it is standard business practice for senior employees (at the very least) to be provided with a mobile telephone and for employers to pay for work-related calls that are made using that mobile telephone. The costs of setting up and maintaining such services would, in my view, fall within the 'general administration' of the Union.
62. It is notable that the Rules set out a particular matter that it was clearly intended would not fall within the 'general administration of the Union'. Rule 22 provides for the meeting of National Council, which is the supreme governing body of the Union. Given the importance of this body, it might be reasonable to argue that the cost of attendance by delegates at meetings of National Council would fall within the definition of 'reasonable administration' costs of the National Office. Rule 24, however, specifically requires Branches to pay for the fares and expenses of their delegates in attending meetings of National Council.

63. Similarly, costs that are attributable under the Rules to Branches, such as Branch accommodation, employing Branch staff and holding Branch meetings, would not be part of the 'general administration of the Union' or for purposes reasonably incidental thereto.
64. It might be also reasonable to presume that anything that falls within the objects of an organisation could appropriately be characterised as being part of that organisation's 'general administration'. An examination of the objects of the Union as set out in Rule 4, however, makes it clear that such a presumption cannot be sustained since the carrying out of many of the Union's objects could require determination of Union policy. For example, Sub-rule 4(f) states that an object of the Union is to 'promote industrial peace by all amicable means, such as conciliation, arbitration, or the establishment of permanent boards, to assist in their settlement by just and equitable means'. This Sub-rule alone raises a number of questions for consideration and debate at a policy level. Does it contemplate conciliation (post WorkChoices) by bodies other than the Australian Industrial Relations Commission and, if so, does it contemplate that the Union will pay for such services? What is contemplated by the 'establishment of permanent boards'? Would those boards only relate to the health sector? Would other unions be approached to assist with the funding of such boards and, if so, which unions? Would employers or employer groups also be approached regarding the establishment of such boards?
65. Once the Union has determined its policy concerning a particular issue, however, expenditure which gives effect to that policy would generally be within the 'general administration of the Union' or for purposes reasonably incidental thereto. Using the example of the Union's object in Sub-rule 4(f) of 'promoting industrial peace', if the Union had a policy that, whenever it is in dispute with an employer, the Union should source and pay for a mediator then a decision by the National Secretary to authorise the payment to such a third party for the purpose of conducting such a mediation process would, in my view, be expenditure for the general administration of the Union.
66. While it is not conclusive, as a general principle, many of the costs associated with 'general administration' are also likely to be characterised as being regularly incurred, incurred at predictable times (and often in a regular pattern, such as weekly, monthly or annually) or on predictable occasions, and are predictable as to dollar amount. Further, with a few notable exceptions, the dollar amount of costs associated with the 'general administration' will also generally be relatively low. By way of example, rates, water and electricity charges are incurred regularly (usually 4 or, in the case of electricity 6, times per year), at predictable times (invoices are usually sent at regular intervals of every 2 or 3 months) and do not usually vary a great deal from one invoice to the next. They are also for a relatively low dollar figure. Two notable exceptions are the costs of rent/mortgage payments and wages which, despite often accounting for a large proportion of the running costs of a business, are nevertheless regularly incurred at predictable times and for a predictable dollar amount. Further, I would expect that the committee of management of any union would have considered and authorised the contracts of rental/purchase and employment that underpin the ongoing, regular and predictable payments that arise from those contracts.

67. That is not to say, however, that all costs that fall within the 'general administration of the Union' or purposes incidental thereto must be incurred regularly, at predictable times and for predictable amounts. In considering the example at paragraph 65 above regarding engagement of a third party mediator, while the cost may vary on each occasion the National Secretary would nevertheless be giving effect to established Union policy (while also exercising his power under Sub-rule 32(s) to 'submit any industrial dispute in which the members of the Union are involved to Conciliation and Arbitration;).
68. On this analysis, there is a relatively small category of expenses of the National Office that, in my view, could be said to fall with little doubt within the 'general administration of the Union'. They would include the costs of running and maintaining National Office premises and the costs of employing staff (provided those staff have been employed in accordance with other requirements of the Rules).
69. Beyond this small category of expenses, however, it is necessary to examine each item of expenditure on an individual basis in order to determine whether it can reasonably be said to fall within the 'general administration of the Union' or for 'purposes reasonably incidental to the general administration of the Union'.

What is meant by 'control' of National Office funds and property?

Oversight of the financial position of the National Office

70. Sub-rule 36(a) requires that:
- The funds and property of the Union shall be controlled by the National Council and the National Executive.
71. It is therefore necessary to consider what is meant by the notion of 'control' of funds and property.
72. The verb 'to control' is defined as being 'to exercise restraint or direction over'. 'To restrain' is to keep in check or under control, while 'restraint' is defined as 'the act of restraining, or holding back, controlling or checking'. The word 'direction' is variously described as 'guidance; instruction', 'order; command' and 'management; control' (Macquarie Concise Dictionary, 4th edition, 2006).
73. The 'control of funds and property' therefore concerns the notion of managing, directing and keeping in check such funds and property.
74. While it is not prescriptive of the requirements of Sub-rule 36(a) while Mr Thomson was National Secretary, the terms of a new protocol containing financial governance procedures for the National Office that were endorsed at a National Executive meeting on 19 March 2008 (HSUNO.018.0081) provide guidance as to what National Executive at that time considered to be appropriate measures to 'control' National Office finances. That protocol provides:

Credit Cards

- All Credit Cards issued to National Office employees and Officials are to be used only for bona fide and approved union business and are to be used in accordance with these procedures;

- The limit on all credit cards held by the National Secretary in the name of the Union shall be \$10,000;
- The limit on all credit cards held by employees the name of the Union shall be (\$5 000);
- No cash withdrawals shall be made from HSU credit cards;
- Receipts and tax invoices are to be kept for all credit card expenditure and a monthly reconciliation against statements is to occur on all credit cards signed off monthly by the National Secretary.

Normal Operating Expenses

The National Secretary is authorised to make and/or commit to expenditures within the context of normal operations and consistent with any policy or program direction issued by the National Executive.

Employees of the Union are authorised to make expenditures within the context of normal operations up to a \$500 maximum without the written authorisation of the National Secretary. Where expenditure is likely to exceed \$500, the National secretary may verbally authorise such expenditure, but authorisation must be recorded in writing as soon as practicable after the expenditure;

Extraordinary Operating Expenses

The National Secretary is authorised to make expenditure up to \$10,000 and must report those expenditures to the Finance Committee as soon as is practicable and report the expenditure to the next meeting of the National Executive following the expenditure.

Expenditure over \$10,000 but less than \$50,000 must be approved by the Finance Committee and reported to the next meeting of the National Executive following the expenditure.

Expenditure over \$50,000 must be approved by the National Executive prior to the expenditure being incurred, or, in urgent and unforeseen circumstances, jointly by the National secretary AND the National President, provided that such payments shall be immediately reported to the members of National executive by email and to the next meeting of the National Executive following the expenditure

Budgets and Reporting

- The National Secretary, in consultation with the Finance Committee. shall be responsible for developing a budget for the HSU National Office which should be submitted to the National executive for endorsement by May each year;
- Monthly profit and loss accounts for the month and year to date are to be prepared and circulated to the Finance Committee and the National Executive every month. These reports will generally be provided within 7 days of the end of each month.
- A detailed list (date drawn, payee, amount, purpose) of cheques drawn and EFT payments made is also to be prepared and circulated to the Finance Committee every month and the National Executive every Quarter.

Leave Entitlements

The National Office should, as a matter of priority, establish a separate bank account for investing funds for leave accruals so that these are separate from general revenue. In future, the National Office budget should make allowance for investing in this account as required to cover existing employee entitlements.

75. This protocol was developed in light of advice in the Exit Audit that was conducted by Mr Dick following the resignation of Mr Thomson as National Secretary. The Exit Audited identified unauthorised expenditure, a lack of supporting documentation for some expenditure and expenditure by persons who were no longer employees of the National Office (HSUNO.018.0009).
76. The protocol that was endorsed in March 2008 provides for a relatively high level of scrutiny of National Office expenditure, including scrutiny of details of all transactions by not only the Finance Committee but also National Executive every quarter. It also requires monthly reporting of profit and loss accounts and year to date expenditure and creates specific requirements regarding authorisation of expenditure.
77. In my view, the notion of exercising 'control' over the funds and property of the Union would not require scrutiny by National Council or National Executive of the standard that is set out in the protocol of 19 March 2008. It would, however, at a minimum require National Council or National Executive to oversee National Office finances through the setting of a budget, regular monitoring of expenditure against that budget during the financial year, authorisation of expenditure that is not on the general administration of the Union or for purposes reasonably incidental thereto and approval of end of year financial reports.
78. Minutes of National Executive meetings while Mr Thomson was National Secretary typically disclose little, if indeed any, specific consideration of the finances of the National Office by the National Executive. For example:
- a. the minutes of the National Executive meeting held on 25 and 26 February 2003 (HSUNO.024.0055) record that the meeting considered a budget for 2002/2003, a budget for 2003 calendar year and a profit and loss budget analysis for the month of January 2003. It was agreed that reports should only be on a quarterly basis, not monthly.
 - b. the minutes of the National Executive meeting held on 5 May 2003 (HSUNO.018.0404) contains the following Financial Report:

FINANCIAL REPORT

National President said budget indicated the expenditure January to March.
 - c. the minutes of the National Executive meeting held on 31 July and 1 August 2003 (a two day meeting) (HSUNO.018.0385) contains the following Financial Report:

Item 9 - Finance Report

A year to date expenditure versus budget was given to National Executive.
 - d. the minutes of the National Executive meeting held on 14 and 15 July 2004 (a two day meeting) (HSUNO.018.0348) do not record any discussion at all of the finances of the National Office. Nor do the minutes of the next meeting of the National Executive - a teleconference held on 14 October 2004 (HSUNO.018.0345) - disclose any discussion of the finances of the National Office.

- e. At the National Executive meeting of 6 September 2005 (HSUNO.018.0286) minutes record that the annual accounts for the National Office were circulated and that 'a finance committee meeting would take place on the Thursday of conference with the reports to go to the full conference on the Friday'.
- f. the Minutes of the National Executive meeting held on 7 and 8 August 2006 (HSUNO.018.0220) record the following Financial Report:

17. Finance report

The National Secretary presented the finance report that had been adopted at the finance committee meeting.

Moved: Dan Hill. Seconded: Kathy Jackson

That the finance report be adopted

CARRIED

- g. The minutes of the National Executive meeting held on 7 December 2006 (HSUNO.018.0192) contain no discussion of the finances of the National Office.
79. In interview Mr Brown described the culture within the Union when he became a member of the National Executive in 2002 as being one in which detailed information regarding finances of the organisation was not provided to National Executive (Brown PN 74). This continued throughout the period in which Mr Thomson was National Secretary. As Mr Brown described it:
- ...some of us tried to change it by, you know, insisting, I guess, that the executive be given more detailed information but that was like pulling teeth. Often we, you know, more often than not didn't get the information. When we did get the information it was so general that it was very difficult to interpret or to make any judgments as to whether things were okay.
80. Mr Brown (Brown PN 109) described the process of reporting financial information regarding the National Office to the National Executive as:
- Up until [maybe two months before the 2007 general election] most of the financial statements were listing broad categories of expenditure so there were about five or six line items on the statement that talked about phones and, you know, meeting expenses et cetera, but it certainly didn't break it down any more than that. I think the most detailed information we had about items of expenditure actually came out of the audited reports, financial reports at the end of the financial year when we actually got those. It was a result of those that a number of questions in each case actually arose as to why expenditure had increased significantly in this area or that area or, you know, what was actually encompassed in this particular line item or whatever, but for the executive between the audit of the financial reports, I don't think we got anything of any detail.
81. Dr Kelly gave the following information in interview (Kelly PN 250):
- MR NASSIOS: Did the national executive typically spend much time reviewing the finances of the national office?
- DR KELLY: Well, sometimes there were no - there was no consideration of the finances at some national executive meetings. So typically you would have to say not a lot of time.

82. When asked during interview about reporting of financial information regarding the national office, Mr Williamson stated that (Williamson PN 64):
- Well, from what I can recall from time to time there was a report given [to National Executive] by the national secretary on the finances of the union and the finance committee consisted of people from the national executive and they were at those meetings and if there was anything untoward so as to speak it would be a matter that they would have brought to the attention of the national executive.
83. Mr Williamson continued (Williamson PN 70):
- ...there was nothing untoward ever said at the national executive meetings other than questions about the issue of the budget – are we on budget, or whatever. But there was no – not to my knowledge that I can recall, anything out of the ordinary.
84. Mr Williamson was then asked whether that meant that, if no-one from the Finance Committee raised anything about finances at National Executive meetings, there may not have been any discussion about finances at such meetings. Mr Williamson's response was that a finance report was 'a standing item' on the agenda of National Executive meetings and that 'as I said, there would have been commentary, you know, actuals to budget but not anything, as I said, you know, extraordinary to that' (Williamson PN 73).
85. Ms Jackson also noted in interview (Jackson (1) PN 66) that 'My understanding was from people that were on the finance committee at the time that the finance committee didn't meet that often, which is another way the system sort of fell down I suppose'.
86. It is clear that some members of National Executive during the period in which Mr Thomson was National Secretary were of the view that the level of scrutiny by that body of the National Office finances was not of a sufficiently high standard. The minutes of National Executive meetings suggest that discussion of the National Office finances rarely (if indeed ever) occupied a significant portion of the National Executive's time. Minutes of National Executive meetings do indicate that National Executive did broadly examine year to date expenditure against a budget and did authorise the end of financial year accounts.

Day to day expenditure by the National Office

Requirements of Sub-rule 32(n)

87. Analysis is set out in paragraphs 4 to 38 of chapter 5 regarding Sub-rule 32(n), which requires the National Secretary to 'control and conduct the business of the Union' between meetings of National Executive.

Prior authority for National Office expenditure that is not of a general administrative nature

88. Much of FWA's inquiry and subsequent investigation has concerned examination of individual items of expenditure and, in particular, authorisation of those transactions.
89. It is useful, however, to understand at a broader level the context in which these individual transactions were occurring. I have therefore made some general

observations below about processes that occurred within the National Office during the period in which Mr Thomson was National Secretary. While this general discussion includes some analysis of specific transactions by way of example, it is not intended that the examination of these transactions be exhaustive. Rather, it is intended that more detailed analysis of particular items of expenditure in later chapters should be understood in this broader context.

Requirements of the Rules

90. There are a number of questions that must be considered in determining whether the requirements of the Rules concerning authorisation of transactions by National Council or National Executive were met:
- a. Was the expenditure on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union? This requires an assessment of expenditure on a case by case basis.
 - b. If expenditure was not on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union, did National Council or National Executive give its 'prior authority' for that expenditure by passing a formal resolution authorising that expenditure?
 - c. If so, do minutes of the meeting at which such prior authority was given record that formal resolution?
91. These requirements arise as a result of the following:
- a. As has been discussed above at paragraph 53 of this chapter, the practical effect of the exception within Sub-rule 36(b) is that the Rules require the National Secretary to seek prior authority of National Council or National Executive for expenditure of Union funds on matters that are not related to the general administration of the Union or for purposes incidental thereto.
 - b. Paragraphs 59 to 69 above have already discussed what constitutes expenditure on the 'general administration' of the Union and have concluded that expenditure of the National Office needs to be considered on a case by case basis in order to determine whether it falls within this category. It should be noted, however, that, as a general proposition, a significant proportion of National Office expenditure that is being examined in this inquiry and subsequent investigation is not likely to fall within the exception regarding 'general administration'.
 - c. Sub-rule 32(b) also requires the National Secretary to 'keep or cause to be kept correct minutes' of meetings of National Council and National Executive. Rule 30 requires the National President to 'attend all meetings of the National Council and National Executive' and to 'sign the Minute Book in the presence of the meeting', thereby signifying the assent of the meeting to the minutes (see paragraphs 4 to 21 of chapter 17).
 - d. Also set out at paragraphs 4 to 21 of chapter 17 is the requirement that minutes be a complete record of every decision that is reached by a meeting. Not only must every decision that is made be recorded, but the precise words of all

motions and amendments that are proposed and whether the proposals were carried or rejected should appear in the minutes.

General processes surrounding scrutiny of National Office transactions

92. Evidence has been given to FWA in interview that there were no general processes or standard practices under which National Council or National Executive scrutinised or authorised individual transactions of the National Office as a matter of routine procedure, whether those transactions were for the general administration of the Union or otherwise.

93. When asked in interview whether National Executive approved items of expenditure by the national office, Mr Thomson stated that (Thomson at PN 149):

The executive were approving the budget and all that that entailed in terms of its expenditure. The original budgets were done on – again, on a consensus basis. It there were to be substantial changes in the budgets, they would be raised as to why and where, but essentially once that first budget was spent – was set and approved, the concerns were about whether we exceeded those budgets or there were to be changes to them. There were – you know, Rosemary Kelly would ask questions all the time about particular issues, both at the finance committee meeting and at the executive. But they were small questions and they weren't to the heart of the expenditure because that had been dealt with by that process of the budget.

94. Similarly, in response to a question regarding whether National Executive or National Council ever authorised expenditure on credit cards, Mr Thomson described the process as being (Thomson at PN 151):

...the expenditure on those was included in the budget accounts. It didn't matter how you spent the money, provided it appeared in the accounts that was there. So whether it's by cheque, which was always a more difficult arrangement given the federation style that we had, or credit card or cash payments, the mode didn't make any difference...

95. Members of the National Executive who were interviewed by FWA agreed with Mr Thomson that National Executive did not approve expenditure incurred on credit cards held by employees of the national office. Ms Jackson stated in interview (Jackson (1) at PN 72) that she did not review statements concerning expenditure on credit cards of employees of the national office. Mr Brown (Brown PN 106) and Dr Kelly (Kelly PN 245) similarly stated in interview that expenditure on credit cards was not reviewed by national executive.

96. Dr Kelly also stated in interview that National Executive was not presented with itemised expenditures of the national office (Kelly PN 176).

Processes for scrutiny and authorisation of particular National Office expenditure

97. Members of the National Executive, including Mr Thomson, were asked in interview about processes of National Council and National Executive for approving particular, specified items of expenditure. On a number of occasions Mr Thomson's responses characterised expenditure by the National Office on specific items as having been 'approved' in the sense that the expenditure was 'within the budget' that had been approved or that National Executive members knew of HSU's involvement in the matter in question:

- a. When asked whether National Executive had authorised Mr Thomson's withdrawal of \$800 in cash from his CBA MasterCard for the New South Wales ALP conference, Mr Thomson replied (Thomson PN 1432) 'They knew I was there, it was part of the accounts and fitted within the budget that was approved by them'.
- b. When asked whether National Executive had specifically approved sponsorship of Central Coast Rugby League, which amounted for over \$100,000 in three years, Mr Thomson replied (Thomson PN 1526) 'There didn't need – in my view anyway, they didn't need to be. It was within our budget for expenditure in terms of that'.
- c. When asked about payment on 22 and 23 August 2007 of \$5,000 to Dads in Education, Mr Thomson gave the following information (Thomson PN 1657-1672):

MR NASSIOS: It appears to be for a Father's Day breakfast. Was that payment discussed or approved by the national executive?

MR THOMSON: It was discussed – we had national TV on it. We did Sunrise – again, it's something that people can't say they didn't know about.

MR NASSIOS: Okay.

MR THOMSON: It started as a Central Coast thing but it was all of – all the schools in the ACT, a lot of the Sydney schools and the Central Coast schools. They held it at the end of literacy week and they were encouraging fathers to come in and read to their kids after they had a breakfast with the kids at school.

MR RAWSON: You say there was no secret because it was on national television.

MR THOMSON: Yes.

MR RAWSON: If someone from the national executive was watching Sunrise that morning – and I presume - - -

MR THOMSON: They wouldn't have got a shock.

MR RAWSON: You were on Sunrise - - -

MR THOMSON: No, I was standing next to the person who was on Sunrise - - -

MR RAWSON: They see you in the background.

MR THOMSON: Yes.

MR RAWSON: They might think, "Craig is somehow involved in this," or even, "Craig is supporting it."

MR THOMSON: No, they - - -

MR RAWSON: But they wouldn't necessarily jump to the conclusion that the HSU has spent \$5000 supporting it.

MR THOMSON: We told them about it, this is not an unknown issue at all.

98. Dr Kelly also expressed the view that (Kelly PN 147-149):

I mean, there were things that clearly were done without the knowledge of national executive – well, when I say national – as a body...They might have been done with the knowledge of members of national executive, but not national executive as a body. For example, it came out after the event that there was sponsorship provided to a rugby league club on the north coast...That never went to national executive’.

99. It is clear from Mr Thomson’s responses that, in his view, it was not necessary for him to obtain particular authorisation from National Council or National Executive for these items of expenditure at any time. Mr Thomson certainly did not consider it necessary to seek prior authority of National Council or National Executive.

Evidence provided by National Executive minutes regarding authorisation of expenditure

100. A requirement to keep minutes regarding any resolution that may be passed by a meeting can only arise where decisions of that meeting are formalised by resolution.

101. A review of the minutes of National Executive meetings, however, reveals that it was not common practice to formalise decisions of the National Executive by resolution. Often the minutes contain a summary of a discussion about an issue, including views expressed by Mr Thomson or other members of the National Executive about what action should be taken, without any formal resolution. Mr Thomson confirmed to FWA (Thomson PN 137) that it was quite common for discussions not to be formalised by a resolution:

Yes, quite commonly from a - it was one of the changes that I was asked to do in relation to consensus building with executive. This was, I think, primarily a Chris Brown request that we were able to try and work through - that they found the minutes that we kept at the start of my time down there to be - they described them as being confrontational because they were in the form that there was a resolution you can either vote for or against it and the discussion that occurred was that they would prefer to have the minutes talk about the discussion and there not be formal resolutions unless there was a need for them. That, I thought at the time, trying to build the union together was something that I could accede to and the executive agreed to that as being the approach.

102. Minutes of National Executive meetings while Mr Thomson was National Secretary do indicate that some expenditure was considered by that body. Even so, the minutes of National Executive meetings often do not record whether any resolutions were passed by the meeting and, if so, the terms of any such resolutions.

103. There is general agreement amongst those members of the National Executive who were interviewed by FWA that National Executive were aware of, and had generally ‘approved’, expenditure by the national office on the dental campaign. Dr Kelly stated in interview (Kelly PN 731) that ‘there was some expenditure that was generally approved’ around the dental campaign. Similarly, Mr Brown stated in interview that a payment to the Centre for Policy Development for research into whether dental health should be included as a Medicare item was discussed and approved by National Executive (Brown PN 397). Ms Jackson also stated in interview that expenditure on the dental campaign was authorised (Jackson (1) PN 219).

107. Minutes of National Executive meetings, however, do not record any resolution authorising payment of monies to Cairns District Soccer Association, either before or after the payment was made on 22 December 2006.
- a. The 'Queensland Update' at a meeting on 15 and 16 February 2006 (HSUNO.018.0259) records that 'Clem O'Shannessy gave a report on the situation he is facing in Queensland with a very hostile employer. He also outlined his branches (sic) agreement with the LHMU on sharing premises and having a day to day organising service being provided to HSU members particular (sic) in the Brisbane area. Clem also outlined his branches (sic) agreement to take advantage of the NSW Branch offer to provide a phone service and membership record service for the branch.

Action: That the National Secretary and the Queensland Secretary prepare a further report on progress in Queensland.
 - b. The 'Queensland Update' at a meeting on 15 and 16 May 2006 records that 'The National Secretary gave a brief update on the Queensland dispute.'
 - c. No further reports are minuted as having been made to National Executive regarding the Queensland Branch until 2 February 2007, which was the first meeting after payment was made on 22 December 2006. Those minutes state that:

The National Secretary reported on serious matters that had occurred in relation to the Queensland branch and the Cairns football federation. It was agreed that further urgent discussions with the branch need to take place and that the Executive needs to consider carefully its response in regards to both the Branch and the responsible officer involved.
108. The minutes of the National Executive meeting held on 28 and 29 March 2007 (HSUNO.018.0151) record a discussion following a report from Mr Thomson on a meeting he and Mr Williamson had had with 'New Matilda'. The minutes then record that a resolution was passed:

That the HSU become a stakeholder in New Matilda as requested by making an annual contribution of \$10,000 to that organisation.
109. This resolution is striking as it is almost unique in the period during which Mr Thomson was National Secretary of the HSU for the minutes of a meeting of National Executive to record the authorisation by the National Executive of a specific and quantified item of expenditure.
110. As is also set out at paragraph 39 of chapter 12, an examination of minutes of meetings of National Council (in 2002 only) and of National Executive while Mr Thomson was National Secretary shows carriage by those bodies of the following resolutions regarding expenditure by the National Office:
- a. Minutes of the National Council meeting on 23 July 2002 (HSUNO.023.0033) record carriage of a resolution "That lawyers be instructed to provide advice and proposals to National Executive and National Council on the corporatising of the training company so that it is a separate legal entity representing those branches that seek to contribute to the training company. Such costs of the corporatisation

- are to be born (sic) by the National office and those branches that seek to be part of the company in equal shares."
- b. Minutes of the National Council meeting of 23 July 2002 (HSUNO.023.0033) record carriage of a resolution authorising the basis of a 'termination' payment to Rob Elliott, the outgoing National Secretary.
 - c. Minutes of the National Council meeting 19 September 2002 (HSUNO.018.0461) record carriage of a resolution authorising 'The Tasmanian No 1 Branch ... to Brief Legal Council (sic) on this matter'.
 - d. Minutes of the National Executive meeting on 19 September 2002 record the reaching of an agreement between the National Office and the Victoria No.1 Branch over outstanding capitation and affiliation fees whereby the Branch would provide '\$82,000 worth of services per year to the National Office including free rent, electricity phones etc'. A motion was carried that 'The arrangements outlined by the National Secretary in relation to the Victorian Number 1 Branch be endorsed and the National Secretary be authorised to sign the agreement between the Branch and the National Office'.
 - e. Minutes of the meeting on 28 February and 1 March 2005 (HSUNO.024.0118) record the passing of a resolution entitled 'Recommendation' that 'Executive endorses the Union becoming a sponsorship member of the National Aged Care Alliance' with no information being recorded regarding, or motion being carried authorising, the specific cost of such sponsorship.
 - f. Minutes of the National Executive meeting of 7 and 8 November 2005 (HSUNO.024.0024) record an 'action arising' item that 'National President to seek legal advice in relation to the need to transfer assets from individual officers to other entities to protect them from possible fines and tort damages under the new Act'.
 - g. Minutes of the National Executive meeting of 5 December 2006 (HSUNO.018.0192) record that the National President undertook to seek legal advice concerning legislative changes to laws regarding the disclosure of political donations.
111. On occasion, minutes of National Executive meetings record no more than that a report was given regarding a particular item of expenditure. Minutes of the meeting on 15 and 16 February 2006 (HSUNO.018.0259) record a discussion regarding an 'internal review' being conducted by Paul Goulter of the ACTU. While it was not crafted as a resolution, the minutes record 'The National Secretary indicated that the cost of the review was around \$30,000'. There is no record of the carriage of a resolution at this or any subsequent meeting authorising expenditure on such a review.

Observations

112. A number of observations can be made regarding general processes within the National Office while Mr Thomson was National Secretary which help in understanding the culture and general operations of the Union during that period.

113. There were no general processes or procedures under which National Council or National Executive scrutinised, approved or ratified expenditure of the National Office as a matter of routine procedure, whether or not such expenditure was on the general administration of the Union or otherwise.
114. Even where particular expenditure fell outside what could be considered to be the 'general administration of the Union', on occasion the National Secretary, by his own admission, did not seek prior authority of National Council or National Executive. Mr Thomson's explanation on such occasions was that it was not necessary to seek prior authority of National Council or National Executive because such expenditure was 'in the budget' and had thereby been 'approved'.
115. Even where particular expenditure that fell outside the general administration of the Union was reported to, and discussed by, National Executive, it was quite common for discussions of National Executive not to be formalised by the carriage of a resolution.
116. Even where members of National Executive agree that resolutions were passed by that body authorising expenditure on a particular transaction, minutes of National Executive meetings often either do not record the carriage of any formal resolution at all or they record the carriage of a resolution but not the terms of that resolution.
117. Only rarely did National Executive give prior authority for the expenditure of funds of the Union on matters that were not part of the general administration of the Union or for purposes reasonably incidental to the general administration of the Union.

PART 2

MATTERS CONCERNING MR THOMSON

Chapter 3 - Mr Thomson's submissions regarding my letter of 12 December 2011

1. Mr Thomson's submissions of 2 March 2012 (FWA.024.0002) set out a number of submissions in its Introduction in response to my letter to Mr Thomson of 12 December 2011 (FWA.018.0001).
2. In this chapter I consider in turn each of the introductory submissions that were made on behalf of Mr Thomson.
3. The second part of Mr Thomson's submissions of 2 March 2012 (FWA.024.0002) set out 'detailed responses' to the alleged contraventions that I put to Mr Thomson in my letter of 12 December 2011 (FWA.018.0001). I have considered Mr Thomson's submissions addressing individual alleged contraventions at my findings in chapters 4 to 8.

Mr Thomson's period as National Secretary of the HSU

4. It is submitted on behalf of Mr Thomson that:
 - a. Mr Thomson was elected National Secretary of the HSU on 16 August 2002 and resigned on 14 December 2007 upon his election to Federal Parliament. At the time Mr Thomson became National Secretary in 2002, the financial position of the HSU was perilous, with debts of approximately \$900,000 including approximately \$120,000 owing to the ATO, \$100,000 to the law firm Slater and Gordon, and \$34,000 to HESTA, and aspects of its governance, especially its financial governance, were inadequate. At the time Mr Thomson commenced as National Secretary, the National Office had only one administrative staff member;
 - b. During his time as National Secretary Mr Thomson took steps to improve the financial governance of the HSU, in particular by establishing a National Finance Committee in February 2003, and employing additional staff in the National Office including Ms Ord as the National Finance Officer. He also ensured that the debt of the HSU was substantially reduced – at the time of his resignation in December 2007 the debt was approximately \$50,000, a reduction of approximately \$850,000, or 94%, on the debt in 2002;
 - c. In addition, and importantly, during Mr Thomson's period as National Secretary, the profile of the HSU improved and the membership of the HSU increased substantially from a membership of approximately 60,000 in 2002 to approximately 72,000 in 2007. This increase in membership substantially contributed to the ability of the HSU to repay its debts;
 - d. Further, during Mr Thomson's period as National Secretary, HSU awards were used for the first time in national wage case decisions, the HSU became active members in the aged care alliance and participated, for the first time, in Senate Inquiries;

- e. It is of concern that I have failed to take into account the substantial achievements and success of Mr Thomson as National Secretary during the period 2002 to 2007;
 - f. The HSU commissioned a review of the expenditures in the National Office during the period in which Mr Thomson was National Secretary by Slater and Gordon, which in turn engaged the accounting firm BDO Kendalls to assist with that review;
 - g. Pending the outcome of that review, the HSU withheld payment of accrued annual leave and long service leave entitlements to Mr Thomson which totalled approximately \$130,000;
 - h. However, following its receipt of the report of the Slater and Gordon/BDO Kendalls review in July 2009, the HSU realised that there was no lawful basis to withhold any moneys from Mr Thomson and the HSU accordingly paid Mr Thomson his entitlements in full; and
 - i. In addition, it is relevant to note that the HSU has not sought to take any action or to recover any monies from Mr Thomson, notwithstanding the thorough review that was undertaken.
5. A timeline of relevant dates (**the Timeline**) was attached as Annexure A to the response on behalf of Mr Thomson. I have included the Timeline as Annexure L to this report. I note, however, that the Timeline includes a narration for '2007' that 'HSU opens a branch in Sydney' but it is not clear to me what this narration is referring to.
6. Mr Thomson has submitted that I have failed to take into account his 'substantial achievements and success' during his period as National Secretary. On the contrary, chapter 8 of this report sets out a detailed analysis which includes the issues raised by Mr Thomson in paragraphs 4a and 4c above. In particular:
- a. information about the financial position of the National Office when Mr Thomson became National Secretary on 16 August 2002 is set out at paragraphs 13 to 41 of chapter 8; and
 - b. information regarding increases in HSU membership levels is set out in paragraphs 4 to 12 of chapter 8.
7. Further, Mr Thomson's submission in paragraph 4.b that there was a reduction in the Union's debt by December 2007 to approximately \$50,000 is not supported by the evidence that is before me. My examination of the liabilities of the National Office during the period in which Mr Thomson was National Secretary is set out in chapter 8 (see, in particular, paragraphs 71 and 72). Figures disclosed in the National Office's financial reports indicate that its liability to trade creditors as at 30 June 2007 (being almost six months before Mr Thomson's resignation) was \$552,035. Further, by 30 June 2008 (being just over six months after Mr Thomson's resignation) the liability to trade creditors had reached \$1,009,019. This is a substantial figure for an organisation that had an annual turnover of around \$2 million in 2006 and 2007 (see paragraph 67 of chapter 8).

8. With respect to Mr Thomson's submissions at paragraphs 4.g to 4.i, Mr Thomson has provided no information or evidence about the quantum of any payment from the National Office to Mr Thomson in respect of his outstanding annual leave entitlements. Any figure that may have been paid, and the basis upon which it was determined, is unknown to FWA.

Conduct of the Investigation

Investigation not authorised by legislation

9. It is submitted on behalf of Mr Thomson that:
- a. In my preliminary findings that were set out (as alleged contraventions) in schedules attached to my letter of 12 December 2011 (**Preliminary Findings**) I state that I was engaged in the exercise of powers conferred by sections 331, 335 and 336(1) of the RO Act and that I am investigating pursuant to section 331 of the RO Act whether provisions of:
- (i) Part 3 of Chapter 8 of the RAO Schedule;
 - (ii) the reporting guidelines made by the then Industrial Registrar on 12 October 2004 under Part 3 of Chapter 8 of the RAO Schedule;
 - (iii) the Rules of the HSU relating to its finances or financial administration; or
 - (iv) section 237 and sections 285 of the RAO Schedule¹⁰²
- have been contravened by the National Office, and/or by officials or employees of the National Office of the HSU in relations to transactions occurring between 16 August 2002 and 1 March 2008..."
- b. The exercise of powers conferred by sections 331, 335 and 336(1) of the RO Act are available to the General Manager of FWA from time to time. I have provided, in response to correspondence from Mr Thomson's lawyers, copies of four delegations dated between 13 July 2009 and 5 October 2011 which presumably delegate to me the power to exercise the powers conferred by sections 331, 335 and 336(1) of the RO Act. This can only be presumed, rather than concluded, because I have only indentified myself in my correspondence as a delegate of FWA and not by my substantive title [of Director, Tribunal Services and Organisations or, subsequently, as Director, Organisations, Research and Advice];
- c. However, section 331 of the RO Act clearly only authorises the exercise of investigatory powers in relation to contraventions of a provision of Part 3 of Chapter 8 of the RO Act; or the reporting guidelines made under that Part; or a regulation made for the purposes of that Part; or a rule of a reporting unit relating to its finances or financial administration. Section 331 **does not** authorise any investigation of matters relating to provisions of the WR Act, which I am purporting to be undertaking (Holding Redlich's emphasis);

¹⁰² My letter to Mr Thomson also stated that I was investigating whether provisions of sections 286 and 287 of the RAO Schedule had been contravened.

- d. It therefore follows that the "investigation" that I have conducted, and am conducting, is not an investigation authorised by section 331 of the RO Act and any exercise of powers that I have engaged in (including the manner of conducting the investigation under section 335) is invalid;
 - e. Accordingly, I am not authorised to engage in the exercise of powers pursuant to section 336 of the RO Act to notify the HSU, as I now apparently propose to do;
 - f. Furthermore, having nominated section 331 of the RO Act as the power which I have purported to exercise, I am bound by that nomination. See *Australian Broadcasting Tribunal v Saatchi & Saatchi Compton (Vic) Pty Ltd* (1985) 10 FCR 1; *Harris & Anor v Great Barrier Reef Marine Park Authority* (1999) 162 ALR 651 at [13].
 - g. This is particularly so where, as here, I have purported to use the coercive powers pursuant to section 335 of the RO Act, and which were not properly available to me, for the conduct of my purported investigation, and the use of such powers has been the basis on which I have obtained much of the factual material upon which I purportedly rely. In addition, there is no evidence that I held any delegations to exercise any other powers relevant to the present purported investigation.
10. Mr Thomson's contention that sections 331, 335 and 336(1) of the RO Act do not authorise an investigation into contraventions of the RAO Schedule cannot be supported. I have set out at paragraphs 23 to 48 of chapter 1 information regarding my power to conduct inquiries and investigations, including the power that is derived from transitional provisions. As noted in chapter 1:
- a. the RAO Schedule was not repealed by the Amendment Act (see Schedule 1, Items 1-3 to the TPCA). Rather, the RAO Schedule was amended and renamed (as the RO Act) by Schedule 22 to the TPCA;
 - b. Schedule 22 to the TPCA also made a series of consequential amendments to the RAO Schedule/RO Act which had the effect of transferring each of the powers which had been conferred on the Industrial Registrar, or upon a Registrar, by the RAO Schedule to the General Manager of FWA;
 - c. As a result:
 - i. The RAO Schedule continues to apply to all conduct which occurs after 1 July 2009, albeit the Schedule was renamed as the RO Act;
 - ii. The powers of investigation which are conferred on the General Manager of FWA by Part 4 of Chapter 11 of the RO Act became available to be exercised by the General Manager from 1 July 2009 (by reason of amendments made by Schedule 22 to the TPCA) and accordingly are available to be exercised in respect of any matter which provides reasonable grounds for the General Manager to be satisfied that there are reasonable grounds for doing so, whether that conduct occurred before, or after, 1 July 2009; and

- iii. the General Manager (or the Delegate under delegated powers) was entitled to exercise the powers conferred by section 335 of the RO Act in relation to the matters which are the subject of the Investigation.
 - d. This is supported by an analysis of Item 11 of Schedule 2 to the TPCA, together with Regulation 5.11 of the TPCA Regulations and the explanatory statement for the TPCA Regulations:
 - i. Item 11 of Schedule 2 to the TPCA provides that the WR Act continues to apply, on and after the WR Act repeal day (which was 1 July 2009), in relation to conduct that occurred before the WR Act repeal day. However Regulation 5.11 of the TPCA Regulations, which is made pursuant to subitem 8(4) of Schedule 2 to the TPCA, provides:
 - (2) to avoid doubt, item 11 of Schedule 2 to the Act does not apply to provisions of the WR Act that are not repealed by Schedule 1 to the Act.
 - ii. Paragraph 85 of the Explanatory Statement to the TPCA Regulations provides that:

85. The effect of this regulation is to clarify that, from 1 July 2009, pre-repeal day conduct relating to Schedule 1 or Schedule 10 to the WR Act will be dealt with in accordance with the processes and institutions contained in the *Fair Work (Registered Organisations) Act 2009*. **For example, from 1 July 2009, investigations under section 331 of Schedule 1 to the WR Act into the pre-repeal day conduct of an organisation will be conducted by the General Manager of FWA and not the Industrial Registrar.** (emphasis added)
11. Mr Thomson has submitted that I have only identified myself in correspondence as the Delegate of the General Manager of FWA and not by my substantive title, and so accordingly it is not apparent on the face of that correspondence that I hold a delegation from the General Manager to exercise powers of investigation. I note in response that I currently hold, and have held since 1 July 2009, the substantive positions of:
- a. Director, Tribunal Services and Organisations (from 1 July 2009 until 4 October 2011); and
 - b. Director, Organisations, Research and Advice from 5 October 2011.

The nature of my 'Preliminary Findings' is not authorised by legislation

12. It is submitted on behalf of Mr Thomson that:
- a. I stated in my Preliminary Findings "that it is open to me to make adverse findings against you in respect of various conduct". The adverse findings which I have indicated are open to me can fairly be described as bald findings that Mr Thomson has "contravened" either the Rules or sections of the RO Act. However, the making of such findings is not permitted in the exercise of powers conferred on the General Manager by sections 331 and 336(1) of the RO Act.
 - b. The word "investigation", as employed in section 331, is not defined in the RO Act. It is clear that taken in its context the word bears its ordinary meaning and should be construed in accordance with its ordinary meaning. See *Health*

Insurance Commission & Anor v Freeman & Anor (1998) 88 FCR 544 at 552B;
Taciak v Commissioner of Australian Federal Police (1995) 59 FCR 285 at 294B;
Day v Commissioner, Australian Federal Police & Ors (2000) 101 FCR 66 at 10;
Commissioner for ACT Revenue v Dataflex Pty Ltd and ACT Civil and Administrative Tribunal (2011) 252 FLR 50 at 49.

- c. The Macquarie Dictionary defines "investigation" as meaning:
"1. the act or process of investigating. 2. a searching inquiry in order to ascertain facts; a detailed and careful examination".
- d. The word, taken in its context, does not ordinarily suggest that legislation authorising an investigation was intended as an authority to decide whether a person has contravened any provision of the relevant legislation or to authorise the making of a decision to take action against a person who is the subject of the investigation. See *Taciak v Commissioner of Australian Federal Police* (1995) 59 FCR 285 at 295B.
- e. The word "investigation" as employed in section 331 of the RO Act should be similarly construed. This construction of the meaning of "investigation" is reinforced by the terms of subsections 336(1) and 336(2) of the RO Act. The scheme of Part 4 of Chapter 11 of the RO Act maintains a distinction between a report about whether a "reporting unit" has contravened a relevant provision of the RO Act and a decision taken by the General Manager to commence civil penalty proceedings under the RO Act. Further, the person responsible for the investigation is not necessarily the person responsible for deciding whether or not to commence civil penalty proceedings under the RO Act. The scheme of the RO Act is reinforced by the terms of section 343A(2) which does not permit delegation by the General Manager of the General Manager's power under section 336(2) of the RO Act.
- f. Sections 331 and 336(1) of the RO Act do not give authority to me (as Delegate) to make bald findings that a person has contravened either the Rules or sections of the RO Act and such findings are not permitted in the exercise of powers under sections 331 and 336(2).
- g. In any event, any such findings are not permitted under subsection 336(1) by the plain words of that section which limit my report to whether a reporting unit "has contravened". Mr Thomson is not a reporting unit, as is made clear in section 242 of the RO Act.
13. This submission ignores the plain words of subsections 331(1) and (2) of the RO Act, which expressly empower me, as a person who has been delegated these powers, to conduct an investigation as to whether a provision of Part 3 of Chapter 8, the reporting guidelines made under that Part, a regulation made for the purposes of that Part, a rule of the reporting unit relating to its finances or financial administration, or a civil penalty provision referred to in section 305 of the RO Act has been contravened.
14. Further, those powers are not confined to provisions which impose obligations upon reporting units. It is plain that many of the civil penalty provisions referred to in section 305 are only capable of being contravened by officials of the reporting unit, rather than by the reporting unit itself (for example, see sections 285, 286 and 287).

15. The submission also implicitly suggests that, because the powers conferred on the General Manager by subsection 336(2) are incapable of delegation, the power conferred by section 331 to conduct an investigation can only be delegated insofar as such an investigation would be confined to ascertaining matters which are relevant to action which may be taken pursuant to subsection 336(1) and not 336(2). There is no basis to read section 343A of the RO Act (which confers the power of delegation) in such a manner.
16. If it is necessary to read section 343A in such a manner (and I do not consider that it is), the power conferred by subsection 657(2) of the *Fair Work Act 2009* to do all things which are necessary or convenient to be done for the purpose of performing the functions of the General Manager would support my making (as Delegate) of any findings of contravention necessary to enable the General Manager to properly consider the exercise of her powers under subsection 336(2) of the RO Act.

The obligation of fairness to Mr Thomson

17. It is submitted on behalf of Mr Thomson that:
 - a. In exercising powers under section 331 of the RO Act, I am obliged to afford Mr Thomson procedural fairness. See *National Companies and Securities Commission v News Corporation* (1984) 156 CLR 296; *Annetts v McCann* (1990) 170 CLR 596. This is trite law which I am said to accept by the terms of my covering letter to the Preliminary Findings, in which I assert that I am able to make adverse findings in respect of Mr Thomson, and in which I give Mr Thomson the opportunity to address me on the issues prior to making a final decision. I state that I will "take into account any relevant considerations you wish to place before me". In allowing Mr Thomson the opportunity to respond prior to forming final conclusions, I have an obligation of fairness to Mr Thomson. See *Morley & Ors v Australian Securities and Investments Commission* [2010] 247 FLR 140 (*Morley*) at [732] to [756]. My failure to interview available and important relevant persons is a breach of the obligation of fairness to Mr Thomson. This is particularly so when I have the coercive powers of section 335 of the RO Act available to me to facilitate such interviews.
 - b. A major focus of my Investigation has been the financial management of the HSU and, in part, the role of the National Finance Committee established by the National Executive on 25 February 2003. I would be expected to interview, but have failed to interview, Mr Dan Hill and Mr Peter Mylan - two of the five members of the National Finance Committee including the two national trustees of the HSU throughout most of the relevant period.
 - c. In addition, a major focus of my Investigation into the financial management of the HSU has focused on the meaning to be attributed to the HSU National Executive resolution carried at the meeting of 25 and 26 February 2003 relating to the Terms of Reference for the Finance Subcommittee (and discussed in more detail below paragraph 73.a below). However, I have hardly questioned any persons who were present at the meeting as to their purpose and/or intention in adopting that resolution.

- d. I have also placed considerable weight on the evidence given by Ms Kathy Jackson. However, it is clear from the minutes of the National Executive upon which I have relied and which I provided to Mr Thomson, that Ms Jackson was absent from a number of National Executive meetings. These absences are noted in the Timeline. In particular, it is noted that Ms Jackson was absent from the National Executive meeting in February 2003.
 - e. Because I have failed to interview available and important witnesses, which is in breach of my obligation of fairness, I cannot (and therefore must not) make adverse findings with the requisite satisfaction on the balance of probabilities. See *Morley* at [795].
18. In my view, this submission misstates the reasoning in *Morley*.
19. *Morley* did not hold that the exercise of an investigative power would be vitiated by a breach of fairness if the investigator failed to interview available and important witnesses. Rather, the case concerned ASIC's failure to call evidence at trial (in proceedings seeking the imposition of civil penalties) from a number of witnesses, whom the respondents contended should have been called by ASIC. The appeal court upheld an appeal against findings of contravention made by the trial judge. In so doing the Court found that one (and only one) of those persons should have been called by ASIC to give evidence at trial.
20. Nevertheless, the Court did not hold that a failure (even at trial) to call evidence from an available and important witness was, of itself, fatal to ASIC's case. On the contrary the Court held that:
- a. The court or tribunal may have regard to any failure to provide material evidence which could have been provided when considering if it is reasonably satisfied of the facts which make out the alleged cause of action, and a person seeking such a finding does need to be diligent in calling available evidence, so that the court is not left to rely on uncertain inferences (at [733-734]);
 - b. In order to be satisfied on the balance of probabilities, within the meaning of section 140 of the *Evidence Act* 1995, the court or tribunal must reach an affirmative conclusion, a definite conclusion, or an actual persuasion. This state of mind turns on the cogency of the evidence before it. Relevant to the cogency of the evidence actually adduced is the absence of material evidence of a witness who could have been called, and in the fulfilment of the duty of fairness should have been called (at [753]);
 - c. Where a regulator (in litigation) fails to call a witness in circumstances which are contrary to an obligation of fairness the case of that party suffers in its cogency (at [755-756]);
 - d. In the context of assessing the cogency of the case of a party subject to an obligation of fairness, the strength of the probability that a person has relevant evidence informs the expectation that the regulator will call the person as a witness (at [760]).
21. With those principles in mind, the Court held that ASIC should have called Mr Robb to give evidence about the events of the Board meeting in issue. Mr Robb was a

solicitor who had provided a draft statement of evidence to ASIC, which ASIC did not seek to tender at trial. It was part of ASIC's case that a particular resolution to approve a press release, recorded in minutes prepared by Mr Robb, had been passed by the Board. However no witness who gave evidence at trial could recall such a resolution being passed. In its reasoning the Court noted (at [761-763]):

... It is pertinent to repeat that it was Allens, acting through or under the supervision of Mr Robb alone or jointly with Mr Peter Cameron, that prepared the drafts of the minutes of the February meeting even before the meeting occurred ... **There is every reason to believe**, subject to issues of memory and other matters that affect any witness, **that matters of primary fact within the issues identified above would have been of sufficient concern to Mr Robb for him to have given attention to the events at the meeting.**

...

... the fact that copies of the 7.24 am draft news release were produced from the records of Allens, containing the writing of Mr Robb and probably Mr Peter Cameron, together with one copy from the records of BIL, was a critical step in the reasoning of Gzell J... (emphasis added)

22. At [766] the Court concluded that:

... ASIC would be expected to call Mr Robb and he would "probably have knowledge" on the issues identified above. They were important issues.

23. However the majority considered that fairness did not require ASIC to call the two other witnesses whom the respondents contended should also have been called (at [768-770]):

... Although they were present at the meeting and had an interest in the decisions being taken, including with respect to any announcement of the decision, they did not have the degree of involvement that Mr Robb had. They were copied with earlier drafts of the news release, but there is nothing to suggest that this was done for the purpose of consultation. In their opinion, by reason of their tangential involvement in the determination of the content of the press release ASIC would not ... "be expected to call" either [person].

Furthermore, ... it cannot be concluded that either [witness] would "probably have knowledge" of whether the draft news release was tabled and approved at the February meeting. They were present at the meeting and, like any eyewitness or bystander, could possibly have a recollection of the relevant events. ... **a possibility is not sufficient to require that they be called in the exercise of a duty of fairness on the part of the regulator. What is required is some basis for an inference that there was a significant degree of probability that the witness would have relevant knowledge.**

On the basis of the materials before the Court, there is nothing to suggest that ASIC was, or ought to have been, aware of any information that could establish any such degree of probability. **A regulator is under no duty to call every bystander or eyewitness who could give relevant evidence.** (emphasis added).

24. At [775] the Court concluded:

Notwithstanding the divergence of the Bench as to [the other two persons], Mr Robb should have been called by ASIC. A body in the position of ASIC, owing the obligation of

fairness to which it was subject, was obliged to call a witness of such central significance to critical issues that had arisen in the proceedings.

25. However this failure was not, of itself, fatal to ASIC's case. Rather, at [777], the Court held that:

... for these reasons the failure to call Mr Robb in our view **significantly undermines the cogency of ASIC's case** on the passing of this Draft ASX Announcement Resolution. (our emphasis)

26. The Court still held (at [793]) that the trial judge had been required to make an "assessment of the 'united force' of the evidence." and said that "That means the whole of the evidence, taken together ...". In so doing the Court held that the cogency of ASIC's proof of passing the Draft ASX resolution must be assessed having regard to the principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336 and in section 140 of the *Evidence Act* 1995. Against that background, the Court held that (at [795]):

The failure to call Mr Robb means more than disinclination to draw inferences favourable to ASIC's case. Failure of a party with the onus of proof to call an available and important witness, the more so if the failure is in breach of the obligation of fairness, counts against satisfaction on the balance of probabilities: we repeat Dixon J's reference in *Jones v Dunkel* (at 304-305) to the facts proved "form[ing] a reasonable basis for a definite conclusion affirmatively drawn on the truth of which the tribunal of fact may reasonably be satisfied". Absence of evidence from Mr Robb, whom ASIC should have called, tells against achieving the "comfortable satisfaction" of which Rich J spoke (at 350), and the "reasonable satisfaction" of the truth of the allegation of which Dixon spoke (at 368-369) in *Briginshaw v Briginshaw*.

27. In my view, the following propositions flow from *Morley*:
- a. a regulator in the position of ASIC (or indeed FWA) who brings legal proceedings seeking the imposition of civil penalties can be obliged in fairness to call evidence from a person if there is a 'significant degree of probability' that that person will have relevant evidence on a critical or important matter;
 - b. the obligation of fairness will only arise when that person's evidence will **probably** and not merely **possibly**, assist in relation to a critical or important matter;
 - c. the failure to call evidence from such a person is not, of itself, fatal to the regulator's case, but it will be relevant to an assessment of the overall cogency of the evidence as a whole on the issue which such a person's evidence would have gone to; and
 - d. such a failure can only be assessed having regard to the particular fact, about which the person could probably give relevant evidence, and also the other available evidence about that fact.
28. *Morley* is concerned not with an investigation being undertaken (administratively) by a regulator, but rather with the application of the rules of evidence to civil proceedings subsequently brought by a regulator, seeking the imposition of a civil penalty. As a result, there is some difficulty applying the reasoning in *Morley* to an administrative investigation (such as the Investigation which I am conducting), in

which the 'investigator' is not bound by the rules of evidence, including in particular section 140 of the *Evidence Act 1995*. Nevertheless, the analysis in *Morley* does not derive solely from section 140 of the *Evidence Act 1995*, but also from the common law, including the principle in *Briginshaw v Briginshaw*. As a result, the propositions set out above in paragraph 27 are illustrative of the way in which I, as the 'investigator', ought to approach my fact finding task.

29. Holding Redlich has submitted on behalf of Mr Thomson that I would be expected to interview Mr Hill and Mr Mylan, both of whom were members of the finance committee. However, Holding Redlich does not identify any particular fact regarding which either Mr Hill or Mr Mylan could give relevant evidence.
30. During the Investigation I interviewed three members of the Finance Committee, namely Mr Thomson, Dr Kelly and Ms Knight. Their evidence, including about the operation of the finance committee, is set out in the discussion of the proposed findings that I provided to Mr Thomson under cover of my letter dated 12 December 2011 (FWA.018.0001). In these circumstances, I do not consider that Holding Redlich have identified any matter or matters on which I ought to have concluded that either Mr Hill or Mr Mylan could probably (as distinct from merely possibly) have assisted.
31. Holding Redlich have also submitted that "*the Delegate has hardly questioned any persons who were present at [the National Executive meeting held on 25 and 26 February 2003] as to their purpose and/or intention in adopting [the resolution relating to the Terms of Reference for the Finance Subcommittee]*". I have considered this submission at paragraphs 68 to 72 of chapter 5, as part of a broader analysis of the effectiveness of the purported delegations to Mr Thomson and to the finance committee (which appears at paragraphs 53 to 72 of chapter 5).

Evidence obtained in breach of Parliamentary Privilege and impermissible use of Hansard

32. It is submitted on behalf of Mr Thomson that:
 - a. Section 16 of *Parliamentary Privileges Act 1987 (Cth)* provides:
 - “(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
 - (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
 - (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
 - (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.”

- b. In *Mundey v Askin* [1982] 2 NSWLR 369 the NSW Court of Appeal further stated:

We should perhaps add that particular objection was taken to the admission of exhibit 3, which was a copy of the Hansard report of certain proceedings in the Legislative Assembly of New South Wales. It was submitted that this tender in some way constituted a breach of Parliamentary Privilege, and reliance was placed upon *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522. There it was held that what was said or done in Parliament in the course of proceedings there could not be examined outside Parliament for the purpose of supporting a cause of action, even though the cause of action itself arose out of something done outside Parliament. The reason for its exclusion is, no doubt, to prevent any inquiry into the motives or intentions of Members of Parliament in anything they said or did in the House. But that principle has nothing to do with the present case. Here, Hansard was tendered to prove, as a fact, that certain things had been said in the course of a debate in the Legislative Assembly. There was no question of any further examination of the circumstances in which the debate had taken place or the motives of the participants or of anything else which might infringe the privilege of Parliament. The ratio of *Johnson-Smith's case* therefore does not apply. Indeed, in that case (at p 531) Browne J said this:

But the Attorney-General limited what he said about the probable attitude of Parliament to the use of Hansard by agreement by saying that Hansard could be read only for a limited purpose. He said it could be read simply as evidence of fact, what was in fact said in the House, on a particular day by a particular person. Note *op cit* at 373.

- c. During the course of my Investigation I have plainly obtained a copy of Mr Thomson's first speech given in the House of Representatives on 19 February 2008 (**Speech**). It would seem that this occurred at an early point in my Investigation. During the course of my Investigation I have used extracts of that Speech to inquire into the motives or intentions of Mr Thomson concerning some matters that Mr Thomson discussed in the Speech. Using extracts of the Hansard in this manner in any proceedings would be impermissible as it is contrary to Parliamentary Privilege, and this use of, and reliance on, the Hansard has clearly and significantly tainted my Investigation processes and any conclusions that I may reach.
- d. It is unclear to what extent the information that I have taken from the Hansard has been used, directly or indirectly, to cause me to search for other information, documents or things relating to my Investigation.
- e. The information that I have taken from the Hansard has been used directly in examinations that I have conducted under subsection 335(2) of the RO Act, at least in respect of Mr Thomson, Mr Burke, Mr Williamson, Mr Brown and possibly others directly or indirectly including Dr Kelly. Furthermore, it is improper for me, in reaching any conclusions concerning Mr Thomson's conduct, to rely on the information, obtained directly or indirectly by searching for other information, documents or things arising from the information in the Hansard. Such information would not be admissible in any proceedings.

33. It is also submitted on behalf of Mr Thomson that:
- a. I have impermissibly used the Hansard:
 - i. in my reasoning and discussions of the issue of employment of staff of the National Office of the HSU (particularly Mr Burke) (which is set out at paragraph 429 at page 705 in chapter 7);
 - ii. in my reasoning and discussion of the issue of leave taken by Mr Thomson (which is set out at paragraphs 209 and 214 on pages 512 and 512 in chapter 6); and
 - iii. in my reasoning and discussion of the issue of expenditure of funds of the National Office (which is set out at paragraphs 61 and 430 on pages 627 and 705 in chapter 7).
 - b. My use of the Hansard, as summarised in paragraph 32.c above, is a breach of Parliamentary Privilege.
 - c. Subsection 336(1) of the RO Act provides that "if, at the conclusion of an investigation, the General Manager is satisfied that the reporting unit concerned has contravened... the General Manager must notify the reporting unit accordingly." The General Manager may also take other action under section 336(2).
 - d. However, because it is impossible for me (as the Delegate) to be "satisfied" within the meaning of subsection 336(1) of the RO Act, without having regard to material subject to Parliamentary Privilege which is not admissible, it is impossible for me to be satisfied under section 336 of the RO Act.
34. These submissions are misconceived. Section 16 of the *Parliamentary Privileges Act* 1987 only renders evidence of parliamentary statements inadmissible in judicial and tribunal proceedings for the particular purposes which are identified in subsection 16(3). The General Manager (and I, in my role as delegate) is not a court or a tribunal. My Investigation is not a proceeding in a Court or tribunal. Section 16 does not have any application to the Investigation that I am conducting. Nor does section 16 confer any "derivative" immunity in the way which appears to be (implicitly) alleged by Holding Redlich.

Evidence obtained from the FWA interview with Mr Thomson

35. It is submitted on behalf of Mr Thomson that:
- a. In the conduct of my Investigation (and in any application which the General Manager may make pursuant to section 336(2) of the RO Act), Mr Thomson is entitled to the privilege against disclosure. See generally *Rich & Anor v Australian Securities & Investment Commission* (2004) 220 CLR 129 at [23] – [25]; *ACCC v FFE Building Services Pty Ltd* (2003) 130 FCR 37; *Refrigerated Express Lines (Australasia) Pty Limited v Australian Meat & Livestock Corporation* (1979) 42 FLR 204 at 207 – 208; *Birrell v Australian National Airlines* (1984) 1FCR 526 at 527/528; *ACCC v Amcor Printing Papers Group* (1999) 163 ALR 465; *ACCC v J. McPhee & Sons Australasia Pty Limited* (1997) 148 ALR

601; *ASIC v Plymin* [2002] VSC 356; 170 FLR 120; *E. L. Bell Packaging v Allied Seafoods* (1990) 4 ACSR 85 at 86, 91, 97-98; *Hadgkiss v Allen Blevin & Ors* [2003] FCA 1083 at para 14. See also *A. L. Silvestri Pty Ltd & Anor v CFMEU & Ors* [2005] FCA 1658 at para [14] – [17]; *Hadgkiss v CFMEU & Ors* (2005) FCA 1452 at [12].

- b. When I interviewed Mr Thomson on 15 September 2010 (**the September Interview**) I stated that the interview was not being conducted “pursuant to power conferred on me by section 335(2)(c)” of the RO Act. Yet in the Preliminary Findings and discussion of the issues in my purported exercise of powers conferred by sections 331, 335 and 336(1) of the RO Act, I have freely and openly had regard to and relied on the questions and answers set out in that interview. Such questions and answers are, of course, hearsay and would not be admissible in any court unless as admissions within one of the exceptions under the *Evidence Act* 1995 (Cth).
 - c. Having regard to the circumstances surrounding the September Interview, even if it were possible to distil admissions from the questions and answers, such interview would still not be admissible in a court and, therefore, the contents of the September Interview should not be considered by me in the preparation of the Preliminary Findings under subsection 336(1) of the RO Act.
36. This submission misunderstands the nature of my investigative power. The General Manager (or the General Manager's delegate) is not a court, and is not bound by the rules of evidence.
 37. It is correct that Mr Thomson's answers at interview are hearsay, and prima facie inadmissible in evidence at trial (although the *Evidence Act* does provide some significant exceptions to the hearsay rule). Mr Thomson's evidence to me would be hearsay (in any resultant civil proceedings), whether it was given voluntarily or under compulsion.
 38. This does not mean, however, that I am not permitted to have regard to Mr Thomson's answers at interview in forming conclusions about the matters which are the subject of the Investigation. Such an approach would render the power conferred by paragraph 335(2)(c) of the RO Act to require a person to answer questions relating to matters relevant to the Investigation virtually worthless.

Bias

39. It is submitted on behalf of Mr Thomson that:
 - a. It is of concern that the investigation and the process adopted by me demonstrate demonstrable bias on my part. It is clear from the Preliminary Findings that I conducted selective interviews and failed to interview all relevant parties.
 - b. I have failed to interview, or seek comments from, those who worked with Mr Thomson, including:
 - i. Mr Struan Robertson – Industrial Officer

- ii. Mr Dan Hill – Communication and Policy Advisor
 - iii. Ms Ruth Kershaw – Research Economist
 - iv. Ms Pauline Fegan – Victoria No 1 President
 - v. Ms Jane Hill – Victoria No 1 Branch
 - vi. Ms Farina (sic) Flavell – Research Officer
- c. In addition, it appears that my questions and comments have focused only on the actions of Mr Thomson, rather than considering the activities of the HSU, and its other key staff, in totality. In particular, it is said that I appear to have formed a preliminary (and incorrect) view that there were a number of obligations that rested solely with the National Secretary, in particular with Mr Thomson as National Secretary without considering the obligations or role of the National Executive or previous HSU National Secretaries. Similarly, many of the proposed allegations are based on a disregard and rejection of the evidence given by Mr Thomson. I have formed my own conclusions based on no evidence or inaccurate material or both.
- d. The HSU has a history of factional rivalry and there were a number of officials who did not support Mr Thomson as National Secretary. In addition, had I interviewed the people listed in paragraph b above, in particular Mr Struan Robertson, I would have become aware of threats made against Mr Thomson by at least one other official of the HSU who, in 2004, threatened to ruin Mr Thomson's life, to destroy his political ambitions and to "set him up with a bunch of hookers and ... ruin him."
- e. As noted in paragraph 17.d above, I have also placed considerable weight on the evidence given by Ms Kathy Jackson. However, it is clear from the minutes of the National Executive that I relied upon and which I provided to Mr Thomson, that Ms Jackson was absent from a number of National Executive meetings. These absences are noted in the Timeline.
- f. Further, I have failed to make sufficient enquiry as to the existence of National Council and National Executive meetings and minutes, and have assumed that they do not exist and that relevant meetings, resolutions and actions did not occur. This is a failure of process and is factually incorrect.
- g. I have also failed to take into account or to have any regard to the substantial achievements of Mr Thomson as National Secretary. As discussed in paragraphs 4.b, 4.c and 4.d above, these achievements include –
- i. substantially decreasing the HSU's debts;
 - ii. increasing the membership of the HSU; and
 - iii. raising the profile of the HSU.
- h. It is also of concern that I have concluded that any failure at all of Mr Thomson to perform an administrative task or duty amounts to a breach of subsection 285(1) of the RAO Schedule. This is an incorrect construction of the law and clearly not the case.

40. The six people specifically identified by Mr Thomson include three former employees of the National Office (Mr Robertson, Ms Kershaw and Ms Flavell), one person who is a member of National Executive and of the Finance Committee (Mr Hill), one person who was not an official of the National Office (Ms Fegan¹⁰³) and one person who (Mr Thomson says) was associated with the "No 1 Branch" (Ms Hill).
41. Mr Thomson has not identified any factual matter concerning which any of these people would probably have had relevant evidence which would have assisted the Investigation. Further, while it is open to me to require Mr Robertson, Mr Hill, Ms Kershaw or Ms Flavell to attend for interview under paragraph 335(2)(c) of the RO Act, I would not have been able to compel the attendance of either Ms Hill or Ms Fegan (although I could, of course, have invited them to interview). During the course of my Investigation, I have given consideration to interviewing a large number of persons. I do not consider that my decision not to interview any of these persons is evidence of bias.
42. I can understand that it may well appear to Mr Thomson, on the basis of the matters regarding which he has been invited to comment, that the Investigation has focussed on his actions rather than the actions of the HSU as a whole. Mr Thomson has, however, only been invited to comment upon the findings which have been proposed against him, and not on the findings which have been proposed against other persons or against the reporting unit.
43. Insofar as Mr Thomson contends that I have incorrectly concluded that there were a number of obligations which rested solely with the National Secretary, without considering the obligations or role of the National Executive or previous National Secretaries, I do not consider that Mr Thomson has demonstrated any bias. Mr Thomson was (for most of the period covered by the Investigation) the National Secretary. Pursuant to the Rules, as National Secretary he was bound by a number of very specific obligations which did apply only to him. Other officials of the National Office (namely Mr Williamson and Ms Jackson) are also the subject of findings of contravention which relate to their obligations under the Rules (although, for reasons set out in paragraph 42 above, Mr Thomson may not be aware of this).

Interpreting Trade Union Rules

44. It is submitted on behalf of Mr Thomson that:
 - a. The approach to be taken to construing the rules of an organisation is well established - the rules of organisations should not be construed technically or narrowly, but rather should be interpreted in a liberal and non-restrictive fashion and given broad meaning. See *The Amalgamated Society of Engineers & Ors v Smith* (1913) 16 CLR 537 at 559 - 560 per Isaacs J with whom Gavan Duffy & Rich JJ agreed: "*Now, I am disposed to give a very broad interpretation to the*

¹⁰³ While Ms Fegan was president of the Victoria No.1 Branch of the HSU, she was not an employee of the National Office or a member of National Executive. Rule 26 provides that members of National Executive are the Officers of the Union (being the National President, National Vice-President, two National Trustees, National Secretary, Senior National Assistant Secretary and the National Assistant Secretary) and the Branch Secretary of each Branch.

terms of association in a society of this nature. I am prepared to read them, not as the strictly prepared and technically framed stipulations inserted in some legal instrument of lawyers, but as the plain and business-like statement of members of the trades concerned, combining for mutual support, and setting down the terms of their combination in language which is applicable to their situation and intended (subject to the presumptive intendment of legality) to be understood apart from technical rules of interpretation."; *Ludwig & Ors v Harris* (1991) 30 FCR 377 at 382 - 383; *Re Election in TWU* (1992) 40 IR 245 at 253 per French J: "Nevertheless, the wider view is consistent with that preferred approach to the construction of union rules which requires them to be construed not technically or narrowly but broadly and liberally and not "subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers". *Re an Election in the Australian Collieries Staff Association (NSW Branch)* (1990) 26 FCR 499 at 502; *Re Kieley re TWU* (1992) 42 IR 4 at 6 - 7; *Australian Electoral Commission v. Hickson* (1997) 76 IR 399 at 416 per Marshall & Branson JJ: "Rule 2 of the Rules is to be construed having regard to its apparent purpose as disclosed by the words of the rule read in the context of the Rules as a whole." As Gibbs J, with whom Stephen J agreed, pointed out in *R v Holmes; Ex parte Public Service Association of New South Wales* (1977) 140 CLR 63 at 73, union rules "...should not be subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers, and should not be restrictively construed."

- b. I have raised a number of the Rules in the alleged contraventions that were put to Mr Thomson in my letter of 12 December 2011 (FWA.018.0001). However, I have failed to refer to legal authority when construing the Rules and have adopted a construction which is contrary to the established, generally-liberal, approach to the construction of organisations' rules referred to at paragraph a above.
45. The authorities referred to by Mr Thomson do establish that the rules of a registered organisation should be given a purposive interpretation. However they do not support an unduly broad approach to interpretation, without reference to the language used in the rules, when construed as a whole.
46. The issue for determination by the Court in *Engineers* was whether the exercise of a power conferred on the governing body by the union's rules to expel a member was contrary to the rules and therefore invalid. The member was charged by the District Committee for "acting contrary to the Society's interests" by disobeying its order to cease work. The plaintiff contended that there was no rule which warranted the making or investigation of such a charge. The parties agreed that no such rule did expressly allow for such a charge. The case was defended on the basis that another rule or the rules in totality, implied such a power.
47. The paragraph in *Engineers* cited by Holding Redlich is succeeded by the following paragraphs (emphases added):
- And therefore I am prepared to give a broad meaning to the words quoted. **But they cannot have an unlimited meaning.** See the observations of *Fletcher Mouton* L.J. on somewhat similar words in *Osborne's Case* (1).

It could not be supposed that whatever the Branch or District Committee happened to think was contrary to the interests of the society would be a proper ground of expulsion. No member would know to what standard he must confirm. What then, is the limit of jurisdiction.

It seemed to be during the argument, and, after further consideration, it seems to be still, that **however general any words of power may be**, they must, in the absence of distinct statement to the contrary, **be at all events controlled by the scope of the objects and purposes created by the constitution of the society.**

It is all important to remember that the society is different from the individuals composing it. The House of Lords in *Amalgamated Society of Railway Servants v Osborne* (2) places the distinctive personality of a trade union, when registered, on almost the same plane with that of an ordinary statutory corporation: See *per* Lord *Halsbury* (3) Lord *Macnagten* (4) and Lord *Atkinson* (5) Lord Atkinson said: - "It is clear in my view that they are, when registered, quasi-corporations resembling much more closely railway companies incorporated by Statute than voluntary associations of individuals merely bound together by contract or agreement express or implied. And it is plain that, as soon as this character was given to them, and the rights and privileges they now enjoy were conferred upon them, it became a matter of necessity to define the purposes and objects to which they were at liberty to debate the funds raised from their members by enforced contributions. **A definition which permitted them to do the particular things named and in addition to all things not in themselves illegal would be no definition at all and would serve no purpose at all. There would be some limit.**

48. In *Ludwig* the Federal Court was required to determine whether the Executive Council of the union was authorised by the union rules to grant legal aid to a member at the expiration of legal proceedings concerning the validity of the appointments of officers. The rule restricted the provision of such assistance to members involved in legal action only where the proceeding "involved" the "interests of the Union".
49. Significantly, the Federal Court rejected the proposition that if the Executive Council considered that the payment of legal costs was in the interests of the Union this met the standard required by the rules. Black CJ, Beaumont and Burchett JJ stated:
- It is necessary, to use the words of Fullagar J, that the court should be able to describe the resolution as one which "can fairly and reasonably be regarded as" falling with the terms of r4(d). Giving the rule a liberal interpretation it expresses a criterion which is sufficiently elastic to extend that far, but is not so nebulous as to allow a resolution, which cannot fairly and reasonably be so regarded, to suffice if only it have the virtue of bona fides. p383
50. The case of *Re Election in TWU* (1992) 40 IR 245 concerned the application of two relevant eligibility rules of the Union - rule 4 which prescribed conditions of eligibility for membership and rule 22 which prescribed conditions of eligibility to nominate and hold office. The factual circumstances were that irregularity in relation to the pending election for offices of the Union was alleged. The alleged irregularity was that the nominations of two members, which had been accepted, were deficient because neither member met the eligibility criteria for election to the office for which they had nominated. The case turned on whether the arrangements of one of the nominated members in working for a company for one day for the sole purpose of meeting the eligibility criteria constituted a contract of employment.

51. French J ultimately held that there was no mutuality of obligation required for the arrangement to constitute a contract of employment. Therefore the member was not employed in the industry "at the relevant time" as required to be eligible to nominate for office.
52. The case of *Re an Election in the Australian Collieries Staff Association (NSW Branch)* (1990) 26 FCR 499 concerned an official's eligibility for membership of the union, and involved the claim that the official was ineligible for election because she did not meet the membership eligibility criteria. Prior to nominating for office the official was an employee of the union and the question was whether she fell within one of the three membership eligibility categories.
53. The paragraph from the judgement of Lockhart J which appears to be referred to by Holding Redlich in full reads:
- The rules of organisations such as the Organisation in the present case are to be construed, not technically or narrowly, but broadly and liberally: see *R v Holmes; Ex parte Public Service Association (NSW)* (1977) 140 CLR 63, per Gibbs J (at 73) where his Honour said with respect to the rules of a union registered under the *Conciliation and Arbitration Act 1904* (Cth):
- "I would add that rules of this kind should not be subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers, and should not be restrictively construed."
54. Lockhart J held that the official qualified for eligibility as a member of the union under rule 2 because her duties as an employee of the organisation met the criteria as "officer" and "office" as per *Landeryou* in that the position carried "some administrative or executive duties or some substantial degree of responsibility". Lockhart J held (at 506) that:
- The construction of this particular category of membership in r 2 does not call for any narrow or pedantic approach. It calls for a liberal and sensible approach, and I note that these days it is well known that persons employed by industrial organisations in a senior executive capacity often have tertiary qualifications and may have no nexus with the particular industry to which the employment of the members of the union or organisations relates. p506.
55. The case of *Australian Electoral Commission v Hickson* (1997) 76 IR 399 concerned whether the nomination of a candidate for an election was wrongfully rejected and whether the subsequent declaration that the successful candidate was elected unopposed was wrongful. The issue was whether the nominator was an unfinancial member at the time of nomination in circumstances in which he paid their membership arrears.
56. The paragraph referred to by Holding Redlich is succeeded by the following statement:
- Where the wording of the rules of an organisation allows**, such rules are to be construed in favour of eligibility for election to office, rather than against it. (emphasis added)

57. The case of *R v Holmes; Ex parte Public Service Associate of New South Wales* related to the membership eligibility rules of a union. Significantly, the passage cited by Holding Redlich reads in full:

"I would add that **rules of this kind** should not be subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers, and should not be restrictively construed.

It is now well settled that the eligibility clause of an association may validly travel beyond the bounds of the industry in respect of which it is registered:..."

58. In my view it is clear that the comments of Gibbs J were addressed to union eligibility rules in particular, rather than to all union rules.
59. The authorities referred to by Holding Redlich which are set out at paragraph 44.a above do support a broad approach to the construction of union rules. A broad approach does not, however, mean that union rules should automatically be given the broadest interpretation which they could conceivably bear. Rather, it is necessary to ascertain the apparent purpose of a rule, as disclosed by the words of the rule read in the context of the rules as a whole. I have considered this issue in more detail at paragraphs 61 to 72 below.

Construing Resolutions of Organisations

60. It is submitted on behalf of Mr Thomson that:
- a. The approach generally taken by courts to construing resolutions of governing bodies of organisations has been to construe the resolutions purposively (not literally) and also not to construe the resolutions restrictively. See *South Australia v Hancock* (1997) 73 IR 19 at 30 per Wilcox CJ, Ryan and Moore JJ:

A resolution of a meeting of an executive body of a trade union should not be narrowly construed: see *Re Australian Worker's Union* (1983) 11 IR 283 at 290-295 approving the approach in *Re AWU* [1983] 290 CAR 157 of Robinson J at 170: "Consistent with the authorities dealing with construction of union rules it is proper to look for the common understanding, by members of the executive of the words used." See also *Zoo Board v ALHMMWU* (1993) 49 IR 41 at 50.

Furthermore, the High Court has held that a resolution of meetings of organisations should not be construed too literally but rather, if necessary, so as to achieve that which was the intention of the meeting and open to be achieved by that body as a matter of law. *Re McJannet ex parte the AWU* (1995) 184 CLR at 620 at 663.
 - b. In the Preliminary Findings I have discussed the various relevant resolutions of various HSU bodies. I have construed these resolutions for the purpose of my Investigation and contrary to the established legal approach to the construction of organisations' resolutions referred to above. Further, I do not refer to legal authority when construing these resolutions.
61. The cases identified by Holding Redlich do establish that a purposive approach should be favoured over a literal approach when seeking to construe resolutions of organisations. However a purposive approach requires a construction of a resolution

by reference both to its terms, and to its evident purpose. It does not promote an uncritical acceptance of the broadest conceivable interpretation of a resolution.

62. Such an approach is supported by a close analysis of the decision in *Re AWU* (1984) 11 IR 283 (**Re AWU**). *Re AWU* concerned applications to the Industrial Registrar by the AWU to change its conditions of eligibility. Those applications were opposed (in part) on the basis that the resolution pursuant to which the applications were purportedly made did not, in terms, alter the rules of the AWU. The relevant portion of the resolution in issue stated:

That the General Secretary be authorised and hereby directed to make an application to the Industrial Registrar to amend Rule ... by inserting ...

63. On a strict literal construction, the resolution did not, by its terms, alter the rules of the AWU.
64. However Robinson J rejected such a literal construction of the resolution, in favour of a purposive approach. At page 295 his Honour stated:

If it is not possible to give practical effect to the ordinary and natural meaning of the language used in the resolutions, there is a deficiency which precludes adoption of the grammatical construction. In such circumstances it matters not whether the words are labelled ambiguous, inconvenient, inconsistent, irrational or some other adjective depicting imperfection. **The significant point is that the deficiency can only be remedied by looking elsewhere.** (emphasis added)

65. After noting that the words used in the resolution had an obvious link with the requirements laid down by the relevant legislation for effecting an amendment to the rules of an organisation, his Honour noted that the evidence before him clearly establishes that the Executive Council intended, by its resolutions, to alter the rules and that action taken by members of the Council since 3 September 1982 has been consistent with that intention. His Honour also noted (at 292) that evidence that the form of resolution has been used by the AWU to amend its rules for at least eighteen years was not challenged.

66. After considering a number of other authorities his Honour held (at 292):

Emerging from those decisions on the construction of union rules is **the need to ascertain the meaning given to the words in their normal usage or how the words are commonly understood by people concerned with industrial affairs.** (emphasis added)

67. At page 293 his Honour continued:

What the Council did was to choose a form of wording which had been accepted by the Registrar for at least eighteen years as effecting an alteration in compliance with the rules of the AWU. And **it is a form of wording which brooks no rational alternative if it does not effect a rule change.** Consistent with the authorities dealing with the construction of union rules **it is proper to look for the common understanding by members of the Executive Council of the words used.** On the evidence there has been a common understanding over at least 18 years. Using that test, the resolutions should be construed as alterations of the rules subject to the consent of the Registrar. (emphasis added)

68. His Honour concluded (at 295):

Departure from the literal construction is proper if it conflicts with the obvious intent of the authors derived from an examination of all the relevant circumstances. ...

In the circumstances I have described, **I believe the literal construction of the resolutions cannot be followed. Without explanation, the resolutions are either meaningless or irrational.** That is not a construction to be forced on union officials whose traditional qualifications are practical not academic and whose skills do not include the drafting niceties of lawyers. (emphasis added).

69. As I understand it, *Re AWU* stands for the proposition that, when construing a resolution passed by an organisation, one should ascertain the meaning given to the words in their normal usage or how the words are commonly understood by people concerned with industrial affairs. Furthermore, where the literal construction of a resolution is inconsistent with the obvious intention of the authors, derived from an examination of all the relevant circumstances, it will be appropriate to depart from the literal construction. Resort to the intention of the members of the body who passed a resolution to ascertain its meaning was also endorsed by the High Court in *Re McJannet ex parte Minister for Employment, Training and Industrial Relations for the State of Queensland* (1995) 184 CLR 620, although this decision does not make the specific proposition attributed to it by Holding Redlich's letter.

70. Nothing in *Re AWU* supports an unqualified, broad approach to construction of union resolutions, without regard to either the ordinary meaning of the words used (as commonly understood by people concerned with industrial affairs) or the common understanding of the members of the executive of the words used.

71. In *South Australia v Hancock & Ors* (1997) 73 IR 19 a Full Bench of the Industrial Relations Court considered *Re AWU* in the context of a union resolution which the Full Bench considered was "*at best for the applicant, ambiguous...*" (see 30). The Full Bench considered that a resolution of a meeting of an executive body should not be narrowly construed, and preferred a broad interpretation of the resolution in issue.

72. While I do not consider that *Hancock* rejected the approach followed in *Re AWU*, it does suggest that where a resolution is truly ambiguous a broader approach to construction should generally be adopted. Such an approach was also applied in *Zoological Board of Victoria and Ors v ALHMWU* (1993) 49 IR 41, in which Moore VP held (at 50):

While the resolution, in terms, might bear a number of meanings if viewed literally, its import and intended effect is clear if a purposive approach is adopted to its construction. As a matter of general principle, resolutions of governing bodies of registered organisations should not be restrictively construed.

Resolution of the National Executive Meeting on 25 and 26 February 2003

73. It is submitted on behalf of Mr Thomson that:
- a. An HSU National Executive Meeting was held in Perth on 25 and 26 February 2003. The minutes of the meeting provide that at that meeting a budget for 2003/2004, a budget for 2003 calendar year and a profit and loss budget analysis for the month of January 2003 were provided to the National Executive. It was resolved that reports should only be on a quarterly basis rather than monthly. Terms of Reference of the Finance Subcommittee were agreed to and were attachments D and E to the minutes of that meeting.
 - b. For reasons already outlined earlier in paragraph 60.a above, this resolution should be construed purposively (not literally) and should not be construed restrictively. The construction of the resolution should be in a way to achieve that which was the intention of the meeting and open to be achieved by the National Executive as a matter of law.
 - c. Adopting this approach, and having regard to the terms of the resolution referring to "attachment E", it is apparent that the intention of the resolution was for the National Executive to exercise "control" over expenditure of the funds as provided for in Rule 36(b) and to authorise expenditure by the National Secretary of any individual payment up to the amount of \$50,000 for "the general administration of the Union and for purposes reasonably incidental to the general administration".
 - d. In the Preliminary Findings I have construed this resolution more narrowly, and therefore wrongly, only having regard to the actual words of the resolution, without considering the context of the resolution (including the Rules), and the intention of the members of the National Executive.
74. At paragraph 61 above I agreed with the proposition that a purposive approach should be favoured over a literal approach when seeking to construe resolutions of organisations. However, and consistently with the principles set out at paragraph 69 above, this does not mean that the resolution should be construed by a simple exercise of ascertaining the intention of the executive members who passed it. Rather, one should ascertain the meaning given to the words in their normal usage or how the words are commonly understood by people concerned with industrial affairs (*Re AWU*). In this regard it is notable that the resolution passed by the National Executive **did not mention** any issue about approval of delegated expenditure limits. That being so, it is difficult to see how even a purposive approach to construction could reach the conclusion that the National Executive, by approving terms of reference for a finance committee, intended to confer a delegation upon Mr Thomson to incur financial expenditure without saying anything at all about that matter.
75. Where the literal construction of a resolution is inconsistent with the obvious intention of the authors, derived from an examination of all the relevant circumstances, it is appropriate to depart from the literal construction. I have had regard both to the "obvious intention of the authors" in passing the resolution and to any evidence which

is before me about the intention of the members of National Executive who passed the resolution. Looking at the particular circumstances in question, Mr Thomson has effectively invited me to find that a resolution which was expressed as being about terms of reference of a subcommittee was also about an entirely different subject matter, namely the approval of a set of financial delegations. The only connection between the two subjects is that they both appear on the same piece of paper (and that piece of paper is referred to in the resolution, although the terms of the resolution are specifically confined to the terms of reference). In those circumstances, even evidence that some members of the National Executive thought that such delegations were in place (which was the evidence of Dr Kelly) provides, at most, limited support for the construction of the resolution which is contended for by Mr Thomson. On the (limited) evidence which is before me, Mr Thomson's submission effectively invites me to ignore the plain language of the resolution (which does not even touch upon the subject of delegations) in preference for interpreting the resolution in the way in which he submits it ought to be interpreted.

76. In any event it is clear (and the proposed findings which were put to Mr Thomson accepted) that, as National Secretary, Mr Thomson was empowered to expend monies on the general administration of the Union or on purposes reasonably incidental to the general administration of the Union, without requiring authorisation to do so from either National Council or National Executive. If Mr Thomson merely contends that the resolution passed by the National Executive on 25 February 2003 entitled him (only) to expend monies of the National Office for the general administration of the Union or for purposes reasonably incidental to the general administration of the Union then this is merely a submission that the resolution authorised him to take steps which he was already entitled by the Rules to take. The discussion of the proposed findings which was put to Mr Thomson included a statement that expressly doubted that the National Executive could pass a valid resolution which conferred a power on Mr Thomson to expend monies of the National Office otherwise than for the general administration of the Union or a purpose reasonably incidental to the general administration of the Union. It seems that Mr Thomson does not contend that the National Executive purported to do so.

Construing Management Rules of Organisations

77. It is submitted on behalf of Mr Thomson that:
- a. The approach taken by courts to construing an organisation's general management rules is well established. It is well accepted that an organisation's general management rules should be construed broadly so that any action, which can fairly and reasonably be regarded as falling within the powers and objects of the rules will be valid. See *Williams v Hursey* (1959) 103 CLR 30 at 57 – 58; *Tanner v Maynes* (1985) 70 FCR 432 at 441; *Scott v Jess* (1984) 3 FCR 263 at 287; *Porter v Davis* (1989) 32 IR 110 (**Porter**) at 115; *Johnston v Cameron* (2002) FCA 634 at [26] – [28]; *Johnston v Cameron (No. 2)* (2002) FCA 948 at [167]; and *Dargavel v Cameron* (2002) FCA 1234 at [26] – [28].
 - b. Furthermore, it is well accepted that the “objects” rules of an organisation are usually in very general terms and, in such circumstances, should receive a liberal

rather than restrictive interpretation by the courts. See *Stevens v Keogh* (1946) 72 CLR 1 at 22; and *Ludwig v Harris* (1991) 30 FCR 377 at 383. This general approach to the construction of the "objects" rules has been particularly in evidence where proper disbursement of an organisation's funds is in issue. Both *Stevens v Keogh* and *Ludwig v Harris* concerned challenges to the legality of the disbursement of funds by organisations.

- c. In addition, when a power is conferred on a person or body by the rules of an organisation, the rule is usually construed as conferring powers necessary to give effect to the power or incidental to or consequential upon the exercise of the power. For instance, in *Belan v National Union of Workers* [2000] FCA 1828 at [59] – [60] Moore J approved the observations of Holland J in *Makin v Gallagher* saying that:

An example of the implication of such a power in rules on a trade union is found in *Makin v Gallagher* [1974] 2 NSWLR 559 at 576. There Holland J was faced with a submission that a power conferred by the rules on the federal management committee of a union to suspend or remove officers for various offence included, incidentally, a power to institute an inquiry for evidence of offences. Holland J said (at 576):

In my opinion this is a sound submission and is supported by what Lord Selborne said in *Attorney- General v Great Eastern Railway Co* [(1880) 5 App Cas 473 at 478] "... whatever may fairly be regarded as incidental to, or consequential upon, those things which the Legislature has authorised, ought not (unless expressly prohibited) to be held, by judicial construction, to be ultra vires". This statement is I think also applicable to powers contained in trade union rules: see per Fullagar J, *Williams v Hursey* (1959) [1959] HCA 51; 103 CLR 30 at 57, 58.

The reference to *Williams v Hursey* is to a passage in which Fullagar J makes substantially the same use of that dictum of Lord Selborne as Holland J.

- d. In the Preliminary Findings I have discussed the various relevant Rules and, in so doing, I have often construed the management Rules for the purposes of my Investigation contrary to the established, generally-liberal, approach to the construction of organisations' management rules referred to above. I do not refer to any legal authority when construing the HSU Rules.
78. I do not agree with the apparent contention of Holding Redlich that *Williams v Hursey*, *Tanner v Maynes* or *Scott v Jess* are authority for an unfettered proposition that any action, by anybody, which can fairly and reasonably be regarded as falling within the powers and objects of an organisation's rules will be valid. None of these cases were concerned with whether the actions of an individual officer of a union was within the scope of their authority as an officer of the union - rather, each case concerned the question of whether action which had been taken by the organisation (rather than its officers) was *ultra vires*.
79. For example, in *Williams v Hursey*, Fullagar J held, at page 57, that:

When the rules use, in stating "objects", such general expressions as "the interests of members" and the "improvement of the conditions of members", they must, of course be read as referring to the interests of members as waterside workers and to the improvement of the conditions under which they work (as to wages, hours, privileges,

amenities, etc.). But, subject to that, no prima facie reason exists for limiting the meaning of such expressions in any way, and any action which can fairly and reasonably be regarded as likely to further the interests of the organisation and its members is within the objects stated in the rules, **and therefore within the powers of the federation acting directly or through the branch.** (emphasis added)

80. I do not consider any of these authorities are of assistance in determining whether Mr Thomson acted in conformity with the powers which are conferred on him by the Rules. In each case, the critical question is not whether the Union had the power to do what Mr Thomson did, but whether Mr Thomson had such power. Each of *Johnston v Cameron*, *Johnston v Cameron (No 2)* and *Dargavel v Cameron*, is similarly concerned with the legality of the actions of the organisation, or an organ within the organisation, rather than the actions of an individual officer.
81. On this basis, the fact that the objects rules of an organisation should be given a broad, rather than a restrictive, interpretation is of minimal relevance in determining whether the powers of the organisation are available to be exercised by Mr Thomson himself. That question can only be resolved by an analysis of the rules which deal with the powers and functions of the National Secretary. Those rules should be construed broadly, having regard to their language and the Rules as a whole.

Meaning of "Control" in rules of organisations

82. It is submitted on behalf of Mr Thomson that:
- a. When the word "control" is used in rules of organisations, it is likely to have a particular historical context and specialised meaning in rules of organisations. This is so because the word "control" appears in section 141(1)(b)(iv) of the RO Act (formerly section 141(1)(b)(iv) of Schedule 1A¹⁰⁴; and earlier section 195(1)(b)(iv) of the *Industrial Relations Act* 1988 and WR Act; and antecedent provisions of the *Conciliation and Arbitration Act* 1904 (Cth)) and has been consistently construed in that context as having the meaning of the fact of checking and directing action and a method or means of restraint, and is not to be construed in the sense of directly controlling or commanding the activities of the organisation. See *Brown v CEPU* [2001] 109 IR 162 at 49; *Boland v Munro* (1980) 37 ALR 263; *Mackenzie v Administrative and Clerical Officers Association* (1962) 5 FLR 342 at 364 - 365; *Loh v O'Grady* (1991) 42 IR 215 at 219; *Wright v McLeod* (1983) 74 FLR 146 at 182, 161; and *Campbell v Crawford* (1985) 12 FCR 317 at 333.
 - b. In the Preliminary Findings I have discussed various relevant Rules. I have construed the word "control" in the Rules for the purposes of my Investigation contrary to the established, generally-liberal, approach to the construction of an organisations' management rules referred to above. I do not refer to legal authority when construing the Rules.
83. I do not disagree with the proposition by Holding Redlich which is set out at paragraph 82.a above. Indeed, in my view it is consistent with paragraphs 55 to 57

¹⁰⁴ While Holding Redlich has referred to 'Schedule 1A', I have taken this to be a reference to Schedule 1B to the WR Act, being the RAO Schedule.

and paragraph 77 of chapter 2. As a result, I do not consider that my proposed findings have misconstrued the word "control" in the Rules.

HSU 'Objects' Rule

84. It is submitted on behalf of Mr Thomson that:

a. Rule 4 sets out the Objects of the HSU. The terms of the objects are typically wide and relevantly provide:

The objects of the Union shall be:

- (a) to raise a fund by entrance fees, contributions, fines and levies, for the purpose of advancing the best interest of its members;
- (b) to regulate and protect the conditions of labour and relations between workers and employers, and between workers and workers;
- (c) to uphold the rights of combination of labour, and to improve, protect and foster the best interests of the members;
- (d) to take all necessary steps for the protection and safety of the members in the course of their occupation;
- ...
- (k) to establish and maintain such publications as may be in the interests of the Union;
- (l) to provide legal and other assistance to financial members whenever and wherever considered necessary;
- ...
- (p) to establish a fund or funds for long service leave and superannuation for full-time officers and employees of the Union and its branches;
- (q) to make gifts for bona fide charitable purposes and to subscribe to testimonials or otherwise recognise services rendered to the Union;
- ...
- (w) to sell, improve, manage, develop, exchange, leave, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the Union or a branch which may be vested in Trustees for them; and
- (x) to do all such things as the Union may from time to time deem incidental or conducive to the attainment of the above objects or any of them.

b. The HSU's objects are broadly cast, and there is no reason why the objects at rules 4(a), (c), (d), (k) and (q) of the Rules would not be given a liberal rather than restrictive interpretation (in accordance with the abovementioned authority) so that any action taken by the HSU, which can fairly and reasonably be regarded as falling within those objects of the Rules, would be valid.

85. The submission that "*any action taken by the HSU, which can fairly and reasonably be regarded as falling within those objects of the rules, would be valid*" appears to contend that any action which Mr Thomson took as National Secretary should be regarded as having been within the scope of his authority if it can be regarded as falling within the objects of the Union as set out in Rule 4.

86. Such a submission cannot be accepted, having regard to the detailed prescription of other rules including, in particular, Rule 32 (which confers powers and obligations upon the National Secretary) and Sub-rule 36(b) (which regulates the expenditure of funds of the Union).

HSU Management Rules

87. It is submitted on behalf of Mr Thomson that:

- a. The HSU management rules are relevantly at Rules 21, 27, and 32.
- b. Rule 21 sets out the powers and duties of National Council and relevantly provides that:

The National Council shall, subject to these Rules and the control by the members as hereinafter mentioned, be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, shall in particular have power: -

- (a) to determine and direct the policy of the Union in all matters affecting the National Council or the Union as a whole;
- ...
- (c) to fix the remuneration and terms and conditions of employment of the Officers of the Union;
- ...
- (e) to appoint and remove such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary and to fix the remuneration and terms and conditions of employment of the same;
- ...
- (j) to delegate its authority on all routine or other matters to the National Executive;
- (k) to establish any committees or sub-committees as it may from time to time determine provided that any such committee or subcommittee shall not exercise any executive powers but shall have and exercise only advisory powers;...

- c. Rule 27 sets out the powers and duties of the National Executive of the HSU and relevantly provides that:

- (a) The National Executive shall, subject to these Rules and to the decisions of National Council and to the control of members as hereinafter mentioned, have power (in addition to powers conferred on it elsewhere in these Rules) to conduct and manage the affairs of the Union including the power to set the wages and conditions of the National Office Staff and between meetings of the National Council may exercise all the powers of National Council except the power to grant life membership and the power to make, add to, amend, rescind and/or otherwise alter these Rules. Provided that none of the powers of the National Executive shall enable the National Executive to alter an Entrenched Rule as defined herein.
- (b) Where, at a meeting of the National Executive, delegates representing not less than four branches so request, a decision of that meeting shall be

forthwith referred to the Committees of the branches for consideration and should the Committees of not less than five branches request the National Secretary in writing or by telegram within fourteen days of such National Executive meeting that the decision of the National Executive not be implemented, then no action shall be taken on that decision until and unless ratified by the National Council either at a meeting of the National Council or pursuant to Rule 25 of these Rules as if the National Executive had determined that the matter required a decision of the National Council.

- (c) The National Council may review any act or decision of the National Executive.
- d. Rule 32 sets out the powers and duties of the National Secretary of the HSU and relevantly provides:

The National Secretary shall -

- (a) Be the registered officer of the Union to sue and be sued on its behalf;
- (b) Summon by notice in writing to each member thereof and attend, unless excused, all meetings of the National Council and National Executive and keep or cause to be kept correct minutes of the same;
- (c) Have the right to speak at any general or special meeting of any branch or Branch Committee, but not to vote unless he/she is a member of such branch or Branch Committee;
- (d) Answer and file all correspondence;
- (e) Keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Workplace Relations Act 1996 or as amended from time to time;
- (f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;
- (g) receive all monies on behalf of the Union and pay the same within seven days of receipt into the Union Bank account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;
- (h) Draw up a report and balance sheet to be submitted to the National Council at its annual Meeting and forward a copy of the same to each branch;
- (i) submit his/her books, accounts and receipts annually or as often as may be required by the National Council or National Executive to the auditors and to give them such assistance as they may require in the audit;
- (j) be responsible for the books, records, property and moneys of the Union and, within 48 hours of receiving a request from the National Council to do so, deliver to the National Council such books, records, property and moneys;
- (k) Take all reasonable steps to increase the membership of the Union and foster a branch of the Union in each State or Territory where members are employed;
- (l) Supply branches with information as to the proceedings of the National Council, National Executive and branches;

- (m) Confer with Branch Secretaries as often as is necessary in the interests of the Union and assist as best he/she is able all Branch Secretaries and Committees;
- (n) Between meetings of the National Executive, control and conduct the business of the Union;
- (o) Between meetings of the National Council and National Executive, have power to call any meeting in the Union which the National Council has power to call;
- (p) Be ex-officio a member of all Committees of the National Council;
- (q) Be indemnified from the funds of the Union;
- (r) Provide the Returning Officer with such assistance as is necessary to enable him/her to conduct any election;
- (s) Have the power to submit any industrial dispute in which members of the Union are involved to Conciliation and Arbitration; and
- (t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.

Appointment and removal of officers and industrial/research staff

88. It is submitted on behalf of Mr Thomson that:

- a. It is readily apparent from Rules 21 and 27 that the National Executive of the HSU has all the powers of the National Council of the HSU, only subject to decisions of the National Council, except the power to grant life membership and the power to make, add to, amend, rescind and/or otherwise alter the Rules. There is no restraint on the implementation of any decision made by the National Executive except as provided in the extraordinary circumstances of Rule 27(b). Otherwise, although there is a power in the National Council to "review" any act or decision of the National Executive, there is no obligation on the National Council to do so even if such a "review" is requested under Rule 27(c), and not under the terms of Rule 27(b). In many situations, decisions made by the National Executive will be effectively implemented by the time the National Council reviews such decisions (if the National Council chooses to review the decision). See *Kingham v Sutton* (2002) 114 IR 137 at [25] – [36], [99].
- b. It follows that at least the National Council and the National Executive each have the power to appoint and remove National Industrial Officers and Research Officers and other types or category of officials as it deems necessary. It is noted that the term "official" is not defined but would not extend to officers of the HSU under the Rules. For this reason, the statutory construction aid of "expressum facit cessare tacitum" [that which is express causes to cease that which is implied] does not assist in construing the HSU's rules, at least in relation to the power to appoint and remove National Industrial Officers and Research Officers and other types or category of officials. This is not an unusual situation when union rules are so construed.

- c. Relevantly, *Johnston v Cameron*, *Johnston v Cameron (No 2)* and *Dargavel v Cameron* all illustrate this feature of construing organisations' management rules. In all three cases the fact that a particular power was granted under the rules of an organisation to another body specified in an organisation's rules, did not lead to a construction, which necessarily narrowed or restricted a general power given to another entity under the rules. But compare with *Brown v CEPU* at [48]. However, Moore J later found at [54] – [55] that the particular power was not available to be used bona fide where the reason for exercising the power was to forestall the other body from exercising the same power.
 - d. It is equally readily apparent from Rules 21, 27 and 32(n) that the National Secretary also had all the powers of the National Council and the National Executive between meetings of the National Executive. The expression "control and conduct" is an expression of wide meaning and is to be so construed in accordance with the authority discussed in above. The Macquarie dictionary relevantly defines conduct as "2 *direction or management; execution: the conduct of a business*". See also *Pharmaceutical Society of Great Britain v Fuller* (1932) 96 JP 422 at 424 and *Pride of Derby v British Celanese Ltd* [1953] All ER 179 at 189 which confirm this ordinary and natural meaning.
 - e. The term "business" itself is of wide import and usually bears the dictionary meaning of "trade, commercial transactions or engagement". Generally business is conducted with some degree of system, regularity and continuity. See *Fasold v Allen Roberts* (1997) 145 ALR 548 at 587 - 588 and the authorities collected therein. In *Porter* (at 115 per Gray J), the expression "necessary in connexion with business of the branch" was interpreted broadly so that any action, which could fairly and reasonably be regarded as falling within the powers and objects of the organisations rules, was included. There is no reason to limit the operation of the rule by implication – especially when, at all relevant times, the HSU has only had one full time elected officer in the National Organisation namely the National Secretary and the relevant power already existed in more than one other body within the HSU.
 - f. It follows that the National Secretary had under Rules at all relevant times, the power to appoint and remove National Industrial Officers and Research Officers and other types or category of officials as it deems **necessary between meetings of the National Executive** (Holding Redlich's emphasis). There is no restraint on the implementation of any decision made by the National Secretary except as provided by implication by Rule 27 on decisions of the National Executive.
89. I do not disagree with the submissions which are set out at paragraphs 88.a and 88.b above.
90. I also accept that in each of *Johnston v Cameron*, *Johnston v Cameron (No 2)* and *Dargavel v Cameron* the Court did not find that the fact that a particular power was granted under the rules of an organisation to one body within the organisation compelled the conclusion that this restricted a general power given to another body within the organisation. This is only of limited assistance (at best), however, in considering whether the National Secretary is empowered to employ officials on

behalf of the National Office. Indeed, in *Brown v CEPU* (2001) 109 IR 162, Moore J noted:

I favour the meaning of the word 'control' for present purposes, adopted by Evatt and Northrop JJ in *Boland v Munro* (1980) 48 FLR 66 at 80. That is, it is unlikely that the rules contemplated that two bodies (the committee and a general meeting) would be the repository of the same power. In the unlikely event that the rules were to confer the same power to appoint on the two bodies, one would expect an express conferral of the particular power on the meeting as well.

91. It is ultimately necessary to construe the Rules in their entirety. In so doing it can be misleading to overemphasise conclusions drawn in previous decisions about the rules of different organisations, especially when those rules are cast in different terms. In considering how I should apply those provisions of the Rules which confer power upon National Council and National Executive and upon an officer of the Union, I draw limited guidance from case law which considers the application of rules of a different organisation and which confer powers upon two different organs of that organisation.
92. In looking at the particular rules which govern the HSU, it is significant that Rule 21 specifically confers power upon the National Council to appoint officials of the Union and that Rule 27 confers power on the National Executive to set wages and conditions of National Office staff. The Rules do not (at least expressly) confer such a power on the National Secretary, nor do they confer on him all the powers of the National Executive between meetings of National Executive (which, on one reading of their submissions, may be inferred by Holding Redlich). The only provision of the Rules which could confer such a power on the National Secretary appears to be the power conferred by Sub-rule 32(n) to:

Between meetings of the National Executive, control and conduct the business of the Union.
93. Sub-rule 32(n) must be construed having regard to the terms of Sub-rule 36(b), which provides that National Council and National Executive shall control, and have power to expend, the funds and property of the Union, save for the expenditure of funds on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union.
94. Considered in this way, the National Secretary could only have power to employ (and pay) officials on behalf of the National Office if:
 - a. such employment could be said to be the conducting of the "business of the Union"; and
 - b. the payment of such employees could be said to be expenditure on the general administration of the Union or a purpose reasonably incidental to the general administration of the Union.
95. Holding Redlich submit that the National Secretary "also had all the powers of the National Council and the National Executive between meetings of the National Executive". I reject this submission, which is inconsistent with the express provisions of Rule 32.

96. It appears as though Holding Redlich advance this proposition on the basis that the words "control and conduct" and "business" in Sub-rule 32(n) should be given an extremely broad interpretation, such that it should be regarded as a proxy for a power to exercise all the powers of National Council and National Executive between meetings of the National Executive. I do not consider there is any basis for such a construction of Sub-rule 32(n).
97. In particular the emphasis placed by Holding Redlich on the authorities cited at paragraph 88.e above is misplaced. *Fasold v Allan Roberts* was concerned with the question of whether or not Mr Roberts was carrying on a business, for the purpose of relevant fair trading legislation. Sackville J held (at 588) that, in the context of the relevant legislation, the term "business" bore its dictionary meaning of "trade, commercial transactions or engagement", but that it additionally (at least) included "a notion of system, repetition and continuity". His Honour concluded:
- Nonetheless, in general, for an undertaking to constitute a business it will have to be conducted with some degree of system and regularity.
- ... the less commercial the character and objectives of an organisation, the greater the degree of system and regularity required for the organisations activities to be characterised as a business'.
98. In my view, his Honour's comments about "system, repetition and continuity" have a particular application to the context in which the word "business" is used in Sub-rule 32(n). It is significant that the power conferred on the National Secretary by Sub-rule 32(n) is not merely the power to conduct "a business" (at large) but rather the power to conduct "the business of the Union". This suggests that the power is confined not merely by notions of trade or commercial transactions but also by reference to the particular systematic, repetitive, or continuous activities of "the" Union.
99. Although *Porter* did concern the construction of the rules of a registered organisation, I do not think that it adds anything significant to the construction of Sub-rule 32(n). *Porter* concerned a rule which conferred power on a Branch Committee of Management to "Vote and expend any money that may be necessary in connexion with the business of the Branch" However the organisation also had a separate rule which provided:
- Each Branch shall control the funds available to it for the purpose of payment of contributions to the Federal Council **and for both ordinary and extraordinary purposes** by resolutions of the Branch Committee of Management. (emphasis added)
100. In light of this, his Honour Justice Gray's conclusion in *Porter* as set out in paragraph 88.e above was not exceptional. His Honour's approach also provides some support for the view that Sub-rule 32(n) cannot be read entirely in isolation from Sub-rule 36(b). In my view, however, the much more limited power of expenditure conferred on the National Secretary by Sub-rule 36(b) excludes the approach adopted by Gray J in *Porter*.
101. On the basis of this analysis, I think the conclusion expressed by Holding Redlich at paragraph 88.f above that:

It follows that the National Secretary had under HSU Rules at all relevant times, the power to appoint and remove National Industrial Officers and Research Officers and other types or category of officials as it deems **necessary between meetings of the National Executive**. There is no restraint on the implementation of any decision made by the National Secretary except as provided by implication by rule 27 on decisions of the National Executive. (emphasis added)

cannot be accepted, at least as a broad and unqualified statement.

102. On the basis of the discussion at paragraphs 89 to 101, I am of the view that, with the exception of some limited circumstances, the effect of Sub-rules 21(e) and 27(a) is that the power to engage persons on behalf of the National Office is confined to the National Council and National Executive.
103. The limited circumstances in which a decision by the National Secretary to employ an official on behalf of the National Office are when such employment is:
 - a. part of the systematic, repetitive and continuous business of the Union within the meaning of Sub-rule 32(n), and
 - b. insofar as the employee must be paid, a commitment to expend funds for the general administration of the Union, or a purpose reasonably incidental to the general administration of the Union, within the meaning of Sub-rule 36(b).
104. Having regard to all of the evidence that is before me, in my view the clearest example of the proposition set out in paragraph 103.a and 103.b would relate to Mr Thomson's employment of Ms Ord. The employment by Mr Thomson of Ms Ord as an administrative assistant/finance officer in the National Office could be said to meet both of the requirements in paragraphs 103.a and 103.b, such as to place it within the power of Mr Thomson as National Secretary. The National Office had employed an administrative assistant prior to Mr Thomson becoming National Secretary and the duties of that position (in assisting the National Secretary to carry out his obligations under the Rules) would fall squarely within notions of the 'general administration' of the Union.
105. Whether the employment by the National Secretary of other persons on behalf of the National Office would also meet these requirements involves finer judgements of fact and degree. While, on the one hand, it seems reasonable that the National Secretary could employ an administrative assistant/finance officer, the employment of Mr Burke and Ms Stevens, on the other hand, is far removed (on the available evidence) from what could be considered to be part of, or incidental to, the general administration of the Union. As set out in chapter 7, Mr Burke and Ms Stevens were engaged on the Central Coast of NSW working in the seat of Dobell to which Mr Thomson was ultimately elected. There is no connection of the employment of these two individuals with the 'general administration of the Union'.
106. Sub-rule 32(n) does not confer an unfettered (or even a broad) power upon the National Secretary to employ persons on behalf of the National Office and, while I am of the view that the National Secretary has a limited ability to employ persons on behalf of the National Office, (by reason of Sub-rule 32(n)) this can only be an aspect of the National Secretary's power to control and conduct the business of the Union **between National Executive meetings**.

107. Where the National Secretary has employed National Office staff between meetings of National Executive, it was therefore incumbent upon him or her to bring the employment of such persons to the attention of National Council or National Executive for their consideration at the next available opportunity.

Fixing Remuneration of industrial/research staff

108. It is submitted on behalf of Mr Thomson that:
- a. For the reasons set out in paragraphs 87.a to 88.f above it also follows that at least the National Council and the National Executive has the power to fix the remuneration and terms and conditions of employment of the National Industrial Officers and Research Officers. For the reasons set out in paragraphs 88.d and 88.e above, it also follows that the National Secretary has the power to fix the remuneration and terms and conditions of employment of the National Industrial Officers and Research Officers between meetings of the National Executive. There is no restraint on the implementation of any decision made by the National Secretary except as provided by implication by Rule 27 on decision of the National Executive.
 - b. This view is indirectly supported by the conclusions in *McLure v Mitchell* (1974) 24 FLR 115 at 118 that salary and emoluments are considered to be ordinary expenditure in the context of an organisation the size of the HSU.
 - c. In the Preliminary Findings, and as earlier noted, I have discussed the various relevant Rules. I have wrongly construed the Rules discussed above for the purposes of my Investigation contrary to the general approach outlined above. I do not refer to any legal authority when construing the Rules.
109. This submission appears to be premised on the proposition stated at paragraph 88.d above that "the National Secretary ... had all the powers of the National Council and National Executive between meetings of the National Executive." For the reasons given above, this proposition is not correct. While I do not accept this proposition, the submission, itself, that the National Secretary has the power to fix the remuneration and terms and conditions of employment of National Industrial Officers and Research Officers between meetings of the National Executive cannot be accepted, at least in the broad terms in which it is put.
110. I accept that the payment of salary and emoluments to existing employees of the National Office falls within the day-to-day expenditure of the National Office given the size of the HSU and the proportion of annual turnover which is spent on wages and remuneration.¹⁰⁵ As a result, the expenditure of such monies by the National Secretary would be likely to be expenditure on the general administration of the Union or for a purpose reasonably incidental to the general administration of the Union, when those employees themselves were already properly engaged in accordance with the Rules. I have also considered this matter at paragraphs 59 to 69 of chapter 2 on pages 103 to 105.

¹⁰⁵ See chapter 8 and, in particular, paragraphs 67 (which gives an overview of National Office income and expenditure) and paragraph 80 (which provides details of National Office salaries).

111. Accepting this submission says nothing about:
- a. the process by which such salary and emoluments may be reviewed and increased, consistently with the Rules; or
 - b. the payment, or adjustment, of salary to persons who have been engaged as employees of the Union, but whose engagement has not occurred in accordance with the Rules.
112. The terms of Sub-rule 21(e), which empowers National Council to employ officials and to fix their remuneration and terms and conditions of employment, is significant in determining whether the National Secretary's power to control and conduct the business of the Union (between meetings of National Executive) extends to the making of decisions about setting or adjusting the remuneration of particular employees.
113. In my view, given that Sub-rule 21(e) specifically confers the power to fix remuneration and terms and conditions of employment on National Council (and indirectly on National Executive), the power conferred by Sub-rule 32(n) on the National Secretary could extend, at most, to a power to set terms and conditions of new employees, on an interim basis, until such matters had been considered by National Council (or National Executive). It goes without saying that any power that is conferred by the Rules could not extend to authorising the National Secretary to make any decision about terms and conditions of employees (whether new or otherwise) which was inconsistent with a prior decision made by National Council (or National Executive).

HSU Financial Rules

114. It is submitted on behalf of Mr Thomson that the relevant HSU financial rule is Rule 36. Sub-rule 36(b) sets out the powers and duties of the National Council and the National Executive and relevantly provides that:
- (b) The funds and property of the Union shall be controlled by the National Council and the National Executive both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union and all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee. For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.

Control of Expenditure

115. It is submitted on behalf of Mr Thomson that:
- a. For the reasons set out above in paragraphs 88.d and 88.e above, unless some restriction can otherwise be found in the rules of the HSU, the power given to the National Secretary by Sub-rule 32(n) was clearly wide enough to expend funds in the course of controlling and conducting the business of the HSU. Rule 36

recognises this situation and relevantly limits the power of the National Secretary to expenditure of national funds to "the general administration of the Union and for purposes reasonably incidental to the general administration". This power vested by the Rules in the National Secretary should not be construed narrowly for the reason discussed in paragraph 44.a above. There is no restraint on the implementation of any decision made by the National Secretary under Rule 32(n) provided for in Rule 36 except for the caveat above. A scheme as provided by Sub-rules 32(n) and 36(2) is not unusual under an organisation's rules - see for example *Lewis v Maynes* (1988) 27 IR 113 (**Lewis**) at 120 - 121 where the distinction under the rules was between ordinary and extraordinary expenditure;

- b. Plainly, the word "control" in Rule 36(b) is used in the sense discussed in paragraph 82.a above;
- c. The ordinary and natural meaning of "administration" in the Macquarie dictionary is "1. the management or direction of an office or employment...". The ordinary and natural meaning of "general" in the Macquarie dictionary in this context is "usual not specific or special". The distinction under the rule is in close conformity to the old distinction between ordinary and extraordinary formerly found in many organisations' rule. In respect to that distinction Gray J in *Anderson v Johnson* (1990) 22 FCR 326 (**Anderson**) observed:

25. In *Lewis v. Maynes*, the Court considered the meaning of the phrases "disbursed for ordinary purposes" and "disbursed for extraordinary purposes" in a provision in the rules of a registered organisation. After reviewing the somewhat limited authorities, and the statutory history of the phrases "ordinary purposes" and "extraordinary purposes", the Court said at pp 127-128:

In construing the phrases...their previous general application must be borne in mind. Attention should be directed, not to whether the purpose of a particular disbursement is ordinary or extraordinary for a branch, or even for the union itself, but rather to whether it would be ordinary or extraordinary for an organisation of an industrial kind. Deference to the view of the majority in *McClure v Mitchell* ((1974) 24 FLR 115, at p 118) might require the words to be construed by a reference to employee organisations, and perhaps to employee organisations of a similar size. The result is that the question to be asked with respect to each disbursement is whether it is for a purpose normally carried out by large industrial organisations of employees. Something which is not so normally carried out, although falling technically within the objects of the union, would be an extraordinary purpose.

26. It is appropriate to follow that line of reasoning in the present case, especially having regard to the probability that the phrases "ordinary purposes" and "extraordinary purposes" came into the rules of the Union because of their presence in earlier times in a requirement under the [*Conciliation and Arbitration Act 1904* (Cth)] for the registration of associations as organizations. An additional factor in the present case, which indicates clearly the intention that the phrase "ordinary purposes" in rule 27(h) is intended to be wider than merely administrative purposes, is the specific power in rule 27(b) for the national executive to disburse funds for administrative purposes.

27. The question is, therefore, not whether amalgamation is a rare event in the history of the Union, but whether it is an ordinary activity for a registered organisation of a

similar size. The evidence is that the Union has some eighty thousand members. It is therefore among the reasonably large organisations registered under the Act. There is considerable evidence that a number of organisations are engaged in activities directed towards amalgamation with other registered organisations. The provisions of the Act concerning procedures for amalgamation have been summarized earlier in these reasons for judgment. It is fair to say that they make the process of amalgamation easier for an organisation than did the equivalent provisions in the [Conciliation and Arbitration Act 1904 (Cth)] and the regulations made under it. This indicates that the intention of parliament when it substituted the Act for the [Conciliation and Arbitration Act 1904 (Cth)] was to encourage amalgamations. The policy of the Australian Council of Trade Unions favours the amalgamation of unions to form larger, more efficient units. On evidence put forward by the applicant, forty-six organisations registered under the [Conciliation and Arbitration Act 1904 (Cth)] or the Act have amalgamated to form twenty-three organisations between 1973 and early 1990. Six of those forty-six were organisations of employers. The respondent Johnson gave evidence of his knowledge of the extent of activity directed towards amalgamation in the trade union movement at present. I am satisfied that there is a substantial amount of such activity. At the present time, having regard to the activities of reasonably large industrial organisations, it is not to be regarded as extraordinary to expend funds in respect of an actual or proposed amalgamation.

28. It is true that the Union has not amalgamated previously. The mere fact that this proposed amalgamation may be a first, if it occurs, cannot operate to make it an extraordinary purpose for the disbursement of funds. A useful analogy is that of marriage. A person may marry only once in the course of his or her life, but it can hardly be said that, in our society, marriage is an extraordinary event for a person. See *op cit* at 337 - 338.

- d. The power of the National Secretary to expend funds without approval of the National Council or National Executive under Rules 32(n) and 36(b) was, and is, therefore wide and each expenditure needs to be tested against the test as explained in *Anderson*;
 - e. In the Preliminary Findings, I have discussed the various relevant Rules. I have wrongly construed the Rules discussed above for the purposes of my Investigation and contrary to the general legal approach outlined above. I do not refer to any legal authority when construing the Rules.
116. Both *Lewis* and *Anderson* concerned the construction of rules of registered organisations which are quite different to those of the HSU. In each case the rules in question conferred separate powers in respect of "ordinary" and "extraordinary" expenditure. In contrast, the Rules of the HSU provide separate powers for expenditure on the general administration of the Union and expenditure for the purpose of carrying out the objects of the Union. Holding Redlich submit that these expressions ought to be construed similarly to the way in which Gray J considered the particular rules which were before him in *Lewis* and in *Anderson*. However, even in *Anderson*, Gray J recognised (at p337) that:

An additional factor in the present case, which indicates clearly the intention that **the phrase "ordinary purposes" in rule 27(h) is intended to be wider than merely administrative purposes**, is the specific power in rule 27(b) for the national executive to disburse funds for administrative purposes.

117. Moreover, *Anderson* concerned a rule which empowered National Council to authorise expenditure for ordinary purposes and a rule which required expenditure of money for an "extraordinary purpose" to be authorised not only by National Council but also by a Special General Meeting of each constituent branch of the union. *Lewis* was concerned with the question of whether the powers conferred by the rules on the National Executive to expend the funds of the union for extraordinary purposes applied to constrain the expenditure of funds held by a branch.
118. In my view, little assistance can be gained from *Lewis* or *Anderson* in relation to the correct construction of Sub-rule 36(b). Both decisions were concerned with rules regarding expenditure which were expressed in language which is different to the language used in Sub-rule 36(b). Further, neither decision concerned (at least directly) the powers conferred on an individual, as distinct from an organ, of the union.
119. The decision in *Anderson* demonstrates the importance of construing the rules of a registered organisation as a whole, having regard to the language in which they are expressed.
120. The submission made by Holding Redlich which is set out at paragraph 115 above does not alter my analysis of the Rules which is set out at paragraphs 41 to 86 of chapter 2.

Duties and Powers of a National Secretary of an Australian Trade Union

121. It is submitted on behalf of Mr Thomson that:
- a. There appears to be a complete lack of understanding and knowledge on my part of the relevant law and obligations of a National Secretary of an Australian Trade Union, in particular the HSU.
 - b. The National Secretary is an officer of the HSU – see Rule 19(a) of the Rules. Rule 32 sets out the obligations of the National Secretary which relevantly include –
 - 32(g) Receive all monies on behalf of the Union and pay the same within seven days of receipt into the Union Bank account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;
 - 32(h) Draw up a report and balance sheet to be submitted to the National Council at its annual Meeting and forward a copy of the same to each branch
 - 32(n) Between meetings of the National Executive, control and conduct the business of the Union (emphasis added)¹⁰⁶
 - 32(t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.
 - c. It is widely accepted that the approach taken when interpreting the rules of an organisation is that of a liberal and non-restrictive fashion and given broad meaning See Gibbs J in *R v Homes; Ex parte Public Service Association of NSW*

¹⁰⁶ While the submission states '(emphasis added)', I could not identify any emphasis.

(1977) 140 CLR 63 at 73; *R v Cohen; Ex parte Motor Accidents Insurance Board* (1979) 141 CLR 577 at 581 & 587; *Re Grimshaw; Ex parte Australian Telephone and Phonogram Officers Association* (1986) 66 ALR 227; *Re Anti-Cancer Council ex parte FPFS* (1992) 44 IR 382 at 384; *Re Election in TWU* (1992) 40 IR 245 at 253; *Re an Election in the Australian Collieries Staff Association (NSW Branch)* (1990) 26 FCR 499 at 502; *Re Kieley re TWU* (1992) 42 IR 4 at 6-7; *Australian Electoral Commission v Hickson* (1997) 76 IR 399 at 416.

- d. Further, it is accepted that an organisation's general management rules should be construed broadly so that any action, which can fairly and reasonably be regarded as falling within the powers and objects of the rules, will be valid. See *Tanner v Maynes* (1985) 70 FCR 432 at 441; *Scott v Jess* (1984) 3 FCR 263 at 287; *Williams v Hursey* (1959) 103 CLR 30 at 57 – 58; *Porter v Davis* (1989) 32 IR 110 at 115; *Johnston v Cameron* (2002) FCA 634 at [26] – [28]; *Johnston v Cameron (No 2)* (2002) FCA 948 at [167]; *Dargavel v Cameron* (2002) 1234 at [26] – [28].
- e. Sub-rule 32(n) gave Mr Thomson a very wide power to control and conduct the business of the HSU, including the day-to-day operations of the HSU. This broad power includes the power to employ staff and expend finances which were incidental or reasonably incidental to the general administration of the HSU. This is also consistent with Sub-rule 36(b). Further, I have failed to appreciate that the budgets of the HSU were approved by the National Executive, and that approval of a budget includes approval of expenditure which is in accordance with the budget.
122. This submission repeats some of Holding Redlich's earlier submissions which are set out at paragraphs 44 and 77.b to 77.d above.
123. I agree that the authorities state that the rules of a registered organisation should be interpreted in a liberal fashion, but note in this regard that many (although not all) of the authorities confine this principle to the construction of an organisations' eligibility rules.
124. It is still worth noting that in *R v Cohen; Ex parte Motor Accidents Insurance Board* (1979) 141 CLR 577 Mason J held (at 581):
- In considering whether the Board is engaged in "the business of insurance", it should be recognised at the outset that we are concerned with the use of that expression in the eligibility clause of a trade union's registered rules. The expression is, in such a context, no doubt intended to have a wide meaning **and it should be interpreted and applied in accordance with its ordinary and popular denotation** rather than with some narrow or formal construction. (emphasis added)
125. Moreover, in *Re Grimshaw; Ex parte Australian Telephone and Phonogram Officers Association (Grimshaw)* (1986) 66 ALR 227 the High Court held (at 235):
- The general rule of construction is that eligibility provisions should be construed liberally rather than narrowly or technically. **But it does not follow that a proviso should be construed liberally. In the present case we should construe the proviso objectively**, recognising that it constituted the settlement of a conflict between the APTU and the prosecutor in which the prosecutor was concerned to ensure that the alteration

of the APTU's eligibility clause would not enable it to enrol present or future members of the prosecutor.

126. In my view this note of caution has particular application to Sub-rule 36(b) which provides that:
- The funds and property of the Union shall be controlled by the National Council and the National Executive both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union and all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee. For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.
127. While the second sentence of Sub-rule 36(b) is not expressed as a proviso to the first sentence, on close analysis its effect does clearly qualify the operation of the first sentence.
128. While I would not regard *Grimshaw* as promoting a narrow approach to the construction of Sub-rule 36(b), I do consider that the decision provides a specific illustration of the need to construe the Rules having regard to their own words, in the context of the Rules as a whole, and in a particular context which bears some analogy to Sub-rule 36(b).
129. I have discussed in some detail at paragraphs 92 to 106 above the question of whether the powers of the National Secretary should be regarded as extending to a power to employ staff.
130. I consider that the last sentence of paragraph 121.e of Holding Redlich's submission is misconceived. The fact that the National Executive approved budgets for the National Office does not mean that they are taken to approve any expenditure "which is in accordance with the budget". Taken to its limits, if such a submission were correct, approval of a wages and salaries budget of \$600,000 would empower the National Secretary to dismiss all staff of the National Office and pay the entire sum to himself.
131. It is clear that approval of a budget by the National Executive constitutes the approval of a plan of projected aggregated expenditure for the National Office under broad categories of expenditure. While that step undoubtedly imposes some constraints on a National Secretary acting diligently, and reasonably, and bona fide in the interests of the organisation, it does not operate as an authority to expend money for any purpose that could reasonably be said to fall within the parameters of the budget.
132. Further, if it is accepted that the National Executive is entitled to budget for expenditure which is not expenditure on the general administration of the Union, then by reason of Sub-rule 36(b) such a budget (without more) is incapable of authorising the National Secretary, without reference to either National Executive or National Council, to expend the monies of the National Office on a purpose which is not for the general administration of the Union or a purpose reasonably incidental thereto.

General duties in relation to the financial management of organisations

133. It is submitted on behalf of Mr Thomson that:

- a. Obligations with respect to the conduct of officers and employees and general duties in relation to the financial management of organisations were set out in Division 11 of Part 1X of the WR Act. The WR Act was amended by the Amendment Act. Obligations with respect to financial records, accounting and auditing were set out in Part 3 of Chapter 8 of what was then Schedule 1B – RAO Schedule. The introduction of Work Choices renumbered the RAO Schedule as Schedule 1 to the WR Act. This change did not make any substantive changes to the contents of the RAO Schedule.
- b. I have made a number of allegations that Mr Thomson has contravened subsections 285(1), 286(1) and 287(1) of the RAO Schedule. Mr Thomson denies these allegations. (Information regarding Mr Thomson's detailed responses is set out in chapters 4 to 8).
- c. Subsection 285(1) is a civil obligation and provides -
 - (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
 - (a) were an officer of an organisation or a branch in the organisation's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer.

Subsection 285(2) provides -

- (2) An officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the organisation.

The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

134. Although Holding Redlich do not expressly say so, I infer that Mr Thomson seeks to rely on subsection 285(2) of the RAO Schedule. It is not possible, however, to do so in an abstract or holistic sense. Rather, the question of whether Mr Thomson made a

judgement which satisfies the terms of section 285(2) falls to be determined in each individual case, having regard to the judgement he claims to have made, and the matters which are referred to in paragraphs (a) to (d) of subsection 285(2). In most (but not all) cases, the responses which Holding Redlich have put on behalf of Mr Thomson in relation to the specific allegations against him, have been cast at a high level of generality, and do not identify any particular judgement made by Mr Thomson which might attract the application of subsection 285(2).

Chapter 4 - Employment of staff of the National Office

1. This Chapter concerns Mr Thomson's employment of persons on behalf of the National Office.
2. Provisions of the HSU Rules are set out in detail in Chapter 2.

FWA's view of the Rules governing employment and remuneration of National Office staff

Provisions of the Rules

3. The National Council is the supreme governing body of the HSU. Rule 21¹⁰⁷ relevantly provides:

The National Council shall, subject to these Rules and the control by the members as hereinafter mentioned, be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, shall in particular have power:-

...

(c) to fix the remuneration and terms and conditions of employment of Officers of the Union;

(d) to fix the remuneration to be paid to any National Returning Officer;

(e) to appoint and remove such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary and to fix the remuneration and terms and conditions of employment of the same;
4. Sub-rule 27(a) provides that the National Executive shall have power to conduct and manage the affairs of the HSU 'including the power to set the wages and conditions of the National Office Staff'.
5. Sub-rule 32(n) provides that the National Secretary shall 'Between meetings of the National Executive, control and conduct the business of the Union'.
6. In the absence of a general resolution by National Council or National Executive regarding wages and conditions of National Office employees, Sub-rules 21(c) to (e) and 27(a) require National Council and National Executive respectively to set the wages and conditions of National Office staff on an individual basis.

Capacity of National Secretary to appoint National Office staff - Rule 32(n)

7. When asked in interview whether he thought he had power to engage staff in his capacity as National Secretary, Mr Thomson replied (Thomson PN 127):

¹⁰⁷ This rule was numbered Rule 22 between 30 March 2006 and 8 June 2006.

I did think that, and with the particular Rule about the national secretary with Rules and powers between National Executive meetings, but I thought the power was limited to reporting it and having it approved by the Executive afterwards.

8. Mr Thomson noted in interview that, towards the end of his time as National Secretary, there was one member of staff who was appointed in a different manner to National Office staff who had been employed when Mr Thomson first became National Secretary (Thomson PN 113 - 114):

I then had interview panels made up of branch secretaries or representatives of branch secretaries from a variety of branches and they interviewed staff collectively and that's how we appointed the majority of those first staff. Subsequent to that there was only, I think, perhaps one staff member that was - there was some issues raised with their appointment and that was late in my time that was there.

That was when Mark McLeay was appointed, he was interviewed by myself and the New South Wales secretary, Michael Williamson, and in relation to that a recommendation went to the executive about his appointment. That was a slightly different way of appointing than we had done - than I had done at the start with everyone involved.

9. When asked in interview about how Mr Thomson ensured compliance with the Rules concerning appointment and wages and conditions of National Office staff, Mr Thomson stated that (Thomson PN 112):

In the first instance when I was setting up the National Office I set up - we advertised, we set a salary and conditions that was agreed by the executive. So the salaries were set at the rate that was paid in the New South Wales branch and the conditions were the Victorian public sector conditions. So essentially once that was done we didn't have to move or change rates or conditions again. That was also the conditions that I was under, they set a rate for me, they didn't actually tie the national secretary salary rate to any particular rate. They actually set a dollar rate for it but it was meant to move in the same way.

10. Dr Kelly stated in interview that her expectation was that 'Clearly if you're going to employ people, then that should go to national executive as well' (Kelly PN 194). Dr Kelly recalled that the appointments of Mark McLeay, Struan Robertson, Karene Walton and Ruth Kershaw were taken to National Executive (Kelly PN 147, PN 196).

11. Ms Jackson also stated in interview that (Jackson (1) PN 194):

...The national secretary can I think in between meetings of council or executive employ and do all that sort of stuff...

12. Whether or not the Rules do, in fact, give the National Secretary the power to appoint National Office staff between meetings of National Executive and National Council must be determined by examining the Rules as a whole. Even where it is assumed that officers of a union are purporting to act in accordance with the rules of that union, their actions in actually running the affairs of the union 'represent no more than the opinion of those persons as to what the Rules permitted them to do - an opinion which...might have been wrong' (per Keely J in *Bogar v Campbell & Ors*).¹⁰⁸

¹⁰⁸ (1995) 59 IR 243 at 244. This decision was later cited in *Kingham v Sutton (No.2)* 2001 FCA 400 per Goldberg J at [53].

13. I have set out at paragraph 88 of chapter 3 Holding Redlich's submissions regarding the power of the National Secretary to appoint and remove officers and industrial research staff. My consideration of those submissions is set out at paragraphs 89 to 107 of chapter 3.
14. As I have set out in chapter 3, in my view there is a reasonable argument that the effect of Sub-rules 21(e) and 27(a) is that the power to engage persons on behalf of the National Office is confined to the National Council and National Executive.
15. Nevertheless, as set out at paragraphs 103.a and 103.b of chapter 3, I am of the view that the Rules do permit the National Secretary to employ National Office staff but only where such employment is:
 - a. part of the systematic, repetitive and continuous business of the union within the meaning of Sub-rule 32(n), and
 - b. insofar as the employee must be paid, a commitment to incur expenditure for the general administration of the Union, or a purpose reasonably incidental to the general administration of the Union, within the meaning of Sub-rule 36(b).
16. As set out at paragraphs 105 and 106 of chapter 3, however, I do not consider that Sub-rule 32(n) confers an unfettered (or even a broad) power upon the National Secretary to employ persons on behalf of the National Office. Moreover, to the extent that the National Secretary can employ persons on behalf of the National Office (which is set out at paragraph 15 above), by reason of Sub-rule 32(n) this can only be an aspect of the National Secretary's power to control and conduct the business of the Union between National Executive meetings.
17. I do not consider that (at least as a matter of strict construction) National Council or National Executive must give their prior approval to the appointment of National Office staff. In contrast to the requirement in Sub-rule 36(b) regarding the 'prior authority' of expenditure that is not on the general administration of the Union, the Rules do not specify such a requirement in relation to the appointment of National Office staff. Rather, in my view the National Secretary would be permitted by the requirement in Sub-rule 32(n) that he 'conduct' the business of the Union between meetings of National Executive to engage staff subject always to subsequent consideration of the employment of those staff by National Council or National Executive.

Determination of wages and conditions of National Office staff - Rule 27(a)

18. I have set out at paragraph 108 of chapter 3 Holding Redlich's submissions regarding the power of the National Secretary to fix the remuneration of industrial/research staff who are employed by the National Office. My consideration of those submissions is set out at paragraphs 109 to 113 of chapter 3.
19. As set out in paragraph 113 of chapter 3, the power conferred on the National Secretary by Sub-rule 32(n) could extend, at most, to setting wages and conditions of National Office employees on an interim basis, until such matters have been considered by National Council or National Executive. Similarly, the National Secretary could determine an alteration to the wages and conditions of existing

employees but, again, only on an interim basis and subject to consideration by National Council or National Executive.

20. This analysis would, of course, be different if National Council or National Executive had passed a general resolution setting the wages and other conditions of National Office employees or officers. There is no evidence before me, however, which indicates that any such general resolution was passed by National Council or National Executive concerning National Office staff who were employed while Mr Thomson was National Secretary.
21. National Council minutes of 23 July 2002 record the passing of a resolution that the 'Crown Employees (Transferred Officers Compensation) Award (NSW) would be used as a guide for transfer purposes' in relation to the movement of Officers or staff between Branches or the National Office ([HSUNO.023.0033](#)).
22. At a meeting of National Executive on 19 September 2002, minutes record under the heading 'Operations and Staff Report' the carriage of a resolution:

That National Executive endorses salaries been (sic) set at Level 4 of the Health Managers (State) Award (NSW) (rates attached) with conditions set by the Victorian Health Professionals Awards' ([HSUNO.024.0027](#)).
23. However this resolution was carried immediately after a resolution in which National Executive approved the appointments of Mark Robinson and Karene Walton as National Office employees. This strongly suggests that this resolution concerned the wages and conditions of employment of those two individuals rather than being a resolution regarding wages and conditions of National Office employees in general.
24. No other minutes of National Executive meetings while Mr Thomson was National Secretary disclose any resolutions that benchmark the wages and conditions of National Office staff against wages of employees of the New South Wales Branch or against Victorian public sector terms and conditions of employment.
25. The agenda of a National Executive meeting on 5 and 6 December 2002 ([HSUNO.018.0413](#)) records under the heading 'National Office Staff Rates and Conditions' that 'This item is merely to note that staff rates and conditions should be incorporated into a new agreement and brought back to the next Executive meeting'. Minutes of the following meeting of National Executive on 25 and 26 February 2003 ([HSUNO.024.0055](#)), however, do not record any discussion of, or resolutions regarding, National Office staff rates and conditions, nor do any subsequent meetings.

Findings in relation to employment of National Office staff

Employment of Criselee Stevens

Evidence

26. In addition to the matters set out at paragraphs 3 to 17 above, the following matters are relevant to Findings 1 and 2 - Employment of Criselee Stevens, which are set out below at page 175.

Commencement of Ms Stevens' employment on 26 September 2005

27. Ms Stevens told FWA that she commenced working for the National Office in about July 2005 as an Organising Works trainee. The Traineeship had been advertised in the Sydney Morning Herald, and she applied 'off her own bat'. She needed to find a union as part of the program and she found the HSU (Stevens PN 8). She said that the traineeship went for a period of 12 months (Stevens PN 12). She said (Stevens PN 15 - 17):

I got on the phone and rang every single union I could think of. Some of them had already had their quota for the program. Some of them didn't put in for the program at all, they had their own organising and all that sort of thing. So really it was by luck that I came across the HSU, because I'd never really heard of them before. They weren't the HSU in Tasmania, they were called HACSU down there.

... And I'd never been in that sort of industry, so I'd never joined. I was given Craig Thomson's number. I don't think anyone expected me to be probably as forceful as I really was about it. Then, sort of, everything fell into place. When I spoke to Craig, he organised a meeting with himself and Michael Williamson, because of the way the national office worked compared to the New South Wales Branch. Then, basically, we went from there. The Central Coast, I think one of the benefits for me was that I was a little bit more mature, and that I knew the Central Coast very well. Aged care is a big issue up on the Central Coast. It is called God's waiting room, and that's honest, like, you know - - -

28. Ms Stevens said that during that meeting (Stevens PN 59 - 62):
- .. They said that basically what they were looking at was for - you know, they were looking for someone who could communicate effectively with such a broad, diverse range of people because the HSU, like any other group of people wherever you work, isn't made up of the same style of person. So they needed someone who was a little bit mature, who could think on their feet, who could actually be enthusiastic enough to, you know, give direction. They were telling me that they would support me in any way they possibly could and if I had any problems that there were certainly processes there like any other employment that you can go through. So it was all pretty general really.
29. A computer printout showing calculated projected annual leave liability for the National Office as at 6 December 2007 ([HSUNO.017.0008](#)) identifies Ms Stevens' 'credit date' for annual leave purposes as having been 26 September 2005.
30. The earliest record produced by the HSU that demonstrates her employment by the National Office is an email from Ms Stevens to Ms Ord dated 15 October 2005

([HSUNO.022.0010](#)) in which Ms Stevens provides information about her superannuation fund membership, and advises that she cannot open her pay slips. In that email Ms Stevens also:

- a. asks whether she has been 'reimbursed from the 5/10 expense of \$85.00'
 - b. suggests she be issued with a new mobile phone number (in terms which imply she expects to be provided with a mobile phone by the HSU); and
 - c. asks 'are we any closer to receiving the Diners Club?'
31. It seems clear from the terms of the email that Ms Stevens commenced employment with the HSU shortly prior to 15 October 2005.
32. It appears from a spreadsheet produced by the National Office ([HSUNO.022.0025](#)) that by November 2005 the National Office was making compulsory employer superannuation contributions on behalf of Ms Stevens.

Offer of employment

33. Mr Thomson told FWA in interview that he, together with Mr Williamson, interviewed Ms Stevens for employment with the National Office. In describing Ms Stevens' role with the HSU, Mr Thomson referred to the ACTU's 'proper training program for organisers' (Thomson PN 503) but explained that the HSU was not 'having a lot of success' in taking on participants in the ACTU program (Thomson PN 504). Mr Thomson determined that he would 'take a person on, which is hardly going to set the world on fire in terms of changing the union, but try and use that as a way of demonstrating some of the things that we can do more locally' (Thomson PN 505).
34. Mr Williamson said that he had had a cup of coffee with Mr Thomson and Ms Stevens one particular day, but said that 'to suggest it was an offer of employment would be remote - farthest thing from the truth'. However he agreed that it was 'a general chat about possible employment' (Williamson PN 253 - 255).

Terms and conditions of Ms Stevens' employment

35. A letter from the NSW State Training Centre addressed to the 'Health Services Union of Australia National Office' dated 21 October 2005 ([HSUNO.022.0009](#)) informed the National Office that its application to establish a new entrant traineeship for Criselee Stevens had been approved. The letter advises that the training contract will run for 12 months, commencing on 4 October 2005, with the Registered Training Organisation to be Trade Union Training Australia Inc. The letter advises that Ms Stevens must be released from work to attend the training provided by the Registered Training Organisation.
36. A letter from Mr Thomson to Rams Home loans dated 7 November 2005 ([HSUNO.022.0008](#)) states that:

Criselee is in the employ of the Health Services Union, National Office, Criselee commenced employment on 26 September 2005.

I would like to confirm that Criselee earns Gross \$743.59, Net: \$586.59.

Should you require any additional information, please do not hesitate to contact our administrator, Belinda Ord on (03) 9341 3328.

37. The National Office's personnel file for Ms Stevens includes further correspondence about matters such as her superannuation contributions ([HSUNO.022.0024](#)).
38. On 28 February 2006 Mr Thomson wrote to Ms Stevens ([HSUNO.022.0018](#)) advising her that he had reviewed, and decided to increase, her salary from \$38,666.66 to \$45,000 per annum as of 6 March 2006.
39. A MYOB/Excel spreadsheet dated 4 September 2006 produced by the National Office ([HSUNO.009.0154](#)) states that Ms Stevens' salary was \$46,800.
40. A spreadsheet dated 6 December 2007 ([HSUNO.017.0008](#)) states that Ms Stevens' commencement date of employment was 26 September 2005. Ms Stevens' salary was \$46,800 on 4 September 2006. Assuming that Ms Stevens resigned immediately upon Mr Thomson's resignation (14 December 2007) then 4 September 2006 is approximately the middle point of Ms Stevens' employment with the National Office. Even if Ms Stevens was paid her starting salary (\$35,000) from her commencement on 26 September 2006 until 3 September 2006 (343 days), and was paid \$46,800 per annum from 4 September 2006 until 14 December 2007 (one year and 102 days) then an approximation of the total salary paid to Ms Stevens during her employment with the National Office would be:

\$35,000.00 (annual salary) x 0.9452 years = \$33,082.19
plus
\$46,800.00 (annual salary) x 1.2794 years = \$59,878.36
Total: \$92,960.55

The nature of Ms Stevens' duties and the ACTU Organising Works Traineeship

41. Information is set out in chapter 7 regarding the nature of Ms Stevens' duties, including the ACTU Organising Works Traineeship program, at paragraphs 211 to 227 on pages 656 to 661.

Ms Stevens' employment over time with the HSU

42. When Ms Stevens was asked by FWA why she had received a pay increase she said that she received a pay increase because (Stevens PN 49):

.. my argument to Craig was that not only was I, like, Organising Works, but also I had a lot of other positions in community campaigning and within the ALP that, you know, is separate but the two often mingled. If there was an IR day on, ALP members would be invited, especially if we had, you know, one of the head honchos like Julia Gillard or, I think at that time, Kim Beazley. I was up in Terrigal for that. So you know, there were a lot of - you had to be very careful not to cross swords, and it was made very clear that any expenses I obviously couldn't claim for ALP or community work, but I certainly could for my work related expenses which were with the HSU in the aged care and IR program.

43. Ms Stevens agreed at interview that she would have started work on Mr Thomson's Dobell campaign in about October 2007 (Stevens PN 73) and was asked what she was doing prior to that time if it was not campaigning. She replied (Stevens PN 75):

Not - I mean, I certainly did some. I was still a member of the ALP. You know, I was FEC secretary, which is like the federal electoral internal make up there. I still had responsibilities as far as that goes. I was still working with, at that time, it might have been Elisha someone from Unions New South Wales, who was the Your Rights at Work

coordinator whatever for the Central Coast area. So, you know, there was the HSU organising stuff, because all of that was certificate and you had to pass, and do courses and tests and exams, and all that sort of thing. So I guess for me, I was gearing up the troops on the other side, looking around and realising that the majority of people in the ALP on the Central Coast are actually quite older. You know, we need some people. I would ask union members and HSU members could they help and could they put their name down. But I guess you could say that I was crossing over slightly, but no one was ever pinned on it. No one got paid. No one got paid to attend meetings or anything like that. It's just like someone you meet in a shop, 'What are you doing Saturday? Guess what, we're having a rally. Do you want to come down?' It was pretty casual.

44. Further information regarding Ms Stevens' duties whilst employed by the National Office is set out at paragraphs 220 to 227 of chapter 7. My conclusions regarding Ms Stevens' employment are also set out at paragraphs 341 to 349 of chapter 7.
45. Further detailed information regarding Ms Stevens' duties while employed by the National Office is set out at paragraphs 220 to 227 of chapter 7. My conclusions regarding Ms Stevens' duties are set out at paragraphs 341 to 349 on page 686 in chapter 7.

Mr Thomson's statements in interview regarding the employment of Ms Stevens

46. In describing the ways in which the process of employing Ms Stevens was different to other employees of the National Office, Mr Thomson stated that (Thomson PN 507):

I kind of saw her - and this, you know, may be subject to some criticism, but I kind of saw her position as not being the same as other employees in that it was for a fixed period while she did the [ACTU] course. It was relatively cheap, I think it's you know, something like \$35,000 a year, it wasn't a lot of money that was there. There were of course additional expenses that we picked up outside of that, but in my mind it was a different situation to employing an ongoing person. But I did make sure that the president of the union was there to be at the interview process and the approval process and then we reported that to executive.

47. Mr Thomson expressed the view that the employment of Ms Stevens could be reconciled with the requirements of Rules 21(e) and 27 (Thomson PN 836):

Well, they were certainly consistent with the practice and principles that it operated. In fact, we were far superior to the precedents that had been there before...The rate of pay and the terms for Crissie were set by the ACTU. There was no real role for the union. Unless they wanted to pay more, I wasn't going to argue that we should be paying more for that position, which was, you know, experimental in a lot of senses.

48. Mr Thomson did not believe that it was necessary for National Council or National Executive to approve Ms Stevens wages and conditions because 'the rate of pay and the terms for Crissie were set by the ACTU. There was no real role for the union' (Thomson PN 836). Mr Thomson also expressed the view (Thomson PN 507) that Ms Stevens' employment fell into a different category because it was 'for a fixed period while she did the [ACTU] course' and 'it was relatively cheap, I think it's you know, something like \$35,000 a year'.

Did Mr Thomson raise with National Executive his decision to employ Ms Stevens?

49. National Executive minutes do not record any report to National Executive regarding the employment by the National Office of Ms Stevens, nor do they contain any resolutions regarding Ms Stevens' employment or her wages and conditions of employment.
50. National Executive minutes do not record that any alteration to Ms Stevens' terms and conditions of employment was approved or ratified by that body.
51. Ms Jackson stated in interview that Mr Thomson, as National Secretary, made the decision to employ Ms Stevens and Mr Burke. When asked whether their employment was ever authorised or approved by National Executive, Ms Jackson stated (Jackson (1) PN 194):

There's a disagreement amongst the National Executive I think. I don't ever have a recollection that these two were employed by the National Executive, or maybe one and not the other. The national secretary can I think in between meetings of Council or Executive employ and do all that sort of stuff and I can tell you on the report that people - some of the National Executive were really pissed off I suppose that they'd go to functions during the Rights at Work Campaign and Criselee Stevens or Matthew Burke would say, you know, to their staff we work for the HSU but no-one, everyone was like, well how. But then over time they were names that were associated with the National Office. There were emails. They had email accounts, they had credit cards so they were sort of - they became employees by default I suppose. But I was never at a meeting where their employment was approved.

52. In her first interview with FWA Ms Jackson said that she had never been at a meeting where the employment of Ms Stevens had been approved (Jackson (1) PN 194 - 197). Ms Jackson told FWA at her second interview (Jackson (2) PN 291) that she only learnt of the employment of Ms Stevens and Mr Burke by the HSU National Office after a staff member from her Branch met them at a Your Rights at Work meeting:

... as I said to you previously, as far as, you know - you haven't asked me this but I'll volunteer it, the extra staff that was on the payroll at the time that we subsequently discovered during the exit process we didn't know about and all the thing about this is - and I don't know if I said this previously - if we had known about them then we would have approved it. But we didn't, well I didn't. I think it came up - staff from the Victorian office had been to some Your Rights at Work campaign where one of the people that had been working in Dobell had said to one of our staff members, you know, 'Where do you work,' and they said, 'I work at the HSU,' and this person, 'Well so do I' and they're like, 'Oh really. Where do you work,' and they're like, you know, 'Based out at Dobell,' or something like that. People came back and they're like, 'Do you know that we had all these staff that work in Dobell?' I'm like, 'No.' So that's sort of - that's how it sort of in 2007 and, you know, post-election it all came to light. But the National Executive, other than knowing that Craig was running Dobell, as a member of National Executive I did not know that those staff, other than the gossip that occurred with people coming to and from meetings, that they were employed by the HSU.

53. Mr Brown stated in interview that he had not been aware that Ms Stevens had been employed by the National Office (Brown PN 170 - 172).

54. Dr Kelly described the employment by the National Office of Ms Stevens as coming 'as a complete surprise to me' (Kelly PN 65). She stated that Ms Stevens' appointment had 'never gone to National Executive' (Kelly PN 63, PN 479).
55. Dr Kelly told FWA (Kelly PN 65) that the finding in the Exit Audit that the National Office had employed Ms Stevens:
- ... came as a complete surprise to me and clearly in my view - my view was that they were not working for the union and its members but were working in a campaign for Craig Thomson's seat and that was a complete surprise to me.
56. Dr Kelly said (Kelly PN 379 - 380):
- I didn't know that they were employed by the National Office until after Craig Thomson had left. I was not aware of their employment, it never went to National Executive, it didn't go finance committee, and I questioned the amount in the salaries, under the salaries line, because it seemed to me the salaries were too high. I did a back of the envelope on what I thought everybody was being paid and I thought, 'That's funny, has a the national secretary got a salary increase, or what's happening with the salaries budget?' So I actually questioned that, I didn't know these two people were employed until afterwards.
- As I said, I attended that first meeting of the officers in - I can't remember whether it was March, around about - might have been earlier, it was after January executive in 2008 that the officers met, it might have - I can't remember the exact date. The issue of Mathew Burke and Criselee Stevens was raised in that meeting. Michael Williamson, who is the national president, said in that meeting, 'Criselee Stevens used to work in our office.' So clearly you couldn't have two people working in the National Office, in the Sydney National Office, I don't believe that that could have occurred without the knowledge of the national president, at least the National President. Given that he basically offered that he knew Criselee Stevens and that she had worked for him. So I'm only supposing, that's only my view, that Michael Williamson knew that these two people were being employed in the National Office. But that's only my view.
57. Dr Kelly later clarified that she understood Mr Williamson to have told her that Ms Stevens had worked in the NSW Branch office (Kelly PN 410).
58. Dr Kelly said (Kelly PN 385) that on 3 December 2007 she sent an email to Ms Ord which she copied to Mr Thomson and in which she queried the salaries budget when she received documentation for the forthcoming Finance Committee meeting in December 2007 because she thought that it couldn't be correct because certain people had left. The meeting was cancelled and her queries were not responded to.
59. This is consistent with correspondence between Ms Ord and Ms Kelly on 3 December 2007 (HSUNO.018.0096).
60. Ms Knight stated in interview that she knew Ms Stevens and Mr Burke because she had 'bumped into them' at the Toukley Markets on the Central Coast of New South Wales when they were all volunteering for the Your Rights at Work campaign. She described Ms Stevens and Mr Burke as 'working for Craig on another table within the markets'. Ms Knight was not, however, aware that Ms Stevens and Mr Burke were actually employed by the National Office (Knight PN 207 - 213).
61. Mr Williamson, when asked in interview whether he and Mr Thomson had interviewed Ms Stevens prior to her being offered employment with the National

Office, replied 'I have heard this said before actually. I actually read it in the paper. That's where I read it so it must have been true - that I had a cup of coffee with Craig and with her on a particular day but to suggest that it was an offer of employment would be remote - farthest thing from the truth' (Williamson PN 253). After agreeing that his conversation with Ms Stevens could have been a 'general chat about possible employment', the following exchange occurred (Williamson PN 256 - 261):

MR NASSIOS: Well, could I ask what you thought her role was with the HSU.

MR WILLIAMSON: I didn't see her to have a role.

MR NASSIOS: She did something.

MR WILLIAMSON: Sorry?

MR NASSIOS: She did something.

MR WILLIAMSON: Well, she did, but as to what that was, I have no idea.

MR NASSIOS: Does it come as a surprise to you that she was based on New South Wales Central Coast doing whatever it was she was doing?

MR WILLIAMSON: Well, she did live on the Central Coast so - as to what she was doing on the Central Coast I'm - obviously must have been in relation to Dobell somewhere but as to what that was, I don't know.

62. Mr Williamson stated that Ms Stevens was known to the National Executive and that he does not understand how members of the National Executive say that they did not know of the employment of Ms Stevens (Williamson PN 331). Mr Williamson stated that (Williamson PN 265 - 267):

MR WILLIAMSON: In fact she attended them so her name did arise. I remember seeing her at a National Executive meeting.

MR NASSIOS: What would she have done at those meetings?

MR WILLIAMSON: Sat there.

63. However, in their letter of 3 February 2012 (FWA.022.0556), Uther Webser & Evans, who act on behalf of Mr Williamson, have submitted that Mr Williamson now, with the benefit of time to reflect, submits that the information that he provided to FWA in interview that Ms Stevens had attended a National Executive meeting as an observer was incorrect. Mr Williamson was confusing Ms Stevens with another woman he had observed at a National Executive meeting.
64. No minutes of National Executive meetings that have been viewed by FWA record the attendance of Ms Stevens as an observer.

Mr Thomson's submissions

65. With respect to finding 1, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening any of Sub-rules 21(c), 21(e) and 27(a);
 - b. At the time he was appointed as National Secretary, the National Office had one administrative staff member and no budgets;

- c. The HSU entered into a memorandum of understanding with Trade Union Training Australia, which is dated 21 September 2005. The memorandum of understanding contemplated a new program for “recruiting, training and supporting a new generation of union organisers to focus on organising the growth and act as a catalyst for change within unions.” Ms Stevens was employed under that program;
 - d. It is apparent that the Delegate has adopted a narrow and restrictive interpretation of the Rules and the powers of the National Secretary.
 - e. As discussed in submissions that are set out at paragraphs 44, 60, 73, 77 and 82 on pages 135 to 145 in chapter 3, the approach to interpreting an organisation’s rules is well established. The rules should be given a wide meaning and should not be constrained. The legal authority cited in those paragraphs in chapter 3 provides that an organisation’s general management rules should be construed broadly so that any action, which can fairly and reasonably be regarded as falling within the powers and objects of the rules, is valid; and
 - f. The Rules provide the National Secretary with the power, at all relevant times, to appoint and remove National Industrial Officers and Research Officers and other types or category of officials as he deems necessary between meetings of the National Executive. The National Secretary did not require the authorisation of the National Council or National Executive to employ Ms Stevens.
66. With respect to finding 2, Holding Redlich’s submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. he denies contravening subsection 285(1) of the RAO Schedule. Mr Thomson has not failed to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Officer’s circumstances by employing Ms Stevens; and
 - b. As the National Secretary has the power to employ staff, a person in the position of the National Secretary would have not sought approval of the National Executive or formally reported it to the National Council or the National Executive, as the National Secretary is not required to do so.

Conclusions

67. I accept that Ms Stevens was not an Officer of the Union for the purpose of Sub-rule 21(c), and that accordingly her employment does not contravene this Sub-rule.
68. For the reasons set out at paragraphs 3 to 17 of this chapter, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office without obtaining the approval of either National Council or National Executive to do so unless the appointment of such staff can properly be characterised as the ‘business of the Union’ between National Executive meetings.
69. The information regarding Ms Stevens’ duties whilst employed by the National Office (which is set out at paragraphs 220 to 227 of chapter 7) makes it clear that Ms Stevens was not employed by Mr Thomson as part of the ‘business of the Union’.

Indeed, at paragraph 344 of chapter 7 I have concluded that it is clear from Ms Stevens' own evidence about what she did that she had no involvement in ordinary activities of the HSU that exposed her to engagement with employees in the workplace. Rather, it appears that the overwhelming majority, and perhaps all, of her time was spent on activities on the Central Coast, which were unknown to anyone in the National Office apart from Mr Thomson, and were closely connected to, if not entirely directed towards, building his profile within the electorate of Dobell, and later towards campaigning for his election as the member of Dobell.

70. National Executive never authorised Ms Stevens' employment by the National Office, as it was required to do (see paragraphs 49 to 64 of this chapter). Even Mr Thomson does not suggest that the National Council or National Executive have authorised Ms Stevens' employment.
71. With the possible exception of Mr Williamson, it is clear that Mr Thomson took no steps even to bring Ms Stevens' employment to the attention of other members of the National Executive. In particular, there is no evidence that he ever notified a meeting of National Executive of Ms Stevens' employment. Further, there appears to have been no knowledge of Ms Stevens' employment among members of the National Executive other than Mr Thomson and Mr Williamson, and even Mr Williamson was unable to tell FWA why Ms Stevens had been employed or what she did for the HSU.
72. A reasonable person in Mr Thomson's position as National Secretary would have:
 - a. sought the approval of National Council or National Executive to employ Ms Stevens; and
 - b. formally reported the fact that they had employed Ms Stevens to National Council or National Executive.

Findings 1 and 2 - Employment of Criselee Stevens

1. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing Criselee Stevens on behalf of the National Office without seeking the authorisation of either the National Council or National Executive to do so, when Ms Stevens was not employed as part of the business of the Union.

2. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by employing Criselee Stevens on behalf of the National Office in circumstances where:
 - the authority to do so was conferred on National Council and National Executive by Sub-rules 21(e) and 27(a)
 - he failed to obtain the approval of the National Council or National Executive to do so;
 - in employing Ms Stevens, Mr Thomson was not conducting the "business of the Union" within the meaning of Sub-rule 32(n); and
 - he failed to take any steps to report to the National Executive the fact that he had employed Ms Stevens on behalf of the National Office.

Employment of Matthew Burke

Evidence

73. In addition to the matters set out at paragraphs 3 to 17 of this chapter, the following matters are relevant to Findings 3 to 5 - Employment of Matthew Burke, which are set out below at page 185.

Commencement of Mr Burke's employment in July 2006

74. Mr Burke advised FWA in interview that he commenced employment with the National Office of the HSU in July 2006 (Burke PN 38 - 40) as a result of being approached by Mr Thomson (Burke PN 42). Mr Burke ceased employment with the HSU in around March 2007.
75. An invoice from Harris Technology dated 19 June 2006 for \$1,114.45 for what is described as 'Adobe Photoshop CS2 v9-WIN' and delivery ([HSUNO.002.0136](#)) lists Ms Ord and Mr Burke jointly as the person receiving delivery. This is the earliest reference to Mr Burke in any documents provided by the National Office.
76. On 27 June 2006 ([HSUNO.022.0154](#)) Ms Ord emailed Matthew Burke asking questions seeking information such as his tax file number, and date of birth ([HSUNO.022.0154](#)). In her email Ms Ord noted that she already had Mr Burke's BSB and account number details. On 4 July 2006 Mr Burke completed a form on HSU letterhead relating to his superannuation details ([HSUNO.022.0153](#)). Mr Burke responded by email on 5 July 2006 ([HSUNO.022.0155](#)) providing this information. He also completed a Tax File Number declaration on 5 July 2006 ([HSUNO.022.0156](#)).
77. On 9 October 2006 Ms Walton emailed Ms Ord ([HSUNO.022.0059](#)) advising that Mr Burke was away sick that day.

78. On the basis of this material it appears that Mr Burke commenced employment with the National Office in around June 2006.
79. Between March and November 2007 Mr Burke was employed by Senator Stephen Hutchins but in his spare time he worked (unpaid) for the National Office (Burke PN 52 - 65), although the HSU did pay his costs associated with working on issues related to the HSU.

Offer of employment

80. Mr Thomson gave the following explanation of the circumstances surrounding Mr Burke's employment (Thomson PN 701 - 702):

Matt was a young Central Coast person who was keen to work primarily for the Labour Party and was going to get a job with a senator. We employed him for a short period of time to ensure that he did go to that senator and that he wasn't employed somewhere else, so when he was with us, he was assisting Crissie [Stevens] in that sense. He came back to us but we weren't employing him. He was employed by the senator and he was doing party political stuff. The senator's duty electorate was both Dobell and Robertson, and he worked for him.

Of course again there was some crossover because of that particular campaign, and one of the arrangements that we agreed upon was that we would pay his expenses - you know, petrol, those types of things - in a similar way that we paid Crissie Stevens' expenses. So he had some stuff that was union oriented through the Your Rights at Work campaign, but largely it was far more directly ALP stuff. The senator had his name on the door of the place. We got local constituency inquiries that he would deal with, even though I was a candidate not a person, not a member, and that's how we did it. So the actual employment with us was until those things were in place.

81. Mr Thomson was asked whether there was a reason why Mr Burke couldn't have started work with Senator Hutchins at the time he came to work for the National Office. Mr Thomson said (Thomson PN 733):

Apparently there was. You know, the balancing of their hours and staff and those sorts of things. But my recollection was, it was a short period of time. When he was working for us, we did make sure that he was specifically doing union-related activities, but his primary interests and ambition was to work for the senator rather than to work for me, or to work for the union. So it was really trying to help get that in place.

82. Mr Thomson described Mr Burke's role as (Thomson PN 710):

Matt played, in that period, two roles that were of assistance to me, one through his employment with the senator and, also in addition to that, his work with the Your Rights at Work campaign. Matt then went on to work for me, as you probably know, and now works for someone else, but yes.

83. Mr Thomson said that (Thomson PN 706):

This was a kid who was fresh out of school. When we had him, we had him for a short period. With the union he actually also helped - some of the stuff we were doing with our National conference. He was down for the conference in Sydney that we had, that I recall, so he was there with, you know, delegates and other people on that occasion, I think. At that time he was still employed by us and then shortly after then that he wasn't.

84. Mr Thomson said that (Thomson PN 714):

As soon as he started working for Senator Hutchins, there was a change of focus for him. He also had to go out to Penrith and work out at the Penrith office on occasions as well. So you know, there were those sorts of things, but he would recall that better than I can. I can't recall the specific times as such.

85. Mr Thomson was asked about whether there had been any similar process to the interview he and Mr Williamson had conducted of Ms Stevens for Mr Burke before Mr Burke was employed. Mr Thomson replied that there was no interview, but 'I met Matt myself while I was up there, but had been told by Senator Hutchins that he wanted to employ this person to help on the Central Coast' (Thomson PN 755). It was put to Mr Thomson that this was a different process to the one he had described for other employees. Mr Thomson replied (Thomson PN 757):

I think before I tried to - in my mind, I saw a difference between a temporary and an ongoing employee. To me, this was very temporary in nature. I had introduced Matt to people on the executive. There wasn't huge interest in what was happening with Matt.

86. Mr Burke told FWA that he started work for the National Office in July 2006 (Burke PN 37 - 38). He said that in March 2007 (Burke PN 65):

What happened after March, I started employment with Senator Stephen Hutchins and the arrangement was - it was made between Craig and Mr Hutchins - and Senator Hutchins, sorry. The arrangement was that I would work 38 hours for Steve from wherever I was located and any spare time I had, any other time, was working for the HSU. So I ended up working a lot doing about 60 or 70 hours a week and - yes. So I wasn't paid a wage by the HSU but they paid costs that were associated for working on issues relating to them.

Terms and conditions of Mr Burke's employment

87. On 4 July 2006 Ms Ord sent an email to someone called Peter ([HSUNO.022.0157](#)) asking for another blackberry facility to be added to the National Office's Telstra account and ordering another 8700 headset with a new mobile telephone number and email/data facilities. Ms Ord stated that the costs should be \$49.95 per month for the Blackberry and \$100 per month for a '100 member plan'.
88. A MYOB/Excel spreadsheet dated 4 September 2006 produced by the National Office ([HSUNO.009.0154](#)) states that Mr Burke's salary was \$35,000.
89. On the basis that Mr Burke commenced employment with the National Office in about June 2006 and resigned to take up employment with Senator Hutchins in about March 2007 it seems he was employed by the HSU for approximately 9 months. Given that he was paid a salary of \$35,000 per annum it seems likely that the HSU would have paid Mr Burke approximately \$26,250 in salary during his employment by the HSU. Assuming that the HSU also made superannuation contributions in respect of Mr Burke of 12% of salary it seems likely that the HSU would have paid approximately \$3,150 in superannuation contributions in respect of Mr Burke. The estimated figures for Mr Burke's salary and his superannuation contributions total \$29,400.

Mr Burke's duties while employed by the National Office

90. Information about Mr Burke's duties while employed by the National Office is set out at paragraphs 423 to 432 on pages 704 to 706 in chapter 7.

Did Mr Thomson raise with National Executive his decision to employ Mr Burke?

91. National Executive minutes do not record any report to National Executive regarding the employment by the National Office of Mr Burke, nor do they contain any resolutions regarding Mr Burke's employment or his wages and conditions of employment.
92. When asked whether Mr Burke was formally introduced at Executive, Mr Thomson replied that (Thomson PN 759):

Well, it would have been the executive, but, you know. The executive - some people very rarely attended, or attended for two minutes to get their name marked off and then left, so - Ms Jackson was one of those, both there and at the ACTU, was always a difficulty for us, because we were both on the ACTU executive at the same time. So there were some people that were in and out. But people had met Matt, I had him there and introduced. He was - he played a bigger role in just some of the basic organisational stuff for one of the conferences that they were all at as well in Sydney.

and (Thomson PN 765):

I don't think it was a formal resolution, but that was because of the way in which I had characterised it, and no-one seemed to be particularly worried with that characterisation.

93. Mr Thomson expressed the view that the employment of Mr Burke could be reconciled with the requirements of Rules 21(e) and 27 (Thomson PN 836):
- Well, they were certainly consistent with the practice and principles that it operated. In fact, we were far superior to the precedents that had been there before. The rate of pay - well, Matt was such a short period of time, it's almost not worth noting.
94. When asked about why the process that was undertaken in employing Mr Burke was apparently so different to the processes that were undertaken in employing other National Office staff, Mr Thomson stated in interview that (Thomson PN 757):
- ...in my mind, I saw a difference between a temporary and an ongoing employee. To me, this was very temporary in nature. I had introduced Matt to people on the executive. There wasn't huge interest in what was happening with Matt.
95. During interview Mr Thomson subsequently referred (Thomson PN 1493) to the National Council meeting in Sydney at the Marriott Hotel as being 'actually where they all would have met Matt Burke, and I'm surprised they don't remember it because he was actually also playing the grand piano when they came in'.

Statements of National Executive Members

96. Members of the National Executive who were interviewed by FWA, however, did not recall meeting Mr Burke or any authorisation by that body of his employment.
97. In her first interview with FWA Ms Jackson said she had never been at a meeting where the employment of Mr Burke had been approved (Jackson (1) PN 194 - 197). Ms Jackson did not know of Mr Burke's employment by the National Office until one

of her staff members told her they had met him at a Your Rights at Work event. In her second interview Ms Jackson specifically rejected (Jackson (2) PN 380 - 398) Mr Thomson's claim that members of the National Executive would have known about Mr Burke's employment by the National Office because they would have met him when he played the piano at a function associated with National Council.

98. Ms Jackson stated that she has never met Matthew Burke and that she does not recall being introduced to a man playing the piano who was identified as an HSU employee (Jackson (2) PN 382). Ms Jackson also stated in interview that she had heard 'gossip' from a person from a Victorian Branch of the HSU who had attended a Your Rights at Work event that they had met either Ms Stevens or Mr Burke at that function and had been surprised to learn that there were HSU staff employed to work in Dobell. Ms Jackson continued (Jackson (2) PN 291):

But the National Executive, other than knowing that Craig was running Dobell, as a member of National Executive I did not know that those staff, other than the gossip that occurred with people coming to and from meetings, that they were employed by the HSU.

99. Dr Kelly stated that she did not know that Mr Burke had been employed by the HSU (Kelly PN 461) and she described learning of the employment of both Ms Stevens and Mr Burke as 'a complete surprise to me' (Kelly PN 65). When discussing the employment of Mr Burke and Ms Stevens, Dr Kelly stated that 'there had been two people appointed to National Office whose appointments had never gone to National Executive and when you read the National Executive minutes you can see that there are reports of people coming and going from the employ of the National Office yet those two people never...' (Kelly PN 63).

100. Dr Kelly told FWA (Kelly PN 65) that the finding in the Exit Audit that the National Office had employed Ms Stevens and Mr Burke:

... that came as a complete surprise to me and clearly in my view - my view was that they were not working for the union and its members but were working in a campaign for Craig Thomson's seat and that was a complete surprise to me.

101. Dr Kelly said (Kelly PN 379 - 380):

I didn't know that they were employed by the National Office until after Craig Thomson had left. I was not aware of their employment, it never went to National Executive, it didn't go finance committee, and I questioned the amount in the salaries, under the salaries line, because it seemed to me the salaries were too high. I did a back of the envelope on what I thought everybody was being paid and I thought, 'That's funny, has the National Secretary got a salary increase, or what's happening with the salaries budget?' So I actually questioned that, I didn't know these two people were employed until afterwards.

As I said, I attended that first meeting of the officers in - I can't remember whether it was March, around about - might have been earlier, it was after January executive in 2008 that the officers met, it might have - I can't remember the exact date. The issue of Mathew Burke and Criselee Stevens was raised in that meeting. Michael Williamson, who is the National President, said in that meeting, 'Criselee Stevens used to work in our office.' So clearly you couldn't have two people working in the National Office, in the Sydney National Office, I don't believe that that could have occurred without the knowledge of the National President, at least the National President. Given that he

basically offered that he knew Criselee Stevens and that she had worked for him. So I'm only supposing, that's only my view, that Michael Williamson knew that these two people were being employed in the National Office. But that's only my view.

102. Dr Kelly later clarified that she understood Mr Williamson to have told her that Ms Stevens had worked in the NSW Branch office (Kelly PN 410). She did not recall Mr Williamson saying anything about Mr Burke (Kelly PN 416). She said that she never knew that Mr Burke had been employed by the National Office, or that he had resigned (Kelly PN 460 - 461).
103. Dr Kelly told FWA that it was never reported to the National Executive or the Finance Committee that Mr Burke had been employed by the National Office, that he had a Diners Club card or that he continued to spend money on the Diners Club card after his resignation (Kelly PN 473).
104. Mr Brown stated in interview that he had not been aware that Mr Burke had been employed by the National Office (Brown PN 170 - 172) and (Brown PN 196) that he could not recall any disclosure of Mr Burke's employment being made to the National Executive.
105. Ms Knight stated in interview that she knew Ms Stevens and Mr Burke because she had 'bumped into them' at the Toukley Markets on the Central Coast of New South Wales when they were all volunteering for the Your Rights at Work campaign. She described Ms Stevens and Mr Burke as 'working for Craig on another table within the markets'. Ms Knight was not, however, aware that Ms Stevens and Mr Burke were actually employed by the National Office (Knight PN 207 - 213).
106. Mr Williamson stated that he had heard of the name 'Matthew Burke' but that he had no idea what role Mr Burke played in the HSU. He could not recall during his interview whether National Executive knew of the employment by HSU of Mr Burke or whether it ever considered remuneration and terms of employment for Mr Burke or Ms Stevens (Williamson PN 316 - 337).

MR NASSIOS: Could I ask about Matt Burke. Does that name mean anything to you?

MR WILLIAMSON: I've heard of it.

MR NASSIOS: Do you know what his role in the HSU would have been?

MR WILLIAMSON: No idea.

MR NASSIOS: He left employment with the HSU in about April of 2007 but continued to hold and spend money, about \$6700, on an HSU credit card.

MR WILLIAMSON: Who is this, sorry?

MR NASSIOS: This is Matt Burke, between April 2007 and the federal election. Can I ask whether you're aware of that.

MR WILLIAMSON: No.

MR NASSIOS: Do you have a view about whether that could have been appropriate expenditure at the National Office?

MR WILLIAMSON: Well, again, I can't answer it because I don't know what it was for.

MR NASSIOS: Was the fact that Mr Burke was continuing to spend moneys on the National Office credit card after his resignation ever reported to the National Executive or the finance committee?

MR WILLIAMSON: No.

MR NASSIOS: It appears that the National Executive were never informed that the National Office had employed either Ms Stevens or Mr Burke. Can I ask you, if this is the case, why that would have been.

MR WILLIAMSON: No, I can't recall if it was - what was the question again, sorry?

MR NASSIOS: Well, it doesn't seem as though the National Executive knew that they were employees of the National Office.

MR WILLIAMSON: Well, I can't speak for them, but I can't understand how they didn't know something was happening because they were at meetings of the National Executive, from what I can recall.

MR RAWSON: Mr Burke was as well?

MR WILLIAMSON: I can't recall Mr Burke. I can't say that about Matt Burke. I don't even know what - I'm just trying to think now - - - Crissie, yes.

MR NASSIOS: All right. In terms of their remuneration and terms and conditions, that is, Ms Stevens and Mr Burke, can you recall any discussion in National Executive about that?

MR WILLIAMSON: None.

MR NASSIOS: Given we spoke about Rules 21 and 27 in terms of fixing and appointing officials et cetera, how do you reconcile - - -

MR WILLIAMSON: I'm saying that I can't recall. I'm not saying it didn't happen.

107. Mr Burke confirmed in interview that he had visited the National Office premises in Melbourne where he had met Belinda Ord and Struan Robertson and the research officer. He also met 'Jeff Jackson and some other characters at certain points in time' (Burke PN 94).

108. Mr Burke was asked whether he met any members of the National Executive at the Pitt Street Office (Burke PN 93 - 98):

MR NASSIOS: Okay. Now, when you went to Pitt Street, did you meet any other members of the National Office executive or anything like that?

MR BURKE: In Pitt Street? No, not in Pitt Street. Maybe Mark McLeay quite later - quite a bit later. But definitely in Melbourne I met Belinda Ord and Struan Robertson and there was a research officer, I can't recall her name, but I met her quite a few times. I also met Jeff Jackson and some other characters at certain points in time.

MR NASSIOS: If Ms Jackson would say to us that she doesn't know who you are, would that be an accurate statement?

MR BURKE: I'd say so, yes. It could be.

MR NASSIOS: You've never met her?

MR BURKE: No, I would have met her, but whether it was a memorable meeting or not or whether she knew who I was.

Mr Thomson's submissions

109. With respect to finding 3, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening any of sub-rules 21(c), 21(e) and 27(a) by employing Mr Burke. As discussed in submissions that are set out at paragraph 88.d on page 150 in chapter 3, the National Secretary of the HSU had all the powers of the National Council and the National Executive. In particular, the National Secretary had under the Rules at all relevant times the power to appoint and remove National Industrial Officers and Research Officers and other types or category of officials as it deems necessary between meetings. This included the power to fix the remuneration, terms and conditions of employment.
 - b. the National Secretary had the authority to employ staff for the National Office and Mr Burke was employed in accordance with that power and authority.
110. With respect to finding 4, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. he denies contravening Sub-rule 32(n) of the Rules by employing Mr Burke in the National Office; and
 - b. The National Secretary had the power and authority to employ staff for the National Office and Mr Burke was employed in accordance with that power and authority.
111. With respect to finding 5, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. Mr Thomson did not fail to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by employing Mr Burke on behalf of the National Office. Mr Thomson was conducting the business of the HSU between meetings, and conducting that business includes employing staff in the National Office, as discussed in submissions that are set out at paragraphs 121.c to 121.e on page 158 in chapter 3.
 - b. The National Secretary had the power and authority to employ staff in the National Office and Mr Burke was employed in accordance with that power and authority.

Conclusion

112. I accept that Mr Burke was not an Officer of the Union for the purpose of Sub-rule 21(c), and that accordingly his employment does not contravene this Sub-rule.
113. For the reasons set out at paragraphs 3 to 17 of this chapter, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office without obtaining the approval of either National Council or National

- Executive to do so unless the appointment of such staff can properly be characterised as the "business of the Union" between National Executive meetings.
114. Moreover, I do not consider the purpose identified by Mr Thomson for employing Mr Burke (which is set out at paragraph 80 above and following) was a purpose which was related to the business of the Union within the meaning of Sub-rule 32(n).
115. The reasons for Mr Burke's employment by Mr Thomson (which are set out at paragraph 80 to 86 above of this chapter) establish that Mr Burke was not employed by Mr Thomson as part of the 'business of the Union'. Rather, as set out at paragraph 80 above, Mr Thomson employed Mr Burke 'for a short period of time to ensure that he did go to that senator [Hutchins] and that he wasn't employed somewhere else'.
116. At paragraph 507 of chapter 7 I have concluded that it is clear from Mr Burke's own evidence about what he did that he had no involvement in ordinary activities of the HSU that exposed him to engagement with employees in the workplace. Unlike Ms Stevens, there is some evidence that Mr Burke did at least perform some ordinary administrative duties for the National Office. But this evidence does not suggest that this was a significant part of Mr Burke's duties. Certainly it seems fanciful to suggest that Mr Burke would ever have been employed by the National Office as an administrative assistant, but for the fact that Mr Thomson wanted to ensure that Mr Burke would be available in the future to work out of his campaign office. It appears that the majority of Mr Burke's time was spent on activities on the Central Coast, which were unknown to any person in the National Office apart from Mr Thomson, and were closely connected to, if not entirely directed towards, building Mr Thomson's profile within the electorate of Dobell, and later, towards campaigning for his election as the member of Dobell.¹⁰⁹
117. Mr Thomson employed Mr Burke on behalf of the National Office in July 2006 without obtaining the authorisation of either the National Council or National Executive to do so (see paragraphs 91 to 108 above)). Even Mr Thomson does not suggest that National Council or National Executive had authorised Mr Burke's employment.
118. A reasonable person in Mr Thomson's position as National Secretary would have:
- a. sought the approval of National Council or National Executive to employ Burke;
 - b. informed either National Council or National Executive, when seeking such approval, of the fact that the purpose of Mr Burke's employment by the National Office was to assist Senator Hutchins to be able to employ Mr Burke at a later date to work in Dobell, rather than for the business of the National Office; and
 - c. formally reported the fact that they had employed Mr Burke to National Council or National Executive

¹⁰⁹ See paragraphs 505 to 509 of chapter 7 for more detail regarding my conclusions.

Findings 3 to 5 - Employment of Matthew Burke

3. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing Mr Burke on behalf of the National Office without seeking the authorisation of either the National Council or National Executive to do so, when Mr Burke was not employed as part of the business of the Union.
4. Mr Thomson has contravened Sub-rule 32(n) by employing Mr Burke on behalf of the National Office in order to ensure that he was available for subsequent employment by Senator Hutchins, rather than for any purpose relating to controlling and conducting the business of the Union.
5. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by employing Mr Burke on behalf of the National Office in circumstances where:
 - The purpose of Mr Burke's employment by the National Office was to assist Senator Hutchins to be able to employ Mr Burke at a later date to work in Dobell, rather than for the business of the National Office;
 - The authority to employ Mr Burke was conferred on National Council and National Executive by Sub-rules 21(e) and 27(a);
 - Mr Thomson was required by Sub rule 32(n) to 'control and conduct the business of the Union';
 - In employing Mr Burke, Mr Thomson was not conducting the "business of the Union" within the meaning of Sub-rule 32(n); and
 - Mr Thomson failed to obtain the approval of the National Council or National Executive to do so.

Mr Thomson failed to take any steps to report to the National Executive the fact that he had employed Mr Burke on behalf of the National Office.

Payment of \$25,000 per annum to Karene Walton while she was employed by the ACTU

Evidence

119. In addition to the matters set out at paragraphs 3 to 17 above, the following matters are relevant to Finding 6 - Payment of \$25,000 per annum to Karene Walton, which is set out below at page 197.

Ms Walton's employment by the HSU

120. The minutes of the National Executive meeting held on 19 September 2002 ([HSUNO.018.0461](#)) record Mr Thomson reporting that a selection committee has chosen Karene Walton for the position of Coordinator - Organising and Training. The minutes record that a resolution was carried approving the appointment of Karene Walton. The minutes also record the carriage of a resolution setting the salary of Karene Walton.
121. The minutes of the National Council meeting of 23 October 2002 record that Karene Walton has been selected for the position of Coordinator - Organising and Training. ([HSUNO.023.0001](#)). The minutes record a resolution moved by Mr Thomson (and carried) '*That the Operations and Staffing Report [which contained this information] is for information purposes only*'.
122. The appointment of Karene Walton with the HSU as a Coordinator - Organising and Training was therefore authorised by the National Council and also by the National Executive.
123. The resolution setting the salary of Karene Walton was also authorised by the National Executive.

Karene Walton's role at HSU

124. At interview Mr Burke described Karene Walton's role as an organising expert. She also looked at the efficiencies within the HSU and how its organising capacity can increase (Burke PN 330 - 354):
 - MR NASSIOS: What did Karene do with the union?
 - MR BURKE: Well, Karene - I think she works for the ACTU now. She was an organising expert and she did a lot about looking at the efficiencies within the union and how its organising capacity can increase. That's my perception of her role. Yes, but a very forceful kind of Scottish personality.
 - MR NASSIOS: What does that mean? Can you just elaborate slightly for me? I'm not sure exactly what you meant by what she is trying to do.
 - MR BURKE: Okay. Well, she would be looking - sort of like HR in a way, human resources kind of thing, finding out what people can do better and how their work practices can change to do better. That's my memory of Karene.

...
 - MR BURKE: Just about how our office was operating and how - you know, finding out personality clashes and where the blame goes if something goes wrong. Just kind of day-to-day HR stuff.
 - MR RAWSON: Which office are you referring to there?
 - MR BURKE: That would be the National Office but particularly either in Sydney or on the Central Coast as well.
 - MR RAWSON: But was there a National Office on the Central Coast?

Chapter 4 - Employment of staff of the National Office
Payment of \$25,000 per annum to Karene Walton while she was employed by the ACTU

MR BURKE: It was a campaign office but we have National Offices.

MR RAWSON: So you mean the Long Jetty - - -

MR BURKE: Yes.

MR RAWSON: So you saw her in both - possibly in the Pitt Street office and in the Long Jetty office?

MR BURKE: I believe so, and also in Melbourne.

MR RAWSON: And in Melbourne?

MR BURKE: Yes, she would have been in Melbourne as well. I think, yes

...

MR NASSIOS: Well, how would that work? I'm curious because I don't know why Karene would have been involved with that office that's why I'm asking the question.

MR BURKE: She wasn't involved much at all. I think she came down once or twice.

125. At interview with FWA Ms Stevens described Karene Walton as her mentor. (Stevens PN 53, PN 317 - 326):

MS STEVENS: But really, Karene Walton who was also there, she was my mentor for the Organising Works, and Craig.

...

MR NASSIOS: You spoke of Karene Walton earlier as in some way your mentor.

MS STEVENS: She was my mentor with the program, yes.

MR NASSIOS: Do you know when she was employed by the National Office and what her duties would have been other than being your mentor?

MS STEVENS: Well, not really. I mean, Karene did a lot of stuff obviously on the more Victoria end and, like I said, I didn't really have anything to do with that, but I'm pretty sure she had been there a while. She had been there for about 10 years and I know that pretty much when I left I think it was - she left working there probably about six months before the election maybe after my program was over and - or maybe even a bit before - and went to the ACTU because she wanted to move back to Sydney and she couldn't work for some reason for the HSU National - sorry, New South Wales office. I think there was stuff going on there. So yes - so basically she went to work for the ACTU.

MR NASSIOS: All right. When she was - do you know that she was on secondment at some point with the ACTU? Are you aware of that?

MS STEVENS: No, I just knew that she worked with the HSU and then she moved over to the ACTU.

MR RAWSON: How much did you have to do with her?

MS STEVENS: Well, she basically, you know, would be, I guess, in a true mentor's role. She went through all the course stuff with me for the Organising Works traineeship. I had a problem a couple of times with a couple of

the people giving the courses, and I think I sort of struggled a little at the start because I hadn't studied for so long. So she was helping me out with things like formatting and, you know, and study tips, and what the actual, like, each module, you know, what I had to do. Because sometimes my, you know, I would waffle on for hours and hours and they would only need two-page, dot-point note and get a bit pissed that I put so much work into it and didn't need to. But other than that, yes, she was there just to support me throughout that program, like, literally.

MR RAWSON: She didn't have any other professional dealings with you, did she?

MS STEVENS: No.

Ms Walton's secondment to ACTU

126. A letter dated 11 November 2005 was sent from Paul Goulter, ACTU, to Mr Thomson confirming an arrangement to second Karene Walton to the ACTU Education and Campaign Centre from 5 December 2005 to 8 December 2006 ([HSUNO.011.0080](#)). The letter outlined the specific responsibilities of Ms Walton. These were:

Undertaking education and training delivery in both the scheduled and unscheduled courses offered by the Centre. Specifically we would like Karene to work on our industry research program as well as being able to take part in our advanced courses. We would also expect Karene to be able to engage with unions around their specific training needs and deliver those as necessary.

Being part of the Centre's team that is able to work with unions at a high level in identifying and facilitating planning and change programs within the union.

Playing a leading part in the organising projects proposed and to be developed within the health industry.

127. It appears as though the secondment was extended to 5 April 2007. Ms Walton told FWA at interview (Walton PN 73 - 74) that the ACTU paid 50% of her wages whilst on secondment from December 2005 to May 2007. She says that from May 2007 to January 2008 she was employed by ACTU on a consultancy basis:

MR NASSIOS: All right. In terms of your pay during that time, your secondment, are you aware whether the ACTU paid - - -

MS WALTON: Yes. I believe - now, I haven't got any paperwork to this effect, but I believe that it was from December 2005 through to May 2007. There should have been a letter that would have been tabled at an executive, is my understanding, where there would have been an arrangement dealt with, which would have been a 50:50 split in terms of the wages, because of the nature of the work that I was doing and the timings that we looked at. Then from May 2007 through to January 2008, it was then a consultancy basis. So what that meant was the ACTU paid a certain amount, and then I billed back the HSU because the ACTU then offered a consulting arrangement using my services and the director of the organising centre at the time.

128. Mr Brown says at his interview with FWA that the secondment to the ACTU was discussed by the National Executive. (Brown PN 226 - 235)

- MR NASSIOS: On 16 March 2006 there was a teleconference of the finance committee in which it was review of a profit and loss statement which identified \$11,250 in other income received from the ACTU for the K. Walton secondment. Are you aware whether Ms Walton's secondment to the ACTU was ever discussed by the National Executive?
- MR BROWN: It was.
- MR NASSIOS: What was your understanding of her duties for the ACTU?
- MR BROWN: Working for the campaign and organising centre as a trainer.
- MR NASSIOS: What is your understanding of the nature of the payments made by the ACTU in respect of her secondment?
- MR BROWN: To the HSU?
- MR NASSIOS: Yes.
- MR BROWN: From the ACTU to the HSU - - -
- MR NASSIOS: Yes.
- MR BROWN: It was reimbursement of her salary.

129. It is clear that National Council, in passing the resolution to appoint Karene Walton as an employee on 23 October 2002, did not thereby also authorise her secondment to the ACTU.
130. Even if Ms Walton's secondment was discussed at the National Executive, as suggested by Mr Brown, that discussion does not appear in any minutes provided to FWA. Certainly it does not appear to have been the subject of any resolution at the National Executive. Given that there were approximately 4 employees employed in the National Office at the time, it is a significant event to send one quarter of the National Office on secondment and this should have been brought to the attention of the National Executive.

Invoices sent by the National Office to the ACTU during Ms Walton's secondment

131. The following invoices show that invoices were sent from the HSU to the ACTU for Karene Walton's secondment. What appears to have happened is that the HSU paid Karene Walton her full salary and as per the 50:50 split arrangement between the HSU and ACTU, and the ACTU reimbursed the HSU for 50% - being the amounts in the invoices below (Walton PN 74):

Date	Amount	Doc number
5 December 2005 - 5 January 2006	\$4,125	HSUNO.011.0078
5 December 2005 - 5 January 2006 [It is not clear why there are two invoices for this period]	\$8,456.77 (50% to be paid by ACTU)	HSUNO.011.0088
5 January 2006 - 4 February 2006	\$4,125	HSUNO.011.0076

Date	Amount	Doc number
5 January 2006 - 4 February 2006 [It is not clear why there are two invoices for this period]	\$4,517.92 (50% to be paid by ACTU)	HSUNO.011.0085
5 February 2006 - 4 March 2006	\$4,125	HSUNO.011.0074
5 February 2006 - 4 March 2006 [It is not clear why there are two invoices for this period]	\$4,357.39 (50% to be paid by ACTU)	HSUNO.011.0082
5 March 2005 [2006?] - 5 April 2006	\$4,125	HSUNO.011.0072
5 April 2006 - 5 May 2006	\$4,125	HSUNO.011.0070
6 May 2005 [2006?] - 5 June 2006	\$4,125	HSUNO.011.0066
6 June 2006 - 5 July 2006	\$4,125	HSUNO.011.0068
6 July 2006 - 5 August 2006	\$4,125	HSUNO.011.0112
6 August 2006 - 5 September 2006	\$4,125	HSUNO.011.0111
6 September 2006 - 5 October 2006	\$4,125	HSUNO.011.0110
6 October 2006 - 5 November 2006	\$4,125	HSUNO.011.0108
6 November 2006 - 5 December 2006	\$4,125	HSUNO.011.0106
6 December 2006 - 5 January 2007	\$4,125	HSUNO.011.0105
6 January 2007 - 5 February 2007	\$4,125	HSUNO.011.0104
6 February 2007 - 5 March 2007	\$4,125	HSUNO.011.0103
6 March 2007 - 5 April 2007	\$4,125	HSUNO.011.0101

Ms Walton's employment by ACTU

132. Ms Walton ceased employment with the HSU, and commenced employment with the ACTU, in April 2007. The National Office appears, however, to have entered into an arrangement under which it paid \$25,000 per annum directly to Ms Walton after she ceased employment with the National Office. It also appears as though Ms Walton's employment with the ACTU (and, as a result, payments by the National Office to Ms Walton under this arrangement) ceased in January 2008.
133. A letter dated 26 March 2007 was sent from Paul Goulter at ACTU to Mr Thomson outlining the details of the ACTU's proposal that it employ Karene Walton ([HSUNO.007.0301](#)). This includes:
1. Karene will be employed by the ACTU on the applicable rate provided for in the ACTU Staff Agreement that meets the *level* at which she is expected to perform.
 2. Karene will *receive* directly from the HSU an annual payment of \$25,000. She will need a ABN number for that to occur and she is willing to do this.

3. On the basis of Karene's ongoing employment with the ACTU, the ACTU Education and Campaign Centre will *provide* to the HSU (its National Office, branches, officials, delegates and members) the following on a no charge basis as contra up to a maximum of \$25,000 per annum for these arrangements. This arrangement to *cover* our normal course fees and consultancy fees. *Travel* and associated costs to the ACTU to provide these services will be charged to HSU by the ACTU.

- Attendance at scheduled courses run by ACTU
- Development and attendance at non scheduled courses put together for a specific branch or for the National Union and run by us
- Facilitation as required
- Participation in strategic planning and change programs at branch, multi branch and National levels
- Participation Nationally and at branch levels in HSU campaigns and multi union campaigns
- Attendance and participation in conferences
- Paul Goulter's attendance and participation formally (eg. conferences) and informally on internal HSU change projects and campaigns

Within that total we will also provide our on line training in sexual harassment and bullying prevention as provided by 'an external provider' at the ACTU cost price of \$15.00 per person (normal retail value \$40 per person). We believe that you will be able to link directly to the TUEF site to facilitate it. [my emphasis]

134. This letter was discussed at the National Executive meeting in Sydney on 28 and 29 March 2007. The minutes of that meeting state that: ([HSUNO.018.0151](#))

The National Secretary discussed **a letter** from the ACTU who were seeking to employ Karene Walton on a fulltime basis and that the union be provided with training to the value of \$25,000 per year. Discussion occurred as to how this was good for Karene and an honour for the HSU that she was asked by the ACTU to work for them. It also enables the union to reallocate those resources to a research officer position.

Rosemary Kelly wanted it noted in the minutes that she believed it was important that an enforceable contract with Karene be entered into.

Discussion occurred as to the length of time the arrangement should continue and it was agreed that it continue whilst ever Karene Walton remains at the ACTU.

Moved: S Pollard Seconded: D Hill

'That the arrangement proposed by the ACTU regarding training and Karene Walton be approved and the National Secretary be authorised to take the necessary steps to legally implement such a scheme. Further, the released resources be used to employ an additional research officer.' [our emphasis]

135. Mr Brown confirmed at interview that (Brown PN 242 - 257, 261 - 262) he was aware of these arrangements with the ACTU, although he was not across the exact details. This confirms that at least some level of disclosure was made to the National Executive about the arrangements.

MR NASSIOS: 28 and 29 March 2007, the National Executive meeting considered a request from the ACTU to employ Karene Walton on a full-time basis.

The minutes record that as part of that deal the HSU will receive training to the value of \$25,000. The minutes record the proposal was voted on and approved by the National Executive. Do you recall what disclosure was made to the National Executive about this arrangement?

MR BROWN: I recall the arrangement, the \$25,000 that we would gain in training and support from the ACTU organising centre. So I assume, given that I wasn't a member of the finance committee, then it was at the National Executive that that information would have been provided.

MR NASSIOS: All right. Do you recall seeing a letter from the ACTU about the arrangement?

MR BROWN: No.

MR NASSIOS: I can hand over the letter if you wish.

MR BROWN: Yes.

MR NASSIOS: Did you understand as part of the arrangement that the HSU would top up Ms Walton's salary as an employee of the ACTU by about \$25,000 per year?

MR BROWN: Look, I think I probably was aware of that, yes. I can't remember the exact details of the arrangement but it rings a bell ...

MR NASSIOS: Now, the final payment seems to have ended a couple of months early rather than what appeared to be for the six or the quarterly payments. Have you any idea why it ceased?

MR BROWN: No.

...

MR RAWSON: Yes. Sorry, you said that you were probably aware of the fact that the HSU was topping up \$25,000 to her salary. What was your understanding of any of the reasons behind that?

MR BROWN: Look, my understanding - Karene, from all the information I had, was a very good trainer and the organising centre in particular wanted her. I think the ACTU is not necessarily flush with money, particularly the organising centre, so I think I interpreted it at the time as being the HSU helping out the ACTU organising centre by providing the services of Karene, because certainly we weren't utilising her internally within the HSU. So that was my understanding of it at the time. The arrangements don't surprise me so I was aware of them but I can't say that I was, you know, across all the detail of exactly what the arrangement was.

136. The resolution at paragraph 134 above refers to an 'arrangement' proposed by the ACTU but this arrangement is not disclosed in the minutes.
137. The minutes at paragraph 134 above refer to a 'letter' from the ACTU but it is unclear which letter it is referring to. Even if the National Executive is referring to the letter sent to Mr Thomson dated 26 March 2007 referred to at paragraph 133 above, there was a failure by the National Executive to adequately minute this.

138. Although the National Executive approved the ACTU's proposal that it employ Karene Walton, critical details of the proposed arrangement were not specified in the minutes, including that the National Office itself would pay Karene Walton \$25,000 per annum whilst she was a full-time employee at the ACTU. At a minimum, the minutes of the National Executive should have disclosed that the arrangement recorded in the letter from the ACTU (and approved by the National Executive) included a commitment by the HSU to pay Ms Walton \$25,000 per annum.
139. In accordance with Sub-rule 32(b) of the Rules Mr Thomson was required to keep or cause to be kept correct minutes of all meetings of the National Executive.
140. Minutes are a complete record of every decision that is reached by a meeting. Not only must every decision that is made be recorded, but the precise words of all motions and amendments that are proposed and whether the proposals were carried or rejected should appear in the minutes. It is not sufficient that minutes only generally record motions that are moved at meetings. Minutes should also be an accurate record of everything that is done at a meeting, although they are not required to be a 'word-for-word' transcription of everything that was said.¹¹⁰
141. Sub-rule 32(b)¹¹¹ requires the National Secretary to 'keep or cause to be kept correct minutes' of National Executive meetings. As minutes are required to be a complete record of every decision that is reached by National Council and National Executive, including the precise words of all motions and whether such motions were carried, it is not up to the discretion of the National Secretary (or other minute taker) as to whether or not a motion should be recorded in the minutes.
142. Karene Walton told FWA that the consultancy arrangement was considered by National Executive. She describes the consultancy arrangement with the HSU as ad hoc. (Walton PN 299 - 342):
- MR RAWSON: Then from April 07, effectively - I mean, effectively you've resigned as an HSU employee and become an ACTU employee.
- MS WALTON: Yes.
- MR RAWSON: Am I right - I think you paid out your employee entitlement and so forth.
- MS WALTON: Yes.
- MR RAWSON: So you go on as an ACTU employee from April 07?
- MS WALTON: Yes.
- MR RAWSON: But with the HSU paying you \$25,000 a year, and you would invoice them quarterly?
- MS WALTON: Yes.
- MR RAWSON: You've described that arrangement basically as a consultancy arrangement.
- MS WALTON: That's correct.

¹¹⁰ E Magner, *Joske's Law and Procedure at Meetings in Australia*, 10th edition, Lawbook Co, Sydney, 2007 (**Magner**) at [12.10].

¹¹¹ This Rule was numbered Sub-rule 33(b) between 30 March 2006 and 8 June 2006.

Chapter 4 - Employment of staff of the National Office
Payment of \$25,000 per annum to Karene Walton while she was employed by the ACTU

- MR RAWSON: Could you just tell us perhaps in a bit of detail what the consultancy arrangement required you to - what you did for the HSU as part of that consultancy arrangement - - -
- MS WALTON: So - - -
- MR RAWSON: - - - from April 07 to January 08?
- MS WALTON: Yes, sure. So in the - so the 25,000 hasn't been paid in full, because obviously I didn't - it was for that period of time. And what that - there was a letter that came through from the ACTU as well, so that provided a - which you've got here, in terms of the billing. So there would be - that's basically it. So that's doing things like - so Paul or myself would attend conferences, I think Paul had done a review of the HSU which may have been part of that as well. It would be any training, it would be anything basically that they saw as being useful for them as a consultant. So that would be training and education of our own campaign, it would be education for organisers.
- MR RAWSON: So was that a structured program or was it on an ad hoc - - -
- MS WALTON: Ad hoc.
- MR RAWSON: So they could ring you up and say, 'Can you come and see us next week to talk about X?'
- MS WALTON: Yes. It would be on an ad hoc basis. So it would be an ad hoc basis in terms of their conferences or conventions, it would be about helping set them up. It would also be then helping them look at getting speakers. It would also help look at getting Paul involved in perhaps doing a review of a particular component. **But I believe again that that's all been - that was all taken to the executive and dealt with there.**
- MR RAWSON: I sort of understand it on a theoretical level. Can you give us an example or two, perhaps, of some of the work you did for the HSU?
- MS WALTON: So an example would be going down to the Vic 2 - so there's several branches in Victoria, so for the Vic 2, there was a conference on that I attended there and then helped run a workshop. It would also be in terms of if any workshops were being done about actually putting those together for them and then either coming down to help them run them or actually providing that material to people.
- MR RAWSON: During that period of time, your position with the ACTU was a full-time position?
- MS WALTON: Yes.
- MR RAWSON: So this is sort of - I gather it was flexible work arrangements?
- MS WALTON: Yes.
- MR RAWSON: But it's not like it was before, where you - - -
- MS WALTON: It wasn't as structured.
- MR RAWSON: - - - were doing one job, you were doing a full-time job for the ACTU -
- -

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MS WALTON: Yes.

MR RAWSON: - - - and then doing additional ad hoc work for the HSU?

MS WALTON: Yes.

MR RAWSON: The letter that you've been shown says that as part of this arrangement, the ACTU provide the HSU with effectively \$25,000 of contra training.

MS WALTON: Yes.

MR RAWSON: Do you know why that was part of the arrangement?

MS WALTON: I think that was because it was then the ACTU as the peak body, as the union's peak body, giving assistance to the union.

MR RAWSON: Yes, but that amount obviously equals the amount the HSU is paying you.

MS WALTON: Yes.

MR RAWSON: Is that by design?

MS WALTON: I couldn't tell you. So in terms of - I would - you would assume that, but basically the contra arrangements were there and they were happy to provide that.

MR RAWSON: I suppose one last question on that.

MS WALTON: Sure.

MR RAWSON: Would you have taken a reasonably significant pay cut when you left the HSU and went onto an ACTU salary?

MS WALTON: Yes.

MR RAWSON: It might have even been of this order, around \$25,000?

MS WALTON: I couldn't tell you exactly at that time. It would have probably been more, to be honest. [Emphasis added]

Payment by the HSU to Ms Walton of \$25,000 per annum

143. Karen Walton invoiced the National Office for training consultancy fees on three occasions after she ceased employment with the National Office:

Period	Amount	Doc number
1 June 2007 - 31 August 2007	\$6,250	HSUNO.010.0101
1 September 2007 - 30 November 2007	\$6,250	HSUNO.006.0218
December 2007 - January 2008	\$4,166	HSUNO.007.0300

144. The following receipts indicated that these invoices were paid by the National Officer:

a. Receipt of payment to Karene Walton's bank account for \$6,250 dated 6 August 2007 ([HSUNO.010.0102](#))

- b. Receipt of payment dated 30 October 2007 for invoice dated 4 October 2007 \$6,250 ([HSUNO.006.0215](#))
 - c. Receipt to Karene Walton dated 13 February 2008, \$4,166.66 for purchase 0000023 ([HSUNO.007.0303](#))
145. These are the only payments that the National Office appears to have made to Karene Walton since her employment with ACTU. Four quarterly payments of \$6,250 would be equal to \$25,000 per annum. Presumably, these payments were part of the \$25,000 annual payment which the HSU agreed to pay Ms Walton while she was employed by ACTU.
146. According to Mr Thomson, the HSU did not in fact get full value from Ms Walton for their \$25,000 (Thomson PN 1003):
- MR THOMSON: Yes, there was some. I don't think we got - to be honest, I don't think we got the value that we paid for it. But again, we don't know that until it's done. The agreement was that we - you know, we absolutely could have got every cent of that. In fact more, because - the bit that you probably find a bit strange, the sexual harassment and bullying prevention was something that a couple of the branches had been talking about specifically in the online service, so that was a great deal for them compared to what they were going to be able to do in one of the areas, they'd been requesting additional stuff, so there were - if they'd done it the right way, there was a lot of stuff. As it turned out there were, as I said, those few branches who used her and we used her nationally. Did we get \$25,000? You know, it's a judgment call at the end of the day. We probably didn't, but we probably weren't that far off it.
147. It is clear from the letter dated 27 March 2007 ([HSUNO.007.0301](#)) from Mr Goulter to Mr Thomson (which is discussed at paragraph 133 above) that the arrangement proposed by the ACTU for it to employ Ms Walton also included the National Office continuing to pay \$25,000 per year to Ms Walton after she ceased to be an employee of the National Office. Ms Walton did indeed invoice the National Office for the payments which were made. While it does appear that there was at least some awareness of this aspect of the arrangement among at least some National Executive members, this is not recorded in the minutes of the National Executive meeting on 28 and 29 March 2007 ([HSUNO.018.0151](#)), where the arrangement was discussed and approved.

Mr Thomson's submissions

148. With respect to finding 6, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(b) of the HSU Rules.
 - b. The National Executive was aware of the arrangement with the ACTU for Ms Walton's secondment. The fact of this arrangement was correctly recorded by the National Executive at the National Executive meeting in Sydney on 28 and 29 March 2007. There is no requirement under Sub-rule 32(b) of the Rules to record details in a particular manner, other than that the details be correct. It is a matter for the organisation concerned as to how it records decisions of its meetings. The brevity with which minutes are recorded is a matter for the

organisation and had the National Executive wanted minutes in more detail, it would have directed the National Secretary accordingly, which it did not.

Conclusion

149. While the letter dated 26 March 2007 from Paul Goulter at ACTU to Mr Thomson outlining the details of the ACTU's proposal that it employ Karene Walton ([HSUNO.007.0301](#)) may have been discussed by the National Executive meeting on 28 and 29 March 2007, the minutes of that meeting ([HSUNO.018.0151](#)) do not record the terms of the National Executive's agreement to the ACTU's proposal. In particular, these minutes do not record that as part of this agreement the National Office would continue to pay Ms Walton \$25,000 per annum even though it would no longer employ her.
150. As set out above at paragraph 140, minutes are required to record the precise words of all motions and amendments that are proposed and whether the proposals were carried or rejected. It is not sufficient that minutes only generally record motions that are moved at meetings.¹¹²

Finding 6 - Payment of \$25,000 per annum to Karene Walton while she was employed by the ACTU

6. Mr Thomson has contravened Sub-rule 32(b) by failing to ensure that correct minutes were kept of the terms of the National Executive's agreement to the ACTU's proposal to employ Ms Walton, in particular by failing to record that, as part of that arrangement, the National Office would make a payment of \$25,000 per year to Ms Walton.

Employment of Struan Robertson, Nicole Rodger, Karinda Flavell, Katie Hall and Mark McLeay

151. In addition to the matters set out at paragraphs 3 to 17 of this chapter, the following matters are relevant to Findings 7 to 9 - Employment of Struan Robertson, Nicole Rodger, Karinda Flavell, Mark McLeay and Katie Hall, which is set out below at page 203.

Evidence

Struan Robertson

152. The National Executive minutes of the meeting held on 1 August 2003 ([HSUNO.018.0385](#)) record that Mr Thomson welcomed Struan Robertson at his 'new role' (which appears from the immediately preceding heading to have been National

¹¹² E Magner, *Joske's Law and Procedure at Meetings in Australia*, 10th edition, Law Book Co of Australasia, 2007 (**Magner**) at [12.10].

Liaison Officer). The minutes also record that Mr Thomson said that Sam Kelly from the Victoria Number 1 Branch was working with the National Office for six weeks to help with the Medicare campaign and general design and layout issues. The minutes do not record that the wages or conditions of employment of either Mr Robertson or Mr Kelly were reported to National Executive.

Nicole Rodger

153. On 7 November 2005 Nicole Rodger wrote a letter ([HSUNO.022.0108](#)), presumably to the HSU, in which she stated that she was applying for the position of 'Administrative/Secretarial Support Role'.
154. On 21 November 2005 Mr Thomson wrote to Ms Rodger congratulating her on being the successful candidate for 'the Administrative Support position' and listing her conditions and entitlements, including her hours of work (16 hours per week) and her salary. While the letter stated that Ms Rodger's performance would be evaluated after three months, and thereafter each year, the letter does not suggest that Ms Rodger's appointment was subject to report to National Executive.
155. It appears from the minutes that the National Secretary did not report Ms Rodger's employment, or her wages and conditions, to National Executive.
156. On 29 June 2006 Ms Rodger wrote to Mr Thomson ([HSUNO.022.0103](#)) tendering her resignation from her position with the HSU.

Karinda Flavell

157. A computer printout showing calculated projected annual leave liability for the National Office as at 6 December 2007 ([HSUNO.017.0008](#)) identifies Ms Flavell's 'credit date' for annual leave purposes as having been 17 March 2006, indicating that she commenced employment with the National Office on that date.
158. A letter dated 7 June 2006 from Qantas Frequent Flyer to Ms Flavell ([HSUNO.002.0139](#)) identifies her as a Research Officer of the National Office, and notes that she has paid a 'Frequent Flyer Joining Fee' on 6 June 2006.
159. FWA has not been provided with any minutes which indicate that the National Secretary reported to National Executive regarding his employment, or the terms and conditions, of Karinda Flavell.
160. The earliest reference FWA has been able to identify in the minutes of National Executive meetings to Ms Flavell is a notation in the minutes of the National Executive meeting on 15 and 16 May 2006 ([HSUNO.018.0241](#)) that she had been admitted to day one of the meeting as an observer.

Katie Hall

161. The minutes of the National Executive meeting held on 15 and 16 May 2006 ([HSUNO.018.0241](#)) record, under the heading 'Seconded Employee' that:
- Discussion occurred around this issue .
- Action:** That the National Secretary informs the ACTU that Katie Hall was the nominee from the HSU for a Victorian seat. The HSU if funding was difficult to attract in Tasmania would half fund a Tasmanian seat and half fund Katie hall with the ACTU to find other unions to make up the shortfall.
162. However these minutes do not identify any discussion about whether the National Office would employ (or had employed) Ms Hall.
163. A computer printout showing calculated projected annual leave liability for the National Office as at 6 December 2007 ([HSUNO.017.0008](#)) identifies Ms Hall's 'credit date' for annual leave purposes as having been 3 July 2006, indicating that she commenced employment with the National Office on that date.
164. The minutes of the National Executive meeting held on 7 August 2006 ([HSUNO.018.0220](#)) record that:
- The National Secretary reported that Katie Hall had been appointed by the National Office and was working for over a month in the seat of La Trobe. It was agreed Katie would provide regular updates to the Executive and that she would give a verbal report after lunch today.
165. No minutes that have been viewed by FWA record that the National Secretary sought seek authorisation from National Executive of Ms Hall's wages or conditions of employment by the National Office.
166. Responses given in interview suggest that there was a view among at least some members of the National Executive that it had approved the employment of Katie Hall through National Executive's approval of expenditure on the Your Rights at Work campaign.
167. Mr Thomson described the HSU's 'responsibility' for the federal seat of La Trobe as being (Thomson PN 309):
- Yes, that was a seat that we were allocated [by the ACTU] to employ a person in, and to coordinate all the unions in that seat for the WorkChoices campaign. We employed a person [Katie Hall]. Also, obviously, employing someone, you have to resource them as well too so there were ongoing issues about the resourcing of that person.
168. Mr Thomson further explained that the ACTU executive allocated a seat to a particular union 'to outrightly fund the person' in each of between 18 and 22 'targeted' marginal seats during the 2007 federal election campaign (Thomson PN 318 - 320).
169. When asked in interview whether National Executive approved any funds for expenditure on the Your Rights at Work campaign, Ms Jackson (Jackson (1) PN 180) replied:
- Yes. There were funds approved. I know that we had, the union were part - I just don't know what the correct term, part sponsoring the Latrobe campaign and I know this

because Katie Hall was the person that the union was allocated and she'd come to National Executive and report on her activities, but that was in Melbourne, Latrobe...

170. Dr Kelly stated that (Kelly PN 293)

The young woman who worked on the campaign. Katie Hall. Now, that went to National Executive. The employment of Katie Hall as a sort of Your Rights at Work coordinator for the HSU and we were levied for Katie Hall.

171. Mr Williamson said that he was unaware whether the seat of Latrobe had been allocated by the ACTU to the HSU as part of the Your Rights at Work campaign (Williamson PN 247).

172. Minutes of the National Executive meeting on 15 and 16 May 2006 record that Katie Hall was employed by the National Office specifically to work on the ACTU's Your Rights at Work campaign, although they do not record that National Executive authorised or ratified her employment.

173. It therefore appears that the terms and conditions of employment of Katie Hall were also not authorised by any resolutions passed by the National Executive regarding resourcing the campaign against Work Choices.

Mark McLeay

174. A computer printout showing calculated projected annual leave liability for the National Office as at 6 December 2007 ([HSUNO.017.0008](#)) identifies Mr McLeay's 'credit date' for annual leave purposes as having been 8 January 2007, indicating that he commenced employment with the National Office on that date. Mr McLeay stated in interview that he commenced employment with the National Office in January 2007 as the National Industrial Officer based in Sydney.

175. The minutes of the National Executive meeting held on 2 February 2007 record the following statement:

The National Secretary spoke of the departure of Struan Robertson and the fine contribution he has made to the union over the past four years and introduced the new National industrial Officer Mark McLeay to Executive.

176. Although Mr McLeay was employed by the National Office, there was an arrangement under which the NSW Branch of the HSU 'topped up' Mr McLeay's salary each quarter (see for example invoice 405 dated 8 January 2007 ([HSUNO.011.0378](#))). A table attached to this invoice ([HSUNO.011.0379](#)) appears to indicate that the amount contributed by the NSW Branch each quarter was the difference between the total cost to the National Office of employing Mr McLeay and the total cost of employing Mr Robertson. This cost differential reflects a significantly higher salary (\$84,141) being paid to Mr McLeay by the National Office than it had been paying Mr Robertson (\$57,200). When asked about this arrangement in interview, Mr McLeay stated that he was asked what he wanted as a starting salary and that, since it was more than was on offer from the National Office, the New South Wales branch agreed to subsidise his salary 'for a period of time'. Mr McLeay was not sure whether the period of subsidy was 'six months or a year or two years'. Although he did not know, Mr McLeay presumed that Mr Thomson had spoken to

Mr Williamson (who was General Secretary of the NSW Branch, as well as being National President) about this arrangement (McLeay PN 33 - 35). Mr McLeay described the arrangement as a 'straight subsidy for the period' and confirmed that he 'didn't see that [he] had any duties for the New South Wales branch that [he] wouldn't have had for any other branches as well' (McLeay PN 39 - 40).

177. It appears from the minutes that the National Secretary did not report to National Executive regarding Mr McLeay's wages and conditions of employment or the arrangement between the National Office and the NSW Branch.

Mr Thomson's submissions

178. With respect to findings 7 to 9, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening any of Sub-rules 21(c), 21(e) and 27(a) of the Rules by employing and settling the wages and conditions of each of Struan Robertson, Nicole Rodger, Karinda Flavell, Katie Hall and Mark McLeay in the National Office.
 - b. As discussed in submissions that are set out at paragraphs 121.c to 121.e on page 158 in chapter 3, the National Secretary had the authority to employ staff in the National Office and to fix the terms of their employment. Wage conditions for staff members were in line with the New South Wales scale.
 - c. The National Executive was aware of the employment because the National Office staff members were often in attendance at National Executive meetings as observers and their appointments were not challenged by the National Executive or the National Council. Relevantly, Struan Robertson gave regular reports to the National Executive and was an observer at National Executive meetings on 31 July to 1 August 2003, 21 November 2003, 17 December 2003, 17 February 2004, 14 to 15 July 2004, 28 February to 1 March 2005, 7 December 2006 and 2 February 2007. These reports are noted in the minutes of those meetings.
 - d. As discussed in submissions that are set out at paragraphs 88.f and 108.a on page 150 in chapter 3, there is no restraint on the implementation of any decision made by the National Secretary except as provided by implication by Rule 27 on decisions of the National Executive. This view is supported by the conclusions in *McLure v Mitchell* (1974) 24 FLR 115 at 118 that salary and emoluments are considered to be ordinary expenditure in the context of an organisation the size of the HSU.
 - e. The National Secretary had the power and authority to employ staff for the National Office and the staff were employed in accordance with that power and authority.

Conclusion

179. I accept that each of Struan Robertson, Nicole Rodger, Karinda Flavell, Katie Hall and Mark McLeay were not Officers of the Union for the purpose of Sub-rule 21(c), and that accordingly their employment does not contravene this Sub-rule.
180. For the reasons set out at paragraphs 3 to 17 of this chapter, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office except where their employment can properly be characterised as the 'business of the Union' between National Executive meetings. Further, the National Secretary is required to report the employment of National Office staff to National Executive.
181. On the basis of the evidence before me, I accept that the employment of each of Mr Robertson, Ms Rodger, Ms Flavell and Mr McLeay was within Mr Thomson's power under Sub-rule 32(n) to control and conduct the business of the Union between National Executive meetings. It appears that each of these persons was engaged (at least primarily) on the ordinary, everyday business of the National Office.
182. Minutes of National Executive meetings indicate that the National Secretary informed a meeting of National Executive of his employment of both Struan Robertson (see paragraph 152 above) and Mark McLeay (see paragraph 175 above).
183. It does not, however, appear from minutes that National Executive was ever informed of the employment of Nicole Rodger or Karinda Flavell (see paragraphs 155 and 159 above).
184. I am not satisfied that the employment of Ms Hall was within Mr Thomson's power to control and conduct the business of the Union within the meaning of Sub-rule 32(n). Unlike Mr Robertson, Ms Rodger, Ms Flavell and Mr McLeay, Ms Hall was engaged for the purpose of assisting in a federal election campaign in the electorate of La Trobe, which was not a purpose that could be characterised as the 'business of the Union' even though I accept that Ms Hall's employment would have been within the power of National Council or National Executive. While minutes of the National Executive meeting on 7 August 2006 do record that Katie Hall had been appointed by the National Office and was working in La Trobe (see paragraphs 164, 165 and 172 above), they do not record that National Executive authorised her employment or her wages and conditions (see paragraphs 172 and 173).
185. Further, as set out at paragraphs 18 and 19 of this chapter, the power conferred on the National Secretary by Sub-rule 32(n) could extend, at most, to setting wages and conditions of National Office employees on an interim basis, until such matters have been reported to, and considered by, National Executive.
186. It appears from an examination of the minutes that the National Secretary did not report to National Executive regarding the remuneration and conditions of employment any of Mr Robertson, Ms Rodger, Ms Flavell or Mr McLeay (see, in particular, paragraphs 152, 155, 159, 165, and 177 above).

Findings 7 to 9 - Employment of Struan Robertson, Nicole Rodger, Karinda Flavell, Mark McLeay and Katie Hall

7. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing and setting the wages and conditions of each of Nicole Rodger and Karinda Flavell on behalf of the National Office without reporting to National Executive that he had done so.
8. Mr Thomson has contravened Sub-rule 27(a) by setting the wages and conditions of each of Struan Robertson and Mark McLeay on behalf of the National Office without reporting to National Executive that he had done so.
9. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing and setting the wages and conditions of Katie Hall on behalf of the National Office without seeking the authorisation of either National Council or National Executive to do so when Katie Hall was not employed as part of the business of the Union.

Employment of Belinda Ord

Evidence

187. In addition to the matters set out at paragraphs 3 to 17 of this chapter, the following matters are relevant to Findings 10 and 11 - Employment of Belinda Ord, which is set out below at page 205.
188. The minutes of the National Executive meeting held on 1 March 2005 ([HSUNO.018.0335](#)) record, under the heading 'General Business', that:

The National Office has a new employee in an administrative and accounts capacity, Belinda Ord joined the National Office in February following the departure of Nurten Ungen. Belinda has worked in the Finance Sector and has experience in accounting practices. Belinda will be producing material for the finance committee.

Executive welcomes Belinda.

Report Noted
189. It appears from the minutes that the National Secretary did not report Ms Ord's wages and conditions to the National Executive.
190. Mr Thomson wrote to Ms Ord on 12 December 2004 ([HSUNO.022.0219](#)) congratulating her on being the successful candidate for the Administration Support position, and setting out her employee entitlements 'as per our recent discussion'. That letter also confirmed that Ms Ord would commence work on 7 February 2005. While the letter stated that Ms Ord's performance would be evaluated by Mr Thomson after three months, and thereafter each year, the letter does not suggest that Ms Ord's appointment was subject to ratification by the National Executive.

191. On 28 February 2006 Mr Thomson wrote to Ms Ord ([HSUNO.022.0187](#)) advising her that he had reviewed, and decided to increase, her salary with effect from 6 March 2006. This appears to represent a salary increase of 17.3%.
192. On 27 September 2006 Mr Thomson wrote to Ms Ord ([HSUNO.022.0214](#)) confirming that she had been employed by the National Office since 7 February 2005, and setting out her entitlements. When compared to the statement of Ms Ord's entitlements in his letter of 12 December 2004, Mr Thomson stated that in Ms Ord's third year of employment (a period which would commence on 7 February 2007) she would be entitled to 21 days of sick leave per year pro rata (rather than 14 days as previously advised).
193. As with her initial employment, it appears from minutes that the National Secretary did not report to National Executive any change to Ms Ord's wages and conditions.

Mr Thomson's submissions

194. With respect to finding 10, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
 - a. He denies contravening any of Sub-rules 21(c), 21(e) and 27(a) by employing and setting the wages and conditions of Ms Ord. As submitted at paragraph 178.e at page 201 of this chapter, the National Secretary had the authority to employ staff for the National Office, and Ms Ord was employed in accordance with that power and authority.
 - b. Further, Ms Ord regularly attended National Executive meetings and was an active participant at National Finance Committee meetings. Ms Ord's employment was never challenged by the National Executive or the National Finance Committee.
195. With respect to finding 11, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
 - a. He denies contravening any of Sub-rules 21(c), 21(e) and 27(a) by increasing Ms Ord's salary. The National Secretary had the authority to employ staff for the National Office and set the wages for staff, including increasing salaries. The increase given to Ms Ord was an economic adjustment in accordance with the relevant State Award and Mr Thomson did not require the authorisation of the National Council or National Executive.
 - b. Further, as noted at paragraph 194.b above, Ms Ord regularly attended National Executive meetings and was an active participant at National Finance Committee meetings.

Conclusions

196. For the reasons set out at paragraphs 3 to 17 of this chapter, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office except where their employment can properly be characterised as the 'business of the Union' between National Executive meetings. Further, the National

Secretary is required to report the employment of National Office staff to National Executive.

197. Having regard to the nature of the duties performed by Ms Ord, as well as the fact that she was appointed to the position which had been occupied by Ms Ungun until her resignation, I am satisfied that the employment of Ms Ord was within Mr Thomson's power under Sub-rule 32(n) to control and conduct the business of the Union.
198. Minutes of the National Executive meeting on 1 March 2005 (which are set out in paragraph 188 above) indicate that National Executive was informed of Ms Ord's employment.
199. As set out at paragraphs 18 and 19 of this chapter, the power conferred on the National Secretary by Sub-rule 32(n) could extend, at most, to setting wages and conditions of National Office employees on an interim basis, until such matters have been considered by National Council or National Executive. Similarly, the National Secretary could determine an alteration to the wages and conditions of existing employees but, again, the National Secretary is required to report to National Executive that he has done so.
200. As set out at paragraphs 189 and 193 above, the National Secretary did not report to National Executive the terms and conditions of employment, or any alteration to the terms and conditions of employment, of Ms Ord.

Findings 10 and 11 - Employment of Belinda Ord

10. Mr Thomson has contravened Sub-rule 27(a) by setting the wages and conditions of Belinda Ord on behalf of the National Office without reporting to National Executive that he had done so.
11. Mr Thomson has contravened Sub-rule 27(a) by increasing the salary of Belinda Ord on behalf of the National Office without reporting to National Executive that he had done so.

Chapter 5 - Financial Management of the National Office

Introduction

1. Information regarding the legislative scheme and the Rules of the HSU is set out in chapter 2.
2. This chapter sets out my consideration of Mr Thomson's duties with respect to financial management of the National Office of the HSU generally. Issues relating to the following specific areas are then dealt with:
 - a. the absence of policies dealing with various financial issues;
 - b. the administration of HSU issued credit cards. All Commonwealth Bank (**CBA**) Mastercards, Diners Club cards and credit cards referred to in this chapter are HSU issued CBA Mastercards, Diners Club cards and credit cards;
 - c. specific payments that appear to be contrary to the Rules;
 - d. payments which are not for the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU;
 - e. expending the funds of the National Office;
 - f. the extent of Mr Thomson's reporting of financial issues to National Executive and/or National Council;
 - g. Mr Thomson's decision to move to New South Wales and open an office in Sydney; and
 - h. expenditure of National Office funds by Mr Thomson on travel to Melbourne during 2006 and 2007.
3. Specific findings are listed within each of these sections.

Mr Thomson's general obligations in relation to the financial management of the National Office

Powers and Obligations of the National Secretary - Rule 32

4. Rule 32¹¹³ sets out the powers and obligations of the National Secretary:

The National Secretary shall -

 - (a) Be the registered officer of the Union to sue and be sued on its behalf;

¹¹³ This Rule was numbered Rule 33 between 30 March 2006 and 8 June 2006.

- (b) Summon by notice in writing to each member thereof and attend, unless excused, all meetings of the National Council and National Executive and keep or cause to be kept correct minutes of the same;
- (c) Have the right to speak at any general or special meeting of any branch or Branch Committee, but not to vote unless he/she is a member of such branch or Branch Committee;
- (d) Answer and file all correspondence;
- (e) Keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Workplace Relations Act 1996 or as amended from time to time;
- (f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;
- (g) receive all monies on behalf of the Union and pay the same within seven days of receipt into the Union Bank account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;
- (h) Draw up a report and balance sheet to be submitted to the National Council at its annual¹¹⁴ meeting and forward a copy of the same to each branch;
- (i) submit his/her books, accounts and receipts annually or as often as may be required by the National Council or National Executive to the auditors and to give them such assistance as they may require in the audit;
- (j) be responsible for the books, records, property and moneys of the Union and, within 48 hours of receiving a request from the National Council to do so, deliver to the National Council such books, records, property and moneys;
- (k) Take all reasonable steps to increase the membership of the Union and foster a branch of the Union in each State or Territory where members are employed;
- (l) Supply branches with information as to the proceedings of the National Council, National Executive and branches;
- (m) confer with Branch Secretaries as often as is necessary in the interests of the Union and assist as best he/she is able all Branch Secretaries and Committees;
- (n) Between meetings of the National Executive, control and conduct the business of the Union;
- (o) Between meetings of the National Council and National Executive, have power to call any meeting in the Union which the National Council has power to call;
- (p) Be ex-officio a member of all Committees of the National Council;
- (q) Be indemnified from the funds of the Union;
- (r) Provide the Returning Officer with such assistance as is necessary to enable him/her to conduct any election;

¹¹⁴ Up until Rule changes that were certified on 30 March 2006, Sub-rule 32(h) provided for a report and balance sheet to be submitted to National Council at its biennial meeting. Prior to 30 March 2006, Rule 22 had provided for National Council meetings to be held biennially in the month of October in even years. With alterations that were certified on 30 March 2006, Sub-rule 22(a) provided for an annual meeting of National Council in September, October or November.

- (s) Have the power to submit any industrial dispute in which members of the Union are involved to Conciliation and Arbitration; and,
- (t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.

The keeping of records

5. Rule 32 places obligations upon the National Secretary concerning the keeping of records:
 - a. Sub-rule 32(e) requires the National Secretary to 'keep or cause to be kept the records required to be kept by the National Office pursuant to the provisions of the WR Act or as amended from time to time'; and
 - b. Sub-rule 32(j) provides that the National Secretary shall be 'responsible for the books, records, property and moneys of the National Office'.
6. Subsection 252(1) of the RAO Schedule requires a reporting unit to:
 - (a) keep such financial records as correctly record and explain the transactions and financial position of the reporting unit, including such records as are prescribed; and
 - (b) keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253; and
 - (c) keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited under this Part.
7. Subsection 252(5) of the RAO Schedule requires an organisation to retain financial records kept under subsection 252(1) for a period of 7 years after the completion of the transactions to which they relate.
8. Financial Records are defined by section 6 of the RAO Schedule as including:

...the following to the extent that they relate to finances or financial administration:

 - (a) a register;
 - (b) any other record of information;
 - (c) financial reports or financial records, however compiled, recorded or stored;
 - (d) a document.
9. There is a similar provision to subsection 252(1) in the *Corporations Act 2001 (CA)*. Section 286 of the CA requires a company to keep written financial records that correctly record and explain its transactions, financial position and performance and would enable the true and fair financial statements to be prepared and audited.
10. 'Financial records' is defined in section 9 of the CA to mean:
 - (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
 - (b) documents of prime entry; and

- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are made up; and
 - (ii) adjustments to be made in preparing financial statements.
- 11. In *Frauenstein v Farinha* [2007] FCA 1953 which dealt with section 286 of the CA, Emmett J stated at 202:

General accounting practice would require supporting documentation such as detailed invoices, wage records, management agreements, working papers, banking records and the like to support journal entries. Detailed invoices, cash dockets and the like are normally kept to support cash expenses. Group certificates, job specifications, employment contracts and details of duties are normally kept to support salaries of wages shown as expenses in the accounts.
- 12. The definition in section 6 of the RO Act is wider than the definition of financial records in section 9 of the CA as it encompasses any document that relates to finances or financial administration of the Branch.
- 13. Subsection 253(1) of the RAO Schedule requires a GPFR to be prepared by the reporting unit in accordance with the Australian Accounting Standards.

Compliance with Rule 32

Expenditure by the National Secretary on the 'general administration of the Union'

- 14. I have already discussed at paragraphs 59 to 69 on pages 103 to 105 in chapter 2 what constitutes the 'general administration of the Union'.
- 15. The Rules gives specific power to both the National Council and the National Executive to expend the funds of the HSU. No such specific power is given by the Rules to the National Secretary.
- 16. The Rules do, however, require the National Secretary in Sub-rule 32(n) to control and conduct the business of the HSU between meetings of National Executive. In my view, this obligation must necessarily contemplate that the National Secretary will expend the funds of the HSU.
- 17. Sub-rule 32(n) is preceded by Sub-rules 32(e) to (j), all of which place upon the National Secretary responsibilities that relate specifically to accounting for the funds and property of the HSU to the National Council, National Executive, the HSU's members and to the Industrial Registrar. Such obligations are not inconsistent with the proposition that the Rules contemplate that the National Secretary will expend funds of the HSU.
- 18. Further, the exception that is set out in Sub-rule 36(b) is underpinned by two presumptions:
 - a. a body or person other than National Council or National Executive is permitted to expend funds of the HSU. While Sub-rule 36(b) does not specify which body or person is contemplated as expending those funds, it would not be inconsistent with Sub-rule 32(n) if such expenditure was made by the National Secretary; and

- b. where funds are being expended other than on the general administration of the HSU (or for purposes that are not reasonably incidental to the general administration of the HSU), that body or person must seek the prior authority of National Council or National Executive.
19. The Rules do not provide a definition or explanation of what constitutes the 'general administration of the Union' or 'purposes reasonably incidental to the general administration of the Union'.
20. Nevertheless, the Rules do contemplate that the funds of the HSU will be expended by someone other than National Council or National Executive and that at least some of that expenditure will be for the general administration of the Union. In my view, given the requirements that are placed upon the National Secretary by Sub-rule 32(n), that body or person includes the National Secretary. As a result, the National Secretary is permitted (although not expressly empowered) by the Rules to expend the funds of the HSU without prior authorisation from National Council or National Executive where such expenditure is on the 'general administration' or for 'purposes reasonably incidental to the general administration' of the Union, however the term 'general administration' is not defined.
21. While I am of the view that the Rules permit the National Secretary to expend funds of the Union on its general administration, the Rules do not go so far as to allow the National Secretary to expend Union funds on matters that fall outside the 'general administration of the Union' or 'purposes reasonably incidental' thereto without seeking the prior authority of National Council or National Executive.
22. Prior authority of National Council or National Executive must be given for expenditure that is not part of the 'general administration' or for 'purposes reasonably incidental to the general administration' of the Union.

Meaning of 'control and conduct the business of the Union' in Sub-rule 32(n)

23. Mr Thomson's submissions regarding the meaning of 'control' in rules of organisations are set out at paragraphs 82 and 115 at pages 145 and 155 in chapter 3. My responses to those submissions are set out at paragraphs 83 on page 145 and at paragraphs 116 to 120 on pages 157 and 158 in chapter 3.
24. The National Secretary is required, by Sub-rule 32(n), to 'control and conduct the business of the Union' between meetings of National Executive. It is therefore necessary to consider the meaning of 'control and conduct' in this context.
25. The verb 'to conduct' means 'to direct in action or course; manage; carry on'.¹¹⁵ Both the requirement that the National Secretary 'control' and 'conduct' business of the HSU contain within them the requirement that the National Secretary, at the very least, set parameters or guidelines directing such matters as expenditure of National Office funds.
26. There is a subtle difference however between the notions of 'controlling' and 'conducting'. Controlling contains within it the notion of establishing parameters or guidelines, without necessarily suggesting that the individual who is exercising such

¹¹⁵ Macquarie Concise Dictionary, 4th edition, 2006.

control is actively supervising whether such parameters are met on a daily basis. The notion of 'conducting', in contrast, is suggestive of the individual concerned being required to actually carry out a process. In my view, the requirement that the National Secretary 'conduct' the business of the HSU has inherent within it a requirement that the National Secretary must himself participate on a day to day basis in the business activities of the National Office. While there are no doubt a number of activities in an office that can be described as 'core activities', the payment and authorisation of expenditure falls squarely within that notion. As a result the obligations within Sub-rule 32(n) go further than requiring that the National Secretary simply set parameters for operation of the business of the National Office. The National Secretary is required by Sub-rule 32(n) to supervise or oversee the payment and authorisation of expenditure by the National Office on a daily basis.

Were the requirements of Sub-rule 32(n) met?

27. Evidence has been given to FWA in interview by both office managers who worked for Mr Thomson while he was National Secretary.
28. Ms Ungun, who was Mr Thomson's personal assistant until her resignation in October 2004, described the day to day process for payment and authorisation of financial transactions in the National Office as follows (Ungun PN 74):

Okay. With the accounts, it used to go to Craig first and he used to tell me if there wasn't any paperwork or receipts for it then he used to tell me where it should go on the MYOB so that's how it really - yes, worked.
29. With respect to payment of credit card statements, Ms Ungun described the following process (Ungun PN 84):

Okay. The credit card statements will come in and they will be - I used to give it to the staff who has got the credit card and they used to go through them and put down - there used to be a section next to the - on the statement, there used to be a section of explanation of what they paid for and they used to explain that on the paperwork and then sign it, give it back to me, and then it used to go to Craig and Craig used to authorise the payment and I used to do the payment over the internet.
30. Ms Ord stated in interview that when she commenced employment with the National Office in February 2005 'we got a lot of bills that weren't our bills initially because we all have the same mailing address and so they would just put stuff in our tray and I'd just take it back. So a lot of stuff initially I checked with Craig because it - I could not comprehend nor trace how it had anything to do with us' (Ord (1) PN 403). As time went on, however, Ms Ord became more familiar with which invoices related to the National Office (Ord (1) PN 405) and 'if it was self explanatory by whatever was on the paperwork, that I wouldn't need to ask' (Ord (1) PN 482). As Ms Ord described it, 'normally on the invoice it tells you what it's for. You know, you can normally put it together if you have a look at the invoice, yes, that's the cost of plumbers or whatever' (Ord (1) PN 480). If a bill was ambiguous, Ms Ord would seek further information from either Mr Thomson (Ord (1) PN 484) or someone else in the office, such as Ms Walton, Mr Robertson or even Mr Robinson (Ord (1) PN 411).

31. When asked, for instance, whether she was instructed by any particular individual to make a payment by the National Office of \$5,000 to Dads in Education on 12 September 2006, Ms Ord stated that (Ord (1) PN 435):

Yes, I think I wouldn't - I was aware that the bill was even coming in. There had been some discussion at some point in time between Craig and I. I don't think I was even surprised when I saw that bill. I didn't question it.

32. Mr Thomson told FWA in interview that Ms Ord would not have paid an invoice for the National Office unless he had been aware of the payment. Mr Thomson was unable to recall why a payment of \$3,500 was made on 22 January 2007 to RAAF Edinburgh rugby sponsorship but added (Thomson PN 1639-1641):

MR THOMSON: That one I just - I can't immediately think of why we would be paying that.

MR NASSIOS: Belinda wouldn't have paid these without in some way indicating to you that they are being paid?

MR THOMSON: That's right. No, I wouldn't have thought so.

33. Mr Thomson described the day to day processes by which he authorised the payment of credit card expenses as (Thomson PN 1133):

Well, they spent it, I authorised it in the general sense, but it went, in a practical sense, to Belinda who checked them off and asked the questions.

34. When asked to describe what he meant when he said that he had authorised payment of credit card statements 'in a general sense', Mr Thomson replied that employees needed to relate expenses 'to work related issues, and if there was something you're unsure about, you should ask me' (Thomson PN 1137). Mr Thomson agreed that he had authorised credit card payments 'in the sense of having given them guidance or instruction about the parameters within which they were authorised to go out and use [the cards]' (Thomson PN 1138 - 1139).

35. Mr Thomson gave a similar description of the process by which he 'approved' payment by Ms Ord of expenses charged to Ms Stevens' credit card (Thomson PN 684):

As I said at the start, I didn't at any stage see her credit card bills and go through them and sit down with her and do that at all. We'd set up parameters as to what she could use them for. If it was outside that, she had to ask me specifically. When she sent in her dockets and her credit card issue and there were the explanations were things that Belinda had an issue with, she would raise them with me, and that was the process.

36. Ms Ord also described the process whereby Mr Thomson would scrutinise National Office expenditure if the National Office was experiencing problems with its cash flow (Ord (1) PN 110):

...Craig would have a look at the finances from time to time to see what bills we had to pay, and it wasn't, it wasn't - it was more likely to occur when we didn't have much available, okay, so, like a decision would be made as to pay these ones but we might have to hold off on those, or whatever. It's not that people weren't going to be paid; it just might have been put off as I guess most businesses have to operate at some point in time.

37. This evidence indicates that, on his own admission, once he had 'set up parameters' regarding appropriate expenditure of its funds, Mr Thomson played no part in authorisation or scrutiny of day to day expenditure of the National Office. Once Ms Ord had 'learnt the ropes', she used her own judgement to determine whether or not expenditure related to the National Office and, if so, how it should be accounted for in MYOB. As she said, if the paperwork was 'self explanatory', she would pay it without reference to anyone else. Further, Ms Ord's evidence is that, if she did require information regarding whether expenditure related to the National Office, she would be just as likely to refer that question to someone other than Mr Thomson. Further, Ms Ord was required by Mr Thomson to use her own judgement regarding whether expenditure by National Office employees fell within the parameters that had been set by Mr Thomson. If she did not have any concerns regarding expenditure that she reviewed, she would pay the invoice without further reference.
38. It would be fair to say that the day to day process within the National Office was one of 'authorisation by exception'. That is, Mr Thomson would only scrutinise and/or authorise payment of particular invoices when specifically asked to do so by Ms Ord or when he had concerns regarding the cash flow of the National Office and it was necessary to prioritise the payment of some invoices over others. Given the HSU was a federation and the Branches expended the vast bulk of funds, it was not an onerous task for Mr Thomson to have exercised a process which was not authorisation by exception.

Authorisation of Expenditure through Financial 'Delegations'

39. I have already considered in chapter 3 submissions that were put by Mr Thomson regarding the operation of financial 'delegations' - see paragraphs 17.c, 31 to 72 and 73 to 76.
40. Minutes of the National Executive meeting on 25 February 2003 record the following ([HSUNO.024.0055](#)):
- 9.4 Terms of Reference of Finance Subcommittee
- Terms of Reference of Finance Subcommittee were agreed to and are attachment D & E.
41. Attachment D & E ([HSUNO.018.0364](#)) states as follows:
- Attachment D & E for the HSUA National Executive in Perth 25th & 26th February 2003
- Terms of Reference for the Finance Committee
1. Review financial position of Association (i.e.) balance of bank accounts and investments and receipts and payments for period of review.
 2. Recommend an annual budget and monitor on a regular basis the union's performance against budget.
 3. Report to the National Executive re financial position of the Union noting any matters requiring the attention of National Executive.
 4. Review of annual financial statements and recommend to National Executive Re: Adoption and signing of same.

5. The Finance Committee should meet each quarter or more frequently as agreed.

Delegation of Approval for Outlays

Recommend delegation levels:

National Secretary

- a. Any individual payments up to an amount of \$50,000
- b. Any regular payments approved in the first instance by the finance committee or the National Executive.

Finance Committee

- a. Any Individual payments between \$50,000 and \$100,000.

National Executive

- a. Any individual items in excess of \$100,000.

42. Although both paragraph 9.4 of the minutes and the heading to the attachment refer to the Terms of Reference of the Finance Committee, it must be noted that the attachment also includes recommended delegations that were purportedly made by that meeting to the National Secretary which (if validly made) would have empowered Mr Thomson to approve expenditure of Union funds of up to \$50,000.
43. Minutes ([HSUNO.024.0055](#)) of the meeting on 25 February 2003 do not frame any decision that may have been reached by that meeting as a resolution. Nor do they make any reference to the inclusion of 'recommended' delegation levels in the 'agreement that was reached'. Despite this, in interview Mr Thomson spoke in terms as though the 'delegations' (in particular to himself) had been approved and were in operation during his time as National Secretary. Mr Thomson referred on a number of occasions to expenditure which was 'authorised' in the sense that it came within the 'delegations' of either the National Secretary or the Finance Committee:
 - a. When asked whether the Finance Committee was ever asked to approve individual items of expenditure that were between \$50,000 and \$100,000, the only particular item that Mr Thomson could recall the Finance Committee approving was a bill from Slater and Gordon, lawyers (Thomson PN 172).
 - b. When asked whether expenditure of \$716 on Ms Stevens' credit card in May 2006 was ever authorised by the national executive, finance committee or the Union in any way, Mr Thomson replied (Thomson PN 477):

Well, it fell very easily within my delegation and was not outside the budgetary constraints that we had in terms of where we spend money;
 - c. When asked whether payment of an invoice from the New South Wales ALP in May 2007 for \$12,511.40 was ever discussed or approved by National Executive, Mr Thomson said that, while it fell within his delegations, it may have been referred to National Executive (Thomson PN 895).

44. Dr Kelly, who was a member of the Finance Committee, also referred in interview to operation of the delegations. When she was asked whether the Finance Committee was ever asked to approve individual items of expenditure, she replied (Kelly PN 145):
- No, because there was a \$50,000, I think, approval that the secretary had at that point in time. So, no, we didn't actually move any motions to, as far as I can remember, approve any particular items of expenditure.
45. While not specifically referring to the delegations, Mr Brown said in interview that he understood that the Finance Committee terms of reference (which were set out in the same document as the recommended delegation levels) were adopted at the National Executive meeting in Perth in February 2003 (Brown PN 166). It is not clear whether Mr Brown is of the view that the delegations, in particular, were also adopted by National Executive at that meeting. Mr Williamson had no recollection in interview whether the recommended delegations were ever adopted by National Executive (Williamson PN 163).
46. Although both Mr Thomson and Dr Kelly referred in interview to the National Secretary's delegation, it is less clear whether members of the National Executive saw the delegation to the Finance Committee as actually operating in practice:
- a. Although he said that the Finance Committee approved payment of a bill from Slater and Gordon (Thomson PN 172), Mr Thomson later said the National Executive approved payment of a bill for \$290,000 to Slater and Gordon (Thomson PN 143);
 - b. Dr Kelly could not recall the Finance Committee approving any particular items of expenditure (Kelly PN 145);
 - c. Ms Knight, who was a National Trustee and a member of the Finance Committee, stated in interview that the Finance Committee did not have any role in approving expenditure (Knight PN 116);
 - d. When asked whether he saw the Finance Committee's role as in some way extending to supervising, approving or ratifying individual transactions, Mr Thomson replied (Thomson PN 176):

Not particularly. I saw it playing - the key role I saw it playing was in relation to budgets and/or unexpected expenditures that would need to be found or made up, or unexpected cuts in revenue that may happen from time to time. So where we needed to be making recommendations to the executive, that's where I saw the real role and strength of that, it wasn't for the day-to-day management of the finances of the union.
 - e. Mr Williamson also described the role of the Finance Committee as being one of reporting financial information regarding the National Office to National Executive (Williamson PN 64):

Well, from what I can recall from time to time there was a report given [to National Executive] by the national secretary on the finances of the union and the finance committee consisted of people from the national executive and they were at those meetings and if there was anything untoward so as to speak it would be a matter that they would have brought to the attention of the national executive.

47. Although minutes were often not kept of meetings of the Finance Committee and the minutes that do exist are often brief, an examination of the Finance Committee minutes that have been viewed by FWA does not disclose any occasion on which the Finance Committee resolved to authorise expenditure.

Effectiveness of purported delegations

48. Sub-rule 36(b)¹¹⁶ provides that both National Council and National Executive 'shall have the power to expend the funds of the Union' and requires the funds and property of the Union to be controlled by National Council and National Executive.'

Are the particular delegations permitted?

49. National Executive did not have power to delegate its power to expend funds to the Finance Committee and any such 'delegation' would have been directly inconsistent with the Rules. Sub-rule 21(k)¹¹⁷ provides that the National Council may establish such committees or sub-committees as it may from time to time determine 'provided that any such committee or sub-committee shall not exercise any executive powers but shall have and exercise only advisory powers'. Sub-rule 27(a) provides that, 'subject to these Rules, the National Executive may, between meetings of the National Council, exercise all of the powers of National Council'. As such, National Executive is not able to exercise a power unless that power is also available to National Council. Sub-rule 21(k) does not permit the creation by National Council of any committee or sub-committee with powers that are anything other than advisory. As a result, even if the National Executive had purported to delegate approval of expenditure of funds to the Finance Committee, such a delegation would have been directly inconsistent with the Rules.
50. Further, such a delegation to the Finance Committee would have been contrary to the requirements of the RAO Schedule. In order for the Union to vest the power to approve individual items of expenditure between \$50,000 and \$100,000 in the Finance Committee, paragraph 141(1)(b) of the RAO Schedule requires the HSU rules to provide for the powers and duties of the committee, the manner of summoning meetings of the committee and the control of the committee by members of the organisation. This is due to the fact that, with such powers, the Finance Committee would have constituted a 'committee' as defined in subsection 141(4) of the RAO Schedule. That is, the Finance Committee would have been a collective body of the organisation with powers of the kind set out in paragraph 9(1)(b) of the RAO Schedule, such as 'the management of the affairs of the organisation'.
51. Up until 9 June 2006 the HSU Rules made no provision at all for a Finance Committee. Even after Rule 46 was certified on 9 June 2006, however, it is clear on the face of the rule that the Finance Committee was not a 'committee' for the purposes of the RAO Schedule. Rule 46 does not give the Finance Committee power in relation to the management of the affairs of the organisation, the determination of policy or the making or enforcement of rules. Rather, the Finance

¹¹⁶ This Sub-rule was numbered Sub-rule 37 (b) between 30 March 2006 and 8 June 2006.

¹¹⁷ This Sub-Rule was numbered Sub-rule 22(k) between 30 March 2006 and 8 June 2006.

Committee as established by Rule 46 was a body that was empowered to receive reports from the National Secretary and to refer matters to the National Executive.

52. As a result, even if National Executive had purported to delegate powers regarding approval of expenditure to the Finance Committee, such delegation could not have been validly made, whether before or after the certification of Rule 46, since the Finance Committee was not a 'committee' for the purposes of the RAO Schedule.

Did National Executive pass a resolution regarding delegations?

53. Even if it was not possible under the Rules or the RAO Schedule for National Executive to delegate its power to expend funds to the Finance Committee, that does not, of itself, mean that the resolution passed on 25 February 2003 could not properly delegate powers to the National Secretary. There is no express provision in the Rules preventing National Executive from delegating to the National Secretary its power to expend funds. It is therefore necessary to consider whether the meeting on 25 February 2003 did properly resolve to delegate its functions, at least insofar as it purported to delegate them to the National Secretary.

54. While they record that the terms of reference were 'agreed to', there is no record in the minutes of 25 and 26 February 2003 that the 'agreement' of the National Executive meeting to the Terms of Reference was formalised by carriage of a resolution. Nor is there any reference to the inclusion of the 'recommended' delegation levels in the 'agreement'. No minutes of any other meeting of the National Executive or National Council provided to FWA contain any express reference to the existence of any financial delegations, nor do they set out a resolution purporting to approve such delegations.

55. Minutes of National Executive meetings often did not formalise discussions with a resolution. As Mr Thomson explained (Thomson PN 137):

...the discussion that occurred was that they would prefer to have the minutes talk about the discussion and there not be formal resolutions unless there was a need for them.

56. It is also of note that the fact that minutes of the National Executive meeting on 25 and 26 February 2005 do not record a formal resolution regarding approval of financial delegations is not reflective of a lack of resolutions in the minutes of that meeting as a whole. Minutes record the carriage of resolutions regarding apologies and admission of observers to the meeting (paragraph 1.2), confirmation and adoption of minutes of the previous meeting (paragraph 2), adoption of National Office accounts (paragraph 9.2) and the war on Iraq (paragraph 18). The formal resolution that is recorded in the minutes as having been passed regarding the war on Iraq is as follows:

Motion:

Moved Mike Hall, seconded Jorge Navas

The Iraqi government, led by President Saddam Hussein is an authoritarian regime which has a shocking record of human rights abuses including the execution of many of its own citizens.

The HSUA is opposed to any Australian involvement in a war against Iraq. War is never justified before all non violent solutions have been exhausted.

Carried Dan Hill and Chris Panizza abstained.

57. This raises the question of why minutes of that meeting did not also record the passage of a resolution regarding approval of financial delegations, particularly given the importance of such a decision to the day to day operations and financial management of the National Office.
58. Minutes must be a complete record of every decision that is reached by a meeting. Not only must every decision that is made be recorded, but the precise words of all motions and amendments that are proposed and whether the proposals were carried or rejected should appear in the minutes. As a result, it is not up to the discretion of the minute taker as to whether or not a motion should be recorded in the minutes.¹¹⁸
59. Sub-rule 32(b)¹¹⁹ requires the National Secretary to 'keep or cause to be kept correct minutes' of National Executive meetings. Rule 30¹²⁰ also requires the National President to chair meetings and, 'upon the minutes being confirmed', to 'sign the Minute Book in the presence of the meeting', thereby signifying the assent of the meeting to the minutes.
60. A resolution was carried at the National Executive meeting on 5 May 2003 ([HSUNO.018.0404](#)) confirming and adopting minutes of the meeting of 25 and 26 February 2003 as a true and correct record of that meeting. Notably, however, the minutes of 5 May 2003 also record that:

MINUTES OF MEETINGS OF 25-26 FEBRUARY 2003

Rosemary Kelly asked change of wording on page 2 of 'All branches' to 'Relevant branches' because her branch doesn't have any members in Aged Care and she also add[ed] [that] a resolution regarding membership levy wasn't in the minutes.

National Secretary advised that minutes will be amended.

61. The absence in minutes of the meeting of 25 February 2003 of any resolution regarding the approval of financial delegations must mean either that the matter was only discussed by the meeting (and that no motion was put regarding that discussion) or that the minutes did not record, as they should have, that a motion was put and subsequently passed.
62. I consider it is likely that the minutes of 25 and 26 February 2003 do not record the passage of a formal resolution regarding approval of financial delegations because no motion to that effect was put to, or passed by, the meeting. That is, the meeting

¹¹⁸ Magner at [12.10]

¹¹⁹ This Rule was numbered Sub-rule 33(b) between 30 March 2006 and 8 June 2006.

¹²⁰ This Rule was numbered Rule 30 between 30 March 2006 and 8 June 2006.

did not make a decision regarding financial delegations. The delegations that are set out in Attachment D & E to the minutes of 25 and 26 February 2003 are therefore of no effect. This is for two reasons:

- a. Mr Thomson has said that formal resolutions would not be put 'unless there is a need for them'. Clearly there were four occasions during the meeting on 25 and 26 February 2003 on which a National Executive member was of the view that a formal motion did need to be put to the meeting. It would be reasonable to presume that, on each of those four occasions, this was because the matter related to a decision of National Executive and it was understood by those attending the meeting that any decision that was to be made by that meeting needed to be made by the moving and passing of a motion. The fact that there is no similar record of the movement and passing of a motion regarding financial delegations suggests to me that no such motion was ever put to the meeting; and
 - b. The fact that Dr Kelly noted at the next National Executive meeting that a resolution regarding membership levies had been passed by the meeting of 25 and 26 February 2003 but had not been recorded in the minutes suggests that, if a resolution had also been passed by that same meeting with respect to approval of financial delegations, a request would also have been made by Dr Kelly (or, indeed, by any other member of National Executive) asking that the minutes be corrected.
63. Accordingly I find that the meeting of 25 and 26 February 2003 did not pass a resolution approving financial delegations that were set out in Attachment D & E to minutes of the National Executive meeting of that date.
 64. Even if the National Executive did pass a motion which purported to give the National Secretary the authority to authorise any individual payments by the National Office up to \$50,000 it is uncertain whether such a delegation could be effective under the Rules.
 65. Firstly, the National Executive could never delegate a power to authorise expenditure of the National Office for purposes other than the carrying out of the objects of the Union, since the power conferred by sub-rule 36(b) on National Council and National Executive is confined to expenditure which is on the objects of the Union. Nor could any such delegation operate so as to override any other express limitation on expenditure contained in the Rules, such as the prohibition contained in sub-rule 36(g) against the making of a loan, grant or donation of an amount exceeding \$1,000 unless the requirements of that sub-rule are satisfied.
 66. Secondly, any delegation by National Executive of the power to authorise expenditure could not be repugnant to the requirement of sub-rule 36(b) that National Council and National Executive jointly control the funds and property of the Union. By the last couple of years in which Mr Thomson was National Secretary of the HSU the turnover of the National Office was approximately \$2 million per year (see paragraph 67 of chapter 8). In my view there must come a point at which a delegation to authorise expenditure purports to confer on an official of a Union a power which is so at odds with the provision made by the Rules for control of the

- Union's funds and property that the delegation is repugnant to such obligations, and accordingly could not be valid.
67. However ultimately it is not necessary for me to decide whether a purported delegation to the National Secretary of an authority to authorise individual items of expenditure up to an amount of \$50,000 was repugnant to the Rules of the HSU because I consider that no such delegation was conferred on Mr Thomson by any resolution of the National Executive.
68. Holding Redlich have submitted in submissions made on behalf of Mr Thomson on 2 March 2012 (FWA.024.0002) that 'the Delegate has hardly questioned any persons who were present at [the National Executive meeting held on 25 and 26 February 2003] as to their purpose and/or intention in adopting [the resolution relating to the Terms of Reference for the finance subcommittee]'.
69. It is true that the evidence obtained in interview only briefly touches upon the passage of this resolution, and the intention of those persons who adopted it. However, in my view, this does not mean that my proposed finding is not open to me.
70. Consistently with *Morley*, I have assessed all of the evidence before me about the passage of this resolution. The analysis which was contained in the notice of proposed findings which was provided to Mr Thomson was based primarily upon the language of the resolution itself - that it approved terms of reference for the finance committee. On its face, the resolution says nothing at all about approving financial delegations of \$50,000 to Mr Thomson and \$100,000 to the finance committee. I have paid significant regard to that fact, as well as to the fact that Sub-rule 32(b) requires the National Secretary (namely Mr Thomson) to keep or cause to be kept correct records of National Executive meetings. I have also had regard to the fact that the minutes of this meeting also record several formal resolutions about other matters, and to the fact that the minutes of the next meeting on 5 May 2003 record that the accuracy of the minutes of the meeting of 25 and 26 February 2003 was queried by Dr Kelly (but not in relation to this matter).
71. While there has only been limited evidence given by those who were present at the National Executive meeting of 25 and 26 February 2003 about their respective intentions in passing the motion which approved the terms of reference of the finance committee, in my view such evidence is unlikely to be determinative in any event. The absence of any record in the minutes of a resolution which purported to authorise financial delegations is a significant piece of evidence which indicates that no such resolution was passed. While he does say that the resolution passed by the National Executive extended to authorisation of the proposed financial delegations, Mr Thomson has not suggested that a resolution in terms was passed to this effect. Rather he contends only that the resolution which is recorded in the minutes ought to be construed as having provided such an authorisation.
72. In any event, given Mr Thomson's submission regarding the meeting of 25 and 26 February 2003 which is set out at paragraphs 73 of chapter 3 and my response to that submission, which is set out at paragraphs 74 to 76 of chapter 3, in my view the issue of this resolution is of marginal significance.

The absence of policies dealing with various financial issues

Failure to prepare, and to seek approval of, policies regarding the establishment of credit cards

Evidence

73. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Finding 12 - Failure to prepare, and to seek approval of, policies regarding the establishment of credit cards, which is set out below at page 231.

Approval and knowledge of the National Council and the National Executive about issuing credit cards

Credit cards issued to National Office staff

74. In the period from on or about August 2002 to December 2007 (**the Relevant Period**) the staff of the National Office who had Diners Club card issued to them were as follows:
- a. Mr Thomson - account nos:
 - i. 2002 to January 2005 - 3643 655548 0080;
 - ii. February 2005 to April 2008 - 3643 655548 2979; and
 - b. Mr Burke, account no 3643 655548 0148
 - c. Mr Burke, account no 3643 655548 9990 (applied for March 2007)
 - d. Ms Walton, account no 3643 655548 0098
 - e. Ms Ungun, account number unknown¹²¹
 - f. Mr Robertson, account no 3643 655548 2714
 - g. Ms Flavell, account no 3643 655548 0122
 - h. Ms Stevens, account no 3643 655548 0114 (card issued August 2005)
 - i. Mark Robinson, account no 3643 655548 0072
 - j. Mark McLeay, account no 3643 655548 0130
 - k. HSUA National Office, account no 3643 655548 6999

¹²¹ Ms Ungun stated in interview that she commenced employment with the National Office in December 1996 (Ungun PN 21). Ms Ungun stated that the HSU did not have any credit cards before she applied for a Diners card and a Mastercard (Ungun PN 138) but Mr Thomson stated in interview that National Office employees had been issued with Diners cards before he became National Secretary (see paragraph 79 of this Schedule). It is therefore not entirely clear whether, as an employee of the National Office prior to August 2002, Ms Ungun already had a Diners card or whether it was issued to her after Mr Thomson became National Secretary.

75. Evidence for the issuance of these cards is found as follows:
- a. Mr Thomson - (Thomson PN 374 - 383, 542 - 551, 734 - 735, 1122 - 1127);
 - b. Ms Jackson (Jackson (1) PN 153);
 - c. Mr Brown (Brown PN 106 - 107);
 - d. Ms Ungun (Ungun PN 87 - 98, 111, 128);
 - e. Ms Walton (Walton PN 209 - 220);
 - f. Mr Burke (Burke PN 371 - 376, 388 - 391);
 - g. Ms Ord (Ord (1) PN 204 - 205);
 - h. Ms Stevens (Stevens PN 330)
 - i. In March 2007 Diners Club Corporate Card application by Matthew Burke for Diners Club card account no 3643 655548 9990 ([HSUNO.002.0150](#)) and facsimile transmission ([HSUNO.022.0145](#))
 - j. Letter of HSU to Diners Club International dated 1 November 2007 ([HSUNO.006.0188](#)), requests closure of cards issued in the names of Struan Robertson, Karene Walton and Mark Robinson and advises details of the change of the mailing address for the cards issued to Mr Thomson, Mark McLeay, Karinda Flavell, Crisilee Stevens, Matthew Burke and the National Office. The HSU letter is signed by Ms Ord, National Finance Officer. Fax confirmation sheet [HSUNO.005.0189](#).
 - k. HSU letter to Diners Club International 1 November 2007, signed Ms Ord ([HSUNO.005.0188](#))
76. During the Relevant Period the staff of the National Office who had CBA Mastercards issued to them were as follows:
- a. Mr Thomson - account no 5587 0131 638 0019
 - b. Mr McLeay, account number unknown
 - c. Ms Ungun, account number unknown (until February 2005)
 - d. Ms Walton, account number unknown (until 1 November 2007)
 - e. Mr Robertson, account no 55870131 63880027 (until 1 November 2007)
77. Evidence for the issuance of these cards is found as follows:
- a. Mr Thomson - (Thomson PN 1142 - 1153);
 - b. Ms Ord (Ord (1) PN 144 - 179) ;
 - c. Ms Ungun (Ungun PN 107, 113,139 - 143);
 - d. Ms Walton (Walton PN 225 - 240).
 - e. CBA Mastercard business cardholders statements of account from November 2002 to February 2008 relating to Mr Thomson (eg [HSUNO.014.0004](#)) .

- f. CBA Mastercard business cardholders statements of account of 26 April 2006 issued to Mark Roberson. ([HSUNO.010.0062](#))

No formal policy existed

78. There is no evidence before me that formal financial governance policies or procedures regarding the issuance of credit cards to National Office employees existed while Mr Thomson was National Secretary.

National Office practices regarding issuance of credit cards before Mr Thomson became National Secretary

79. Diners Club cards had been issued to some staff of the National Office prior to August 2002. Mr Thomson stated that '*There was always Diners Club cards in the union.*' Mr Thomson understood that all staff of the National Office had previously had issued to them a Diners Club card. (Thomson PN 1123 - 1125) Mr Thomson also stated that there had been a convention in the HSU for credit cards to be issued widely to staff (Thomson PN 182):

...There had always been credit cards both in branches and in the National Office. It wasn't an issue that was raised but it was one that everyone was aware of. It's not - it was a - you know, the convention was there in relation to credit cards existing and being used and being used by a wide variety of staff.

80. On becoming the National Secretary, Mr Thomson said that he took steps to cancel the credit cards which had been issued to the previous members of the National Office (Thomson PN 151):

... there had been credit cards previously as well because I had to cancel credit cards from the previous regime.

Approval for issuance of credit cards for National Office staff once Mr Thomson became National Secretary

81. It appears new credit cards were issued to National Office staff in late 2002, shortly after Mr Thomson commenced as National Secretary. The earliest Diners card statement obtained by FWA that was issued in respect of Mr Thomson's credit card was issued on 20 October 2002 with the earliest transaction recorded on 17 October 2002. ([HSUNO.013.0004](#)). The earliest CBA Mastercard statement obtained by HSU that was issued in respect of Mr Thomson's credit card was issued on 27 November 2002 with the earliest transaction recorded on 8 November 2002. [HSUNO.014.0004](#)
82. Mr Thomson advised that he was issued with a Diners Club card on commencement with the National Office or soon thereafter (Thomson PN 1126 - 1127) and that new credit cards had been issued to staff prior to the Finance Committee being established in February 2003. (Thomson PN 1154)
83. There is no written record of the National Council, the National Executive or the Finance Committee approving the issue of credit cards to any staff member of the National Office.
84. Mr Thomson advised FWA that he approved the issue of credit cards and that he '*reported*' this to the National Executive. Mr Thomson said there was a general

discussion about the matter, which occurred prior to the establishment of the Finance Committee. The Finance Committee was established in February 2003 (Thomson PN 1154 - 1157):

MR NASSIOS: In terms of those credit cards being issued, was there any authorisation from the national executive or finance committee?

MR THOMSON: It was pre finance committee, and all those changes - it was - I told the executive what happened because I also was cancelling cards for Jeff Jackson who had been a national office person who was continuing to use a national office card at the time. So we had a discussion about that more generally.

MR NASSIOS: To the extent that we could use the word 'approving' the issue of such cards, would that have been you?

MR THOMSON: It was me, but it was reported to our executive, so - I mean, I certainly didn't see that I was doing something that was secret outside of the union's processes, and also at that time we were really trying to put into place better processes for the way things operated.

85. Mr Thomson stated that the Finance Committee was informed about which staff had credit cards and the type of credit card issued. He said that was the committee's only interest in the matter and that there had always been credit cards issued to HSU officers and employees, particularly to those who travelled for purposes of HSU work. Mr Thomson did not have a credit card when he worked in the NSW Branch, because, he said, he did not need it since there was a well set up office (Thomson PN 179 - 182):

MR NASSIOS: Was the finance committee ever asked to approve the issue of credit cards?

MR THOMSON: As in whether we had credit cards - - -

MR NASSIOS: Well, to particular persons.

MR THOMSON: They were told who had credit cards and what sort of credit cards that they had, but that was their only interest. There had always been credit cards both in branches and in the national office. It wasn't an issue that was raised but it was one that everyone was aware of. It's not - it was a - you know, the convention was there in relation to credit cards existing and being used and being used by a wide variety of staff. In fact, some branches - well, in quite a number of branches every staff member had a credit card to operate, but in a national office in particular where people were interstate, travelling, spending more time outside their home state than others, it was more required than in some of the branch operations. Myself - I, for example, didn't have credit cards at all. I think I was the only one who didn't in my entire time in the New South Wales branch because I didn't think that I needed it with the well set-up office that was there, but that was very different nationally.

86. The few minutes of meetings of the Finance Committee that exist and which have been provided to FWA do not contain a record that Mr Thomson informed the committee of any such information.

Evidence of members of the National Executive

87. None of the members of the National Executive or the Finance Committee who have been interviewed by FWA advised that those bodies had formally authorised the issuance of credit cards to staff of the National Office.
88. Ms Knight states that the Finance Committee did not approve the issue of credit cards, either generally or to specific staff of the HSU (Knight PN 102 - 105).
- MR NASSIOS: Okay, all right. Did the finance committee ever deal with credit cards, the approval of credit cards? Was it ever asked to do so?
- MS KNIGHT: No.
- MR NASSIOS: Was it ever asked to issue credit cards to particular persons?
- MS KNIGHT: I don't know anything about it.
89. Dr Kelly states that the Finance Committee did not approve the issue of credit cards to particular persons (Kelly PN 156 - 157)
- MR NASSIOS: All right. Have the finance committee ever asked to approve the issues of credit cards to particular persons?
- DR KELLY: No.
90. Mr Williamson states that he did not know who approved the issue of Diners Club cards or to whom such cards had been issued (Williamson PN 240 - 243):
- MR NASSIOS: Yes. Do you know who within the HSU decided to approve the issue of HSU Diners Club cards to officers and employees in the national office?
- MR WILLIAMSON: No, I don't.
- MR NASSIOS: Do you know who would have had such cards?
- MR WILLIAMSON: No, I do not. I can put that - sorry. I certainly didn't.
91. Ms Knight has also said that she was not aware of the CBA Mastercards (Knight PN 169 - 174):
- MR NASSIOS: Can I specifically ask you about the CBA credit card. Were you aware of that credit card existing at any time?
- MS KNIGHT: A credit card?
- MR NASSIOS: Yes. The Commonwealth Bank. There was a - well, the auditor identified that there were ATM, automatic teller machine cash withdrawals using that card. Were you aware of that occurring?
- MS KNIGHT: No.
92. While the National Executive had not formally authorised the issuance of credit cards, there is evidence that at least some members of the National Executive were aware that Diners Club cards had been issued to staff of the National Office. However it does not appear that any member of the National Executive had any knowledge of the issuance of CBA Mastercards until early 2008.

93. Ms Jackson states that she became aware of the existence of the CBA Mastercards when she was in the National Office and she asked Ms Ord for folders for the purpose of the Exit Audit. The National Executive and Mr Dick were not previously aware of CBA Mastercards. This occurred a few weeks prior to receiving the letter from Mr Dick, the National Office auditor, on 12 May 2008. (Jackson (1) PN 153)

Prior to this letter [from Iaan Dick], yes, but [I had become aware of the existence of the Mastercards] as in weeks before while we were when Iaan was in the office conducting the audit. We were in the same office obviously and the day that he asked Belinda Ord for the folders that's - I became aware of it then because they pulled out a folder and it was a Commonwealth Bank one and then Iaan came to me and said, 'Well, what's this, I've never seen this before', and asked her and she just went, you know, 'The credit cards that we have', and he said, 'Well, I don't know about these credit cards, Belinda, you know, where's this account', because as far as the union was concerned as in like the national executive and the auditor I suppose we had Diners Club cards and they're the ones you would see, not the Commonwealth Bank credit cards.

94. Ms Jackson states that the credit card account held by Mr Thomson was cancelled in the weeks before the letter of BDO Kendalls of 12 May 2008. (Jackson (1) PN 157) Ms Stevens and Mr Burke continued to use the cards until they were cancelled in February 2008. (Jackson (1) PN 207)
95. Dr Kelly also states that she was not aware that a CBA Mastercard had been issued to Mr Thomson prior to the Exit Audit. The issue had not been discussed previously before the finance committee. (Kelly PN 349 - 352)

MR NASSIOS: In terms of the CBA credit card, did you know about the existence of this account prior [to] the exit audit?

DR KELLY: No.

MR NASSIOS: Was it ever the subject of discussion or report before the finance committee?

DR KELLY: No.

96. Mr Brown was aware that Mr Thomson had been issued with a Diners Club card. He did not become aware that Mr Thomson had been issued a CBA Mastercard until the meeting of the National Executive in March 2008. (Brown PN 106-107)

Cards issued to Mr Burke and Ms Stevens

97. There is no evidence that the National Council, the National Executive or the Finance Committee approved the issue of cards to Mr Burke and Ms Stevens. The evidence indicates that Mr Thomson approved the issue of credit cards to these individuals.
98. Mr Brown assumes that Mr Thomson must have approved their issuance. (Brown PN 184). Dr Kelly states that she does not know who approved the issue of Diners Club cards to Ms Stevens and Mr Burke. (Kelly PN 456 - 457) Ms Jackson states that she does not know who approved the issue of Diners Club cards to Ms Stevens and Mr Burke. It was '*probably the National Secretary at the time.*' (Jackson PN (1) 222 - 223)

99. Ms Knight states in relation to the issuance of Diners Club cards to Ms Stevens and Mr Burke (Knight PN 218 - 219):

MR NASSIOS: Was the issuing of Diners Club to Ms Stevens and Mr Burke is something that you would have no knowledge on?

MS KNIGHT: No.

100. Ms Ord states in relation to the issuance of Diners Club cards to Ms Stevens and Mr Burke, that it was most likely on the instructions of Mr Thomson (Ord PN (1) 204 - 205):

MR NASSIOS: Okay. Do you know who would have approved the issuing of Diners Club to both of them? Well, Diners Club cards I should add.

MS ORD: Sure. As in - they would never have got one unless it had been at the instruction of most likely Craig, that they should have one. I wouldn't decide that they should just have one or not. The more people that had cards in fact, the more paper work I had to do so the less people that had cards might have suited me better.

Why National Office staff needed CBA Mastercards

101. Mr Thomson stated that the reason that CBA Mastercards were issued to staff was because they were far more widely accepted than Diners Club cards. CBA Mastercards were issued to those staff members who were likely to independently travel for HSU work purposes:

MR NASSIOS: Can I ask in terms of your CBA MasterCard, how did that come about?

MR THOMSON: At the time, and it's changed slightly, Diners weren't as widely accepted a card, and MasterCard was far more widely accepted. So we had MasterCards for, I think, myself and three of the staff members who were more likely to use it.

(Thomson PN 1142 - 1143)

MR NASSIOS: Yes, okay. But is there a particular reason they had cards and maybe others didn't? MasterCards, or is there no other person?

MR THOMSON: Not really. They were also the people who were more likely to independently travel than anyone else. They were filling up their cars with petrol and it wasn't always - Diners wasn't always the best thing - there was nothing, really, more to it than that.

(Thomson PN 1152 - 1153)

MR NASSIOS: Would that have been a - do you recall that that may have been one of the reasons it went to a CBA MasterCard?

MR THOMSON: Look, the real reason we went there was, as I said before, that---

MR NASSIOS: It's not available in all places.

MR THOMSON: Yes.

(Thomson PN 1296 - 1299)

102. Mr Thomson states that he reported to the National Executive that he had arranged for the issue of the CBA Mastercards. This occurred at a time prior to the establishment of the finance committee and when he cancelled the credit card held by Jeff Jackson. Mr Thomson said that he did not see that he was doing something that was secret outside HSU processes and was trying to put into place better processes for the way things operated. (Thomson PN 1154 - 1157)
103. Mr Thomson stated that the fact it may not have been possible to make cash withdrawals on a Diners Club card was not a reason for obtaining a CBA Mastercard. (Thomson PN 1291 - 1299)
104. Ms Ungun believes that the Diners Club cards and CBA Mastercards were applied for separately at different times. Diners Club cards were obtained first. She understood that the only reason that a CBA Mastercard was applied for was because cardholders could earn frequent flyer points (Ungun PN 139 - 144):
- MR RAWSON: Can you remember why it was - or can you remember if both were applied for at the same time, the Diners Cards and the MasterCard or - - -
- MS UNGUN: No, separately.
- MR RAWSON: Do you know which - - -
- MS UNGUN: There was a - yes, I'm sure there was a time difference. The only reason I believe why they applied for the MasterCard was because of - you could earn some fly points.
- MR RAWSON: Right. So you had a Diners first, did you?
- MS UNGUN: Yes.

Mr Thomson's submissions

105. With respect to finding 12, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(j) of the Rules. It was not the responsibility of the National Secretary to prepare financial governance policies, in particular in respect of the establishment of credit cards.
 - b. There was a convention in both the branches and the National Office to issue credit cards to staff, prior to Mr Thomson's commencement as National Secretary. Due to the structure of the HSU and the policy in relation to signing cheques it was administratively burdensome to continue with this process and additional credit cards were issued to ensure efficiency with regard to expenditure in accordance with the budget.
 - c. Staff members who travelled on HSU business had HSU credit cards, as did employees such as Ms Ungun who incurred expenditure for work purposes, such as office administration. The Finance Committee were informed of the individuals who had credit cards.

- d. Even if there was an obligation to prepare formal policies regarding approving establishment of credit cards (which is not admitted), it did not rest with the National Secretary, but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies regarding approving establishment of credit cards was not a new obligation and no formal policies regarding approving establishment of credit cards had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002. As is submitted below at paragraph 214.b on page 257 of this chapter, HSU credit cards had been issued to HSU officials prior to Mr Thomson's commencement as the National Secretary.

Conclusions

106. The evidence set out above indicates that there were no formal written policies while Mr Thomson was National Secretary regarding the establishment and issuance of credit cards to National Office staff.
107. Notwithstanding that National Office staff had been issued with credit cards prior to Mr Thomson's appointment as National Secretary, Sub-rule 32(j) nevertheless required Mr Thomson to be responsible for the monies of the Union. As a part of this responsibility, it was incumbent upon Mr Thomson to ensure that proper financial governance policies and procedures existed in relation to the establishment of credit cards attached to National Office accounts.
108. The failure of previous National Secretaries similarly to prepare and obtain approval of financial governance policies does not obviate the obligation that rested upon Mr Thomson once he became National Secretary. Obligations under the Rules are placed upon those who occupy offices within the Union from time to time and, upon assuming office as National Secretary, Mr Thomson assumed all of the responsibilities of National Secretary, whether or not previous National Secretaries had met the requirements of the Rules.
109. While I agree that there was a collective responsibility upon members of National Executive to ratify policies regarding financial governance, as the full-time, paid officer of the Union who was given responsibility under Sub-rule 32(j) for the monies of the Union, it was incumbent upon Mr Thomson as National Secretary to prepare such policies and to present them to National Executive for ratification.
110. Mr Thomson, according to his own submissions of 2 March 2012 (FWA.024.0002), did not prepare any financial governance policies or procedures regarding the establishment of credit cards, or submit such policies and procedures to National Executive or National Council for approval. Further, the evidence does not support Mr Thomson's claim that he informed the Finance Committee of who had been issued credit cards and what type of cards had been issued. Both Dr Kelly and Ms Knight say this was not the case and no record of any meeting of the Finance Committee suggests that such matters had been discussed.

Finding 12 - Failure to prepare, and to seek approval of, policies regarding the establishment of credit cards

12. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures in relation to the establishment of credit cards and by failing to submit such policies and procedures to the National Council and the National Executive for approval.

Failure to prepare policies regarding the use of credit cards

Evidence

111. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 13 and 14 - Failure to prepare policies regarding the use of credit cards, which are set out below at page 245.

No formal policies existed

112. With the exception of one document that is discussed at paragraphs 131 to 134 of this chapter, there is no evidence that any formal written policies or guidelines regarding the use by National Office staff of their National Office credit cards was ever prepared or provided to those staff.
113. There is no evidence that any formal written policies or guidelines regarding the use by National Office staff of their National Office credit cards were ever presented to National Council or National Executive for approval or ratification, nor that any informal policies were ever discussed or ratified by National Council or National Executive.
114. The position has been confirmed in evidence given to FWA by Mr Thomson, Mr Brown, Dr Kelly and Mr Dick, as set out below.
115. Mr Thomson stated that credit cards were to be used for work related expenses. However, Mr Thomson said that no written document was given to staff about the matter. (Thomson PN 1128 - 1131). (See, however, information that is set out at paragraphs 131 to 135 below regarding a document that Mr Thomson gave to Ms Stevens concerning her use of her National Office credit card. As stated at paragraph 134, this document appears only to have been provided to Ms Stevens.)
116. Mr Brown stated that the National Office did not have any policies in relation to the use of credit cards and the facility to make cash withdrawals (Brown PN 147 - 148).

117. Dr Kelly understood that the HSU had a policy that expenditure had to be legitimate expenses of the HSU. In Dr Kelly's view 'legitimate expenses' were to be assessed by reference to a reasonable person test. There is no evidence that this test was formalised or how it was understood to apply by other persons (Kelly PN 564).

Well, the union has a policy that only legitimate expenses should be incurred in relation to union business and the travel of a spouse is not a legitimate expense. I think you take the reasonable person test there and that the reasonable person would not expect that spousal travel would be paid for by the union.

118. Mr Dick stated that the HSU did not have any policies with regard to credit cards or expenditure. He said that Mr Thomson was the person spending the money and authorising expenditure. The National Executive did not review expenditure. In hindsight, Mr Dick considered the Executive should have probably had a greater level of involvement in monitoring the financial aspects of the HSU (Dick PN 51):

Anything like that, well, I suppose that would be - I suppose I'd be involved in that to a degree because I'd be asked and so I'd tell - you know, as to the way I'd keep the records. That's what I - so I'd be advising how to keep the records but with a low level staff there's not really much reference to keep. But other policies there aren't - when you look at the office there aren't really many policies that can be put in place. Like there's no policies with regard to credit cards, expenditure, because Craig's the one spending the money and he's the one that's authorising it so there's no-one - and there was no policy where the executive was reviewing it and that's probably with the benefit of hindsight the executive should have had a - in a circumstance where there's a lack of internal control the executive should have been probably had their nose deeper into the financial side of the running of the union or the branch.

119. It was not until 19 March 2008, after Ms Jackson became National Secretary, that the National Executive endorsed protocols setting out financial governance procedures ([HSUNO.018.0054](#)). The document addresses the use of credit cards, the authority of persons holding particular positions to expend moneys, budget and reporting).

Documentation of credit card transactions and permitted use of cards

120. BDO Kendalls asked Mr Thomson to explain the processes that were to be followed while he was National Secretary regarding the assessment and approval of expenses incurred and paid for by credit cards and cash withdrawals.
121. Mr Thomson's advice to BDO Kendalls is set out at paragraph 41 of the BDO Kendalls Report ([WIT.BRO.003.0052](#)) as follows:

Approval process for Union credit card transactions

41. We asked Thomson to explain the process for approving transactions made using Union credit cards, including the CBA MasterCard. The transactions consist of payments and cash withdrawals. He advised as follows:

- (a) Invoices and receipts for payments were kept by the cardholder.
- (b) Where receipts and invoices were not obtained, a voucher was completed by the cardholder setting out the details and description of the expense paid or use made of the cash withdrawal.

- (c) When the card statements were received by the Union, the expenditure items listed on the statement were reviewed by the cardholder and the corresponding invoice, receipt or voucher was attached to that statement and forwarded to the financial controller at the national office.
- (d) Upon receipt of the card statements and attached supporting documents, the financial controller checked that there was a supporting receipt or voucher for each transaction and if there was not, the financial controller would contact the cardholder for details of that transaction.
- (e) The financial controller entered the payment transactions in the Union's, MYOB accounting system applying the items to specific accounts.
- (f) A profit and loss statement was prepared from MYOB by the financial controller, which reported actual income and expenditure against budgeted income and expenditure with variances. This was provided to the meetings of the Executive/Finance Committee where the actual expenditure line items were compared to budget.
- (g) Thomson indicated that this review constituted approval of the total expenditure under review.

Mr Thomson's evidence

122. Mr Thomson stated that he agreed with the contents of paragraph 41 of the BDO Kendalls report and that is how he understood credit card transactions were processed within HSU while he was National Secretary (Thomson PN 1180 - 1181).

MR NASSIOS: We spoke of the BDO Kendall report earlier, and certainly I will show you one particular paragraph [41] of that report which sets out the process that you explained to them regarding approval of credit card transactions for both payments and cash withdrawals. Are you able to say whether that's an accurate summary of what you would have said?

MR THOMSON: That's, as I understand what I said and how I understood it to work.

123. Mr Thomson gave the following evidence concerning the processes and procedures that he understood applied in relation to the review and approval of credit card statements (Thomson PN 538 - 539) :

Can I make a general statement first about the credit cards and the way they operated, particularly when I was living on the Central Coast and operating either out of Sydney or the Central Coast, and we had the office in Melbourne. Everyone who had a card was given their statement, they had to supply either the receipts or explanations with receipts or - and, you know, in hindsight we may have been a little too generous.

There were occasions where people didn't have them but they had to be very small occasions. They married that up, they sent it down to Belinda, Belinda would then come back to me if there were questions or things that were done. I didn't see these, and I'm not saying that I didn't approve, I clearly did, and that's my position, but that was the process that occurred and it was the only way we could deal with the tyranny of distance of how we operated those things. So it wasn't sitting down in the same office going through those particular issues.

124. Mr Thomson has said that instructions were given to card holders that their credit cards were to be used for work related expenses and that they had to provide the documentation relating to the expenditure. The instructions were not recorded in a written document. (Thomson PN 1128 - 1131)

MR NASSIOS: You've already indicated you didn't have any credit cards when you were assistant secretary of the New South Wales branch. Were there any instructions given to card holders about the purpose of the cards?

MR THOMSON: Yes. That obviously they were for work related expenses, that - that was the general - and that they would have to provide the documentation for those cards as they expended them.

MR NASSIOS: Did they get any specific written instructions, documentary?

MR THOMSON: No.

125. Mr Thomson stated that the instructions given to staff regarding the use of Diners Club cards also applied in respect of the use of CBA Mastercards (Thomson PN 1158 - 1159; 1170 - 1171)

126. When asked whether the National Council or the National Executive ever reviewed credit card expenditure, Mr Thomson said that expenses paid by using the credit cards were included in the budgeted accounts that were provided to the National Executive or the National Council. (Thomson PN 151) However, there is no evidence that the National Executive reviewed, or was ever provided with an itemised list of, specific transactions paid for by the use of a credit card.

Evidence of employees of the National Office who had been issued with National Office credit cards

Ms Ungun's evidence

127. Ms Ungun states that she did the accounts. (Ungun PN 64) Accounts went to Mr Thomson first. If there was not any paperwork or receipt Mr Thomson would verbally instruct Ms Ungun where the account should be recorded in MYOB. She does not recall ever receiving a written memo of instruction. (Ungun PN 73 - 82)

128. Ms Ungun states that the contents of paragraph 41 of the BDO Kendalls report regarding the approval processes for credit cards is not correct in relation to receipts (Ungun PN 210 - 211):

MR NASSIOS: It's a particular paragraph I would like you to read. It explains in here what Mr Thomson has said used to occur with the approval of credit card transactions. Do those approval processes accord with what you believe the process was?

MS UNGUN: When it comes to receipt, no. Receipts, no.

Ms Ord's evidence

129. Ms Ord said that the process described at paragraph 41 of the BDO Kendalls report and Mr Thomson's processes sounds right. She took issue with her job description,

which she said was more properly described as 'national finance officer' rather than 'financial controller' (Ord (1) PN 78 - 93).

MR NASSIOS: All right. Well, can I provide you with an extract from, and I'm not sure if you are aware of the BDO Kendall report - - -

.....

MS ORD: Yes, I think the process sounds right. I just don't like the terminology. I don't know that I was ever called a financial controller.

MR NASSIOS: All right. I've got an email in which you described yourself as a national finance officer, so - - -

MS ORD: That's probably more appropriate.

130. Ms Ord states that she understood that Ms Stevens and Mr Burke were permitted to incur petrol and car expenses on the Diners Club card because that is what everyone else who had a card did. Cards could be used for business expenses (Ord (2) PN 81 - 88):

MR NASSIOS: How did you get that understanding?

MS ORD: Well, that's what everyone used theirs for.

.....

MR NASSIOS: All right. Do you think Mr Thomson may have introduced this everybody can use these cards for those purposes?

MS ORD: No, maybe I presumed it. I don't know. I just - when I was asked to have them, you know, accommodated with a credit card - I can't remember the conversation. I've got to be honest. I can't remember the exact conversation of hardly any of these things, but I can remember the instances. So there was no - I just figured it was exactly the same as everyone's credit card. If it was, like, something that was a personal expense, that wasn't okay along the lines - I think there was a few minor things that came up along those lines and that was - that was pretty quickly stopped. So anything the credit cards were given over for and receipts were provided for that could be considered to be business expenses that's [what] I would've considered them to be.

Ms Stevens' evidence

131. Ms Stevens told FWA that Mr Thomson gave her instructions that she must obtain receipts for credit card payments. In his instructions to her, Mr Thomson made reference to the fact that there were rules and regulations about the requirements (Stevens PN 97):

MS STEVENS: Craig was always very careful that the paperwork had to be right. He always used to say to me, and I must admit a couple of times when receipts weren't attached with the Diners Club thing, Belinda would be on my back, and he always used to say to me, 'You've got to get those receipts in. There are all these rules and regulations around this sort of thing.'

132. Ms Stevens states that a Diners Club card was issued to her in August 2005. *'Craig told me I would be entitled to one.'* (Stevens PN 332) As an organiser she was said to be entitled to a Diners Club card. Mr Thomson informed Ms Stevens that *'There are, you know, rules and limitations about what you can do and what you can spend. You have to get approval, you have to attach receipts, blah blah blah. I just went, 'Okay, thanks.'* (Stevens PN 332) Mr Thomson explained the Rules regarding use of the credit card which were set out in a piece of paper provided to Ms Stevens (Stevens PN 336):

'I did get a bit of paper. They also - Craig went through it with me. But I did get, sort of, like a blurb about - that, you know, I had to make sure that I kept all receipts, that I was not allowed to draw out cash. That anything had to be for work purposes only, that I had - if I wasn't sure, ring up and ask, and that I had to get approval.'

133. Stevens states that she mainly used the credit card for petrol costs, which were considered to be a legitimate work expense. (Stevens PN 329 - 346)
134. The document referred to by Ms Stevens appears to be HSU document ([HSUNO.022.0005](#)). The document is undated and signed by Criselee Stevens addressed to the attention of Belinda Ord. It records Rules of the National Office regarding the issuance and use of credit cards by staff members.

The document records:

Health Services Union - National Office

Credit Cards

- The card is always the property of the Health Services Union - National Office and must be returned upon request/termination of employment etc.
 - All transactions must have a receipt to be able to be claimed. Any transactions that relate to electronic purchases made via internet (ie. flights information, accommodation bookings 'etc) will be required' to have the printout from the internet - detailing purchase item.
 - Prompt return of statement with receipts attached is necessary to ensure account is checked, paid and is up to date. A late payment incurs a fee to the Health Services Union.
 - Any credit cards issued by The Health Services Union cannot be used for personal expenses. All expenses must be for business related purposes - a written notation next to the transaction is required for any items that are not self explanatory.
 - When using any Health Services Union Credit Card, the purchaser is expected to have solicited a cost effective and efficient purchase.
135. No record of such a written statement (or a similar statement) ever having been given to any other National Office employee has been produced by the National Office. Nor has any employee or official of the National Office (including Mr Thomson) told me that any such written instruction was ever given to anyone else apart from Ms Stevens.

Ms Walton's evidence

136. Ms Walton states that she was given a Diners Club card when she was employed with the National Office. She assumed the card was part of the package for those working with the National Office. She understood that, based on common sense, the card was to be used for work expenses. Ms Walton does not recall being given any document with instructions regarding production of documentation to support expenditure, but generally receipts were submitted with the bill. Expenditure was approved when the statement was submitted for payment (Walton PN 209 - 222):

MR NASSIOS: When were you given an HSU Diners Club card?

MS WALTON: That would have been when it was the national office, I believe. I couldn't tell you the dates exactly.

MR NASSIOS: Do you know who gave it to you?

MS WALTON: I assume that it was part of the package of HSU National office, that people had credit cards.

MR NASSIOS: Did you get any instructions as to what you were to use that card for?

MS WALTON: Well, it would be for work.

MR NASSIOS: Were you ever told what was legitimate expenditure?

MS WALTON: No. I would have thought that was a bit of commonsense.

MR NASSIOS: Were you provided any instructions about documentation of expenditure on your card?

MS WALTON: I don't know that - I'm not sure if there was documentation, but generally what we would do is get receipts and put that against the bill when it would come in. But I couldn't tell you exactly if I - I may have looked at something, I don't know if there was a policy at all. I can't remember, sorry.

MR NASSIOS: All right. Did you seek any authorisation or approval of moneys that were spent on that card?

MS WALTON: Well, it would all be approved so that you would put all the stuff together and give that in to accounts. So if there was any questions then they would query it.

MR NASSIOS: Okay. May I ask in general terms what you actually used that club card for?

MS WALTON: I can't tell you now. I think there was - I'm not sure how often that was utilised, sorry.

137. Ms Walton states the same processes applied to the CBA Mastercard as those for the Diners Club card. She stapled dockets to the statement and checked off the documents on her statement (Walton PN 235 - 236).

MR NASSIOS: Were you given any instructions about documentation of expenditure on the MasterCard?

MS WALTON: I think it was the same thing, that you would get a bill in and then you would staple - I think if you go and have a look at the accounts, you staple your dockets to it, and I would go through and tick off.

Evidence of National Executive members

Ms Jackson's evidence

138. Ms Jackson states, in relation to paragraph 41 of the BDO Kendalls report, that paragraphs (a) to (g) were pretty much in line with how things were done except for paragraph (f), which states: (Jackson (1) PN 65 - 66)

This was provided to the meetings of the executive finance committee where the actual expenditure line items were compared to budget.

MS JACKSON: My understanding was from people that were on the finance committee at the time that the finance committee didn't meet that often, which is another way the system sort of fell down I suppose.

139. Ms Jackson, when asked about the authorisation of credit card transactions, states that when she became the National Secretary (on 14 December 2007) it appeared to her that financial records were being kept, with receipts attached to a person's credit card. (Jackson (1) PN 47) Ms Belinda Ord was the bookkeeper/financial controller at that time (Jackson (1) PN 62).

Mr Brown's evidence

140. Mr Brown states that he was not aware of the processes described in paragraph 41 of the BDO Kendall report regarding the approval of credit card expenditures or how National Office recorded financial matters. Mr Brown had assumed that there was a recording system in place that enabled financial reports to be produced for the finance committee or the National Executive and that was sufficient to satisfy the auditors that the accounts had been kept in a proper manner. (Brown PN 77)
141. When he inspected the records at the meeting held in March 2008 Mr Brown found no indication that the processes described in paragraph 41 of the BDO Kendalls report were in place or existed. (Brown PN 79)
142. Mr Brown was involved in investigating the accounts of the HSU following the meeting of the National Executive in March 2008. He found very little information was available. A significant amount of accounts and credit card statements were missing. It was necessary to obtain duplicate copies of documents from the relevant banks. (Brown PN 84)

Dr Kelly's evidence

143. Dr Kelly states that she was not aware of the processes described in paragraph 41 of the BDO Kendalls report (Kelly PN 206 - 207).

Ms Knight's evidence

144. Ms Knight states, in relation to paragraph 41 of the BDO Kendall report and Mr Thomson's processes, that she has no recollection of the National Executive and the finance committee ever reviewing specific expenditure on credit cards (Knight PN 157 - 162).

MR NASSIOS: That's (indistinct) subtle difference with the no, which I'm trying to just make sure that it's not. Now, in terms of this particular report that has been, you know, as I understand, certainly [of] keen interest to

people, the BDO Kendall report, there's a process explained in that report as to how credit card transactions are approved and, if I can, I'll give you an extract of that report, and I'd like to ask you if you are aware or were aware of those approval processes.

MS KNIGHT: Well, probably it's the profit and loss statements.

MR NASSIOS: All right. Paragraph (f) or item (f) there, okay.

MS KNIGHT: What I remember.

MR NASSIOS: Yes. Can I ask if you have any recollection of specific expenditures on union credit cards, whether they were ever reviewed by the national executive. Again, as the finance committee you certainly have no recollection of that ever happening.

MS KNIGHT: No.

Evidence of the auditor

145. In reference to the extract from the BDO Kendalls report and Mr Thomson's processes, Mr Dick said that the procedures were similar to what is set out in the extract of the report shown to him. He was provided with and reviewed vouchers for the Diners Club card, to which were stapled supporting documents in relation to expenses. He stated that the 'bulk of the time' there was a voucher supporting the expenditure. He did not know about the credit card and did not review any documents related to it. (Dick PN 60 - 63)
146. Mr Dick states that he understood that finance meetings were held every quarter. A set of MYOB financials were presented to the members of the committee. The financial documents did not provide underlying details of the expenses. The members would not know what they were approving. The MYOB document constituted an internal accounting record. Mr Dick used these records to prepare the financial statements. (Dick PN 64 - 71)

Instructions to staff regarding when to use Diners Club card compared with CBA Mastercard

147. Mr Thomson stated that no instructions were given to staff regarding which credit card was to be used. There may have been benefits in using a particular card, such as obtaining frequent flyer points, but no instructions were issued about that to staff (Thomson PN 1160 - 1165):
- MR NASSIOS: In the event that you could use either card, how did - - -
- MR THOMSON: It didn't matter.
- MR NASSIOS: There were no instructions to use one as opposed to the other?
- MR THOMSON: No.
- MR NASSIOS: There was no benefit in terms of a fee for the card or the frequent flyer points you may have got?
- MR THOMSON: There may have been, but that wasn't an instruction that was issued.

148. Mr Thomson used the CBA Mastercard extensively compared to other staff. He saw no particular reason why this was so. (Thomson PN 1172 - 1175)

MR NASSIOS: It does appear from the records that you were probably the only official who used it pretty well extensively.

MR RAWSON: Sorry, we need to clarify - that's the MasterCard.

MR NASSIOS: MasterCard. My apologies, the MasterCard, yes. Is there a particular reason why you would have used it as opposed to others that would have been using it?

MR THOMSON: Not particularly, no.

149. Ms Ungun states that she used the Diners Club card for stationery supplies (Officeworks) and the CBA Mastercard for meeting expenses and lunches. Mr Thomson would instruct her about which card to use in relation to these items of expense. But there was no hard and fast rule about which credit card was to be used (PN 352):

MS CARRUTHERS: What did you use your credit card for?

MS UNGUN: Mainly mine was for Officeworks and, you know, for stationery when I used to go out, stationery shopping, or when we used to go out for lunch, instead of Craig getting up and paying for it, I used to go and pay for the lunches and meeting expenses. I used to pay for them as well. Yes, that sort of stuff.

MR NASSIOS: All right.

MR RAWSON: How did you decide then whether you would use your MasterCard or your Diners card?

MS UNGUN: We just - Craig used to tell me which one to use at the time but mainly for the stationery I remember I used to use my Diners and when we used to pay for meeting expenses and, yes, luncheons and stuff, I think we used a MasterCard.

MR RAWSON: That was because - - -

MS UNGUN: But I was being directed by Craig saying, you know, 'Just go and pay with your MasterCard.'

(Ungun PN 162 - 168)

MS UNGUN: Well, not always - always we used a MasterCard for lunches. It's - it was just - I suppose it was just a decision of the staff to decide which card they were going to use at the time so there wasn't such a rule that says, 'Okay, for the lunch you've got to use this or for stationery you've got to use this,' you know?

150. Ms Walton does not recall having been given any instructions about the use of a credit card for particular purchases. (Walton PN 233 - 234)

MR NASSIOS: You weren't provided any instructions to use one for particular purchases and the other for others?

MS WALTON: No. Not to my knowledge, no. Again, it could have been a policy document that I would have read, but it was a very long time ago.

151. Mr Williamson states he does not know whether any instructions were given about the purpose of Diners Club cards (Williamson PN 244 - 245):

MR NASSIOS: Do you know if cardholders would have been given any instructions about the purpose of those cards?

MR WILLIAMSON: No, I don't know that.

Mr Thomson's submissions

152. With respect to finding 13, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies contravening Sub-rule 32(j) of the Rules. Sub-rule 32(j) provides that the National Secretary will be responsible for "the books, records, property and moneys of the Union". Rule 32 contains no express or implied obligation in relation to the preparation of financial policies, or a requirement to submit them to the National Council or the National Executive for approval.
- b. It was not the responsibility of the National Secretary to prepare financial policies for the HSU, in particular in respect of the use of credit cards. Further, Mr Thomson, as National Secretary, was under no obligation to prepare such policies.
- c. While there were no written policies regarding credit card use by National Office staff, there was an informal policy that was communicated to staff – that the cards were not for personal use.
- d. I have also failed to take account of the HSU's financial processes. The budgets of the HSU were approved by the National Executive and this amounted to approval of the expenditure in the budget. Expenses incurred on HSU credit cards were included in the accounts that were provided to the National Executive or the National Council, and were approved by them. The National Executive did not review and was never provided with an itemised list of specific transactions to be paid for by use of a credit card because a budget had already been approved for the relevant expenditure. The approval of the budget meant that funds could be expended which were in accordance with the budget. Expenditure was then posted to the accounts, which were provided to the National Executive on a quarterly basis.
- e. Further, even if there was an obligation to prepare policies regarding credit card use (which is not admitted), this obligation did not rest with the National Secretary but instead was with the National Executive. In addition, the obligation, if any, to prepare the policies was not a new obligation and no credit card policies had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002. It is of concern that I have formed the erroneous conclusion that it was the responsibility of Mr Thomson to prepare such policies when this is clearly not the case.

153. With respect to finding 14, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. It was not the responsibility of the National Secretary to prepare financial policies, in particular for the use of credit cards. Mr Thomson, as National Secretary, was under no obligation to prepare any such policies and has not failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary of the HSU.
 - b. I have failed to consider informal policies and processes that were in place in respect of credit card expenditure and payments. A reasonable person in the position of National Secretary would not have prepared any further policies.
 - c. In particular it is noted that Ms Jackson, who replaced Mr Thomson as National Secretary, commented (as set out at paragraph 139 on page 238 in chapter 5) that when she became the National Secretary on 14 December 2007 it appeared that financial records were being kept with receipts attached to a person's credit card. Accordingly a person who was the National Secretary considered financial governance policies and procedures in relation to credit cards were in place.
 - d. Further, as discussed at paragraph 152.e above, even if there was an obligation to prepare policies regarding credit card use (which is not admitted), this obligation did not rest with the National Secretary but instead was with the National Executive.

Conclusion

Approval by National Executive of the budget

154. Mr Thomson has submitted that the budgets of the HSU were approved by the National Executive and that this amounted to approval of expenditure in the budget. The National Executive did not review and was never provided with an itemised list of specific transactions to be paid for by use of a credit card because a budget had already been approved for the relevant expenditure. The approval of the budget meant that funds could be expended which were in accordance with the budget.
155. While this argument does not appear to be relevant to whether contraventions have occurred concerning failure to prepare policies regarding the use of credit cards, I will nevertheless consider this matter because this submission has been made a number of times throughout the submissions that were made by Holding Redlich on behalf of Mr Thomson dated 2 March 2012 (FWA.024.0002).
156. There is a distinction between the approval by National Executive of the categorisation of figures of anticipated aggregate expenditure in the budget and the approval in accordance with the requirements of the Rules of individual items of actual expenditure. This is so whether authorisation occurs before or after the expenditure is incurred and whether such authorisation is required, under the Rules, to be given by the National Secretary or by National Council/National Executive. Approval of a forecast budget and authorisation of actual expenditure are two quite distinct and separate processes.

Inclusion of expenditure in the accounts which are provided quarterly to National Executive

157. Mr Thomson has also submitted that expenses incurred on HSU credit cards were included in, or 'posted to', the accounts that were provided to the National Executive (on a quarterly basis) or the National Council, and were approved by them. Mr Thomson has also submitted with respect to later findings that the accounts were approved by the National Finance Committee (see, for example, paragraph 625.b in chapter 7).
158. Once again, this argument does not appear to be relevant to whether contraventions have occurred concerning failure to prepare policies regarding the use of credit cards. I will nevertheless consider this matter because this submission has also been made a number of times throughout the submissions that were made by Holding Redlich on behalf of Mr Thomson dated 2 March 2012 (FWA.024.0002).
159. The entry of transactions into MYOB under various categories of expenditure is a quite separate process, and not relevant, to whether that expenditure has been authorised. It is possible for expenditure to be entered into MYOB in categories (whether appropriate or not) even where that expenditure has not been properly authorised under the Rules. The entry of unauthorised expenditure into appropriate categories in MYOB does not thereby authorise the expenditure. Conversely, the incorrect entry of properly authorised expenditure into a category in MYOB does not alter the proper authorisation of that expenditure.
160. Nor does the subsequent presentation to National Executive of aggregated figures of expenditure (which have, no doubt, been extracted from MYOB) under various broad categories identified in the budget constitute authorisation of individual transactions. As set out at paragraph 27 of chapter 12, Mr Dick, the National Office auditor, commented that (Dick PN67):
- But all they're really doing is approving a set of MYOB financials that say this is the expenditure with no detail behind it. So it would be very hard for them without getting their hands dirty to know what they were approving.
161. While National Executive had the power (and, indeed, was required by the Rules) to approve individual items of expenditure that were not on the general administration of the Union or reasonably incidental thereto, an examination of the minutes of National Executive meetings indicates that there were very few occasions on which it did so in practice (see paragraph 78 on page 107 in chapter 2). Indeed, Mr Thomson acknowledges at paragraph 152.d above that National Executive did not review and was never provided with an itemised list of specific transactions for authorisation. Expenditure by the National Office on the dental campaign, which is discussed in chapter 15, stands out as one of the few examples of individual expenditures that were considered and authorised by National Executive, although even then the minutes do not record such authorisation as clearly as perhaps they should (see, for example, paragraphs 21, 26, 34 and 43 to 44 of chapter 15).
162. Further, the finance committee had no power to authorise expenditure as it was not a properly constituted committee under the RAO Schedule (see paragraphs 50 to 52 of chapter 5 on page 217).

Other relevant matters

163. The evidence set out above indicates that there were no formal written policies while Mr Thomson was National Secretary regarding use by National Office staff of their credit cards.
164. Mr Thomson has submitted that I have failed to consider informal policies and procedures that were in place regarding credit card expenditure by National Office staff. I have set out at paragraphs 127 to 137 above evidence of various National Office employees regarding their understanding of the parameters within which they were permitted to use their National Office credit cards. It is notable from this evidence, however, that each of those members of staff had their own understanding or rationale of the conditions surrounding use of National Office credit cards:
- a. Ms Walton says that she does not know whether she was given any instructions or whether there was any policy at all. She was not told what constituted 'legitimate' expenditure but she would have thought that 'was a bit of commonsense' (see paragraph 136 above);
 - b. Ms Ord states that she presumed that Mr Burke and Ms Stevens were permitted to purchase petrol on their credit cards because she 'just figured it was exactly the same as everyone's credit card' (see paragraph 130 above);
 - c. Unlike others who were interviewed by FWA, Ms Ungun does not agree that the processes set out in paragraph 41 of the BDO Kendalls report regarding receipts in support of expenditure were carried out in practice (see paragraph 128 above);
 - d. Ms Stevens' understanding of what she was permitted to use her National Office credit cards for was gained, at least in part, from the document that was provided to her by Mr Thomson (see paragraph 134 above). It is notable that no other member of staff was given a similar document, although the rationale for only providing such a document to Ms Stevens is not apparent from the evidence.
165. It is clear from this evidence that staff of the National Office each had their own understanding of the 'informal' policies which may have existed while Mr Thomson was National Secretary. The existence of such 'informal' policies which were differently understood by various members of National Office staff could not have been, and was not, sufficient to discharge Mr Thomson's obligation under Sub-rule 32(j) to be responsible for the monies of the Union. As part of this responsibility, it was incumbent upon Mr Thomson to ensure that proper financial governance policies and procedures existed in relation to the use by National Office staff of their National Office credit cards and that such policies were provided to all staff.
166. As set out at paragraph 108 above, the failure of previous National Secretaries to prepare and obtain approval of financial governance policies does not obviate the obligation that rested upon Mr Thomson once he became National Secretary. Obligations under the Rules are placed upon those who occupy offices from time to time.

167. As also set out at paragraph 109 above, while I agree that there was a collective responsibility upon members of National Executive to ratify policies regarding financial governance, as the full-time, paid officer of the Union who was given responsibility under Sub-rule 32(j) for the monies of the Union, it was incumbent upon Mr Thomson as National Secretary to prepare such policies and to present them to National Executive for ratification.
168. The evidence overwhelmingly establishes that, aside from the very limited guidance provided by Mr Thomson to Ms Stevens about how she could use her own credit cards, Mr Thomson took no steps to prepare policies or procedures regarding the use of credit cards in the National Office. Moreover, Mr Thomson took no steps to inform, or seek approval from, National Council or National Executive regarding any such policies or procedures. I do not consider that Mr Thomson's actions were consistent with his obligation to be responsible for the monies of the Union, or with what would be expected of a reasonable person in Mr Thomson's position as National Secretary.
169. A reasonable person in Mr Thomson's position as National Secretary would have ensured that appropriate financial governance policies and procedures in relation to credit cards were prepared and submitted to National Council or National Executive for approval.

Findings 13 and 14 - Failure to prepare policies regarding the use of credit cards

13. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures in relation to the use of credit cards and to submit those policies and procedures to the National Council and the National Executive for approval.
14. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to prepare financial governance policies and procedures in relation to the use of credit cards and to submit those policies and procedures to the National Council or National Executive for approval.

Failing to prepare policies regarding cash withdrawals

Evidence

170. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 15 and 16 - Failing to prepare policies regarding cash withdrawals, which are set out below at page 254.

No formal policy existed

171. There is no evidence before me that formal financial governance policies or procedures existed while Mr Thomson was National Secretary regarding the withdrawals of cash from credit cards that had been issued to National Office staff.

Informal policies regarding cash withdrawals

172. Evidence has been obtained that Mr Thomson made cash withdrawals on his CBA Mastercard for substantial sums. There is documentary evidence (which is summarised in Annexure A) that Mr Thomson made cash withdrawals in the period 2002 to 2007 totalling the sum of \$103,338.70.
173. I questioned Mr Thomson concerning the persons who were permitted to make cash withdrawals and the reasons why such withdrawals were necessary. Mr Thomson said that he was the only person authorised to make cash withdrawals on a credit card of the National Office. (Thomson PN 1128-1130). Mr Thomson limited the authority to himself because it enabled him to retain control over cash withdrawal transactions. Mr Thomson stated that he established the facility to be able to make cash withdrawals because he found it to be more convenient to use cash in certain circumstances, particularly when he attended dinners and meetings. Mr Thomson considered payment by cheque to be the worst way to pay. Authorisation of cash withdrawals was by the same processes as applied in relation payments made by credit card (Thomson PN 1193 - 1206):

MR THOMSON: For example, say I took cash out of the ATM machine. I would say I've taken X amount out for this purpose. You would then have to try and reconcile that after the fact and presumably - and in, you know, most cases you would then have receipts that were there, but it was meant to try and catch it before and after the event rather than just after the event.

MR NASSIOS: Yes, all right, okay. Speaking about cash withdrawals - -

MR THOMSON: Yes.

MR NASSIOS: - - - were there any general policies in relation to cash withdrawals?

MR THOMSON: Only that I was the only one who was to do it. We didn't allow anyone else to.

MR NASSIOS: Who made that - - -

MR THOMSON: I did.

MR NASSIOS: - - - particular policy? Okay, all right. Can I ask why you made that policy?

MR THOMSON: I just thought it helped with control. Yes, that was probably the reason.

MR NASSIOS: Is there a particular reason that you felt it was important for you to be able to make cash withdrawals?

MR THOMSON: There were a number of situations where it was more convenient to have cash to pay and reconcile it later, particularly with some people that you were having dinner or meeting with. It was a better thing.

There were also some groups - and, you know, this is an example but it's not typical - obviously - but at one of our conferences the Aboriginal group who did the welcome to country - you could only pay cash. There was no other way of doing it. Now, I don't put that up as being typical but that's how it kind of went, and we sort of, I mean, got into the - maybe 'habit' is not the right word, but there was no issue as to - it didn't matter how the expenditure took place.

The worst way for us to have expenditure was by cheque because it was just difficult in terms of getting signatures. There were people from New South Wales and so forth, and you had the other option of having chequebooks signed with blank cheques as another way of dealing with that. To me that wasn't a particularly great way of dealing with it. So there were troubles all round in terms of how - well, difficulties and considerations all round in how you do those things.

MR NASSIOS: In terms of the authorisation of those withdrawals, there was no different practice to what it would have been with using the credit card with a purchase.

MR THOMSON: That's right, yes.

174. Mr Thomson has also said that he considered cash was a more convenient way to pay for expenses, rather than having to take out a credit card many times in the course of travel (Thomson PN 1231 - 1234):

MR NASSIOS: I have to ask, in terms of a restaurant, why would you not have used your credit card to pay your bill?

MR THOMSON: It was just sometimes more convenient for who and where you were meeting and who you were meeting with to pay in cash.

MR NASSIOS: I'm not sure quite what you mean by 'more convenient'.

MR THOMSON: If I was travelling down to Melbourne, you could take the money out at the start, you would be there for a couple of days, you'd spend the money, you'd give the receipts back and it would be done, rather than take the card out five or six times on a trip while you were away.

175. When I asked him to explain the cash withdrawals from 2003 to 2007 of substantial sums, around \$20,000 per year, Mr Thomson said that it may be explained by the fact that he may have been travelling more in 2006 (Thomson PN 1302 - 1312).

MR NASSIOS: You've started to take \$8000 in cash withdrawals from the CBA MasterCard from that time. Now, again, I've heard that you've said that that's an easy way of coming down to Melbourne and taking out the money and - - -

.....

MS CARRUTHERS: Yes. This is a bar chart that FWA has drawn up which shows your quantity of cash withdrawals on your CBA MasterCard over the five-year period, but obviously 2002, you only got it in November, so it's a very small amount in 2002. The reference that Terry has then made to \$8000 is, in each of 2004, 2005 and 2007 you've spent - around about the \$20,000 mark has been taken out in cash withdrawals. In

the 2006 year you've taken an extra \$8000 out in cash. You've actually taken over \$28,000 out in 2006.

.....

MR NASSIOS: So I guess I'm asking, I just want to confirm, from your perspective, that this was a major reason that these withdrawals were taking place at that time.

MR THOMSON: Look, I don't know whether 2006 was a year that I was travelling more as well, too, I mean, I just don't - - -

176. Mr Thomson also said that he travelled more in 2006 later in his interview (Thomson PN 1381).

177. It was put to Mr Thomson that he had a CBA Mastercard to pay for expenses so that the HSU would not know about money that he spent on his election campaign. He denied this and said that expenses were '*put through the union's accounts.*' Mr Thomson said that minutes of meetings record discussions at the time. Consequently, in his view, there was no secrecy about expenses he incurred (Thomson PN 1374, 1375 & 1381):

MR NASSIOS: Now, I'm showing you these, and in view of what has been said previously by Mr Dick and the letter in terms of what they have known about your MasterCard, the allegation that's made is that (1) you've had a MasterCard to try to in some way keep expenditure away from the union's knowledge, and in terms of the latter charge, that you're expending money on your election campaign.

MR THOMSON: Well, it doesn't keep away from the union's knowledge, it gets put on through the union's accounts, so it doesn't matter how it's spent, it still ends up there the same way. Where we spent money on the election campaign, it's been known, it hasn't been a secret issue in any sense. It was an election campaign where unionists probably spent more than they've ever spent and probably will not spend that much again, because of the issues that were there, and because the categorisation of Your Rights at Work has been a political issue, it meant that there was far more that previously we normally wouldn't have perhaps categorised in that way that go into those things. Central Coast, there's two seats, as well, by the way, not just my seat. We did win them both.

....

MR THOMSON: But these were not things that - and I'll take you back to some of the minutes you showed me about what we were saying at the time and how we were doing these things. We were discussing these all the time. People totally understood where it was. We had to cobble together donations from lots of other people as well as other branches, to pay for those sorts of things, and they were by far where the majority of the election money was coming from. Just on one thing, you were talking earlier about why 2006 may have been higher. Just looking at this, that is a year of a lot more travel, which is consistent with what I was saying before.

Cash withdrawals by other staff members

178. Evidence given by staff members substantiates Mr Thomson's evidence that other staff members were not permitted to make cash withdrawals on the credit cards issued to them.
179. Ms Stevens states that on one occasion she inquired of Mr Thomson whether she could make a cash withdrawal on her Diners Club card. Mr Thomson instructed her that she was not allowed to do so (Stevens PN 130):

Not to my recollection. I did ask Craig once could I draw money out of my Diners card and he said, 'No, because we're not allowed to do that.' I said, 'Okay.'

180. Ms Ungun confirmed that, aside from Mr Thomson, staff were not allowed to make cash withdraws. Cash withdrawals by Mr Thomson were recorded by her in the accounts on MYOB in accordance with verbal instructions provided to her by Mr Thomson (Ungun PN 186 - 187):

MR NASSIOS: Do you know of any process that was in place as to when you would make a cash withdrawal rather than potentially using the credit card itself?

MS UNGUN: We weren't allowed to use it as a cash withdrawal but the ones that spent on Craig's card, he has been telling me where to put it on MYOB so that's how it worked, yes.

Knowledge of the National Executive and the Auditor

181. On reading an extract from the BDO Kendalls report and Mr Thomson's processes, Ms Jackson said that paragraphs (a) to (g) were pretty much in line with how things were done except for paragraph (f) and in relation to cash withdrawals. Ms Jackson did not expect that cash withdrawals would have been taking place. She was surprised to learn that cash withdrawals had been taking place (Jackson (1) PN 64 - 66):

To some extent but not in relation to the cash withdrawals. My understanding is and when I say my understanding, my expectation is that no branch of the union, not of the HSU but in any union of this nation or anywhere else, has cash withdrawals. So the cash withdrawals here is a surprise but as far as how you to get from (a) to (g) on this document you're showing me is pretty much in line with how things are done except for (f) where it says:...

182. According to Ms Jackson, cash withdrawals were never approved by the National Executive (Jackson (1) PN 74):

Now we definitely don't have cash withdrawals and I just want to make that really clear that the organisation and the executive particularly were quite surprised that - we had never approved cash withdrawals. It's just not something that we do as an organisation.

183. Ms Jackson also said that cash withdrawal expenditure was not approved at any time. She only became aware of cash withdrawals when Mr Dick brought them to her attention. (Jackson (1) PN 153 - 155)

184. Ms Jackson was also of the firm view that she had no knowledge of cash withdrawals being transacted (Jackson (1) PN 78 - 82):

I just want to make it clear, we never had cash withdrawals ...In our time.

185. Dr Kelly said that she was not aware of the HSU having any policies regarding use of credit cards for cash withdrawals. She did not expect that cash withdrawals would have taken place (Kelly PN 355 - 356):

MR NASSIOS: Okay. At the time that Mr Thomson was national secretary, were there any policies dealing with the use of union cards for cash withdrawals?

DR KELLY: Not that I am aware of, no. But a reasonable person would expect that you would not withdraw cash to pay for anything. Given that what was supposed to happen was that expenditures would be paid by cheque with two signatories, a reasonable person would expect that a tax invoice would be presented to the other signatory and the signature would be put on the cheque and you would be paid for whatever - that way by cheque. There was no - I had no expectation that any cash would be - ever go through the national office accounts.

186. Ms Knight informed FWA that she was not aware of CBA Mastercards having been issued or that cash withdrawals were taking place. Ms Knight was not aware of any policy of the national executive or the finance committee in relation to cash withdrawals from an automatic teller machine (**ATM**) (Knight PN 169 - 174):

MR NASSIOS: Can I specifically ask you about the CBA credit card. Were you aware of that credit card existing at any time?

MS KNIGHT: A credit card?

MR NASSIOS: Yes. The Commonwealth Bank. There was a - well, the auditor identified that there were ATM, automatic teller machine cash withdrawals using that card. Were you aware of that occurring?

MS KNIGHT: No.

MR NASSIOS: Was there any policy that either the national executive or the finance committee had in relation to cash withdrawals from an ATM?

MS KNIGHT: Not that I'm aware of.

187. Mr Williamson said that the HSU did not have any general policies regarding the use of credit cards to make cash withdrawals. He did not consider cash withdrawals to be appropriate (Williamson PN 461 - 464):

MR NASSIOS: Did the HSU have any general policies regarding use for credit cards to make cash withdrawals?

MR WILLIAMSON: No.

188. Mr Williamson said that he had no idea why CBA Mastercards were issued to Mr Thomson, Mr McLeay, Ms Walton and Mr Robinson with ability to draw cash advances. He cannot recall whether it was approved by the National Executive. He did not know what the purpose of giving the credit cards was. Mr Thomson's frequent withdrawals were not disclosed to the National Executive. Mr Williamson became aware of the matter through the BDO Kendalls report. (Williamson PN 445 - 459)

189. Mr Brown told FWA that the National Office did not have any policies in relation to the use of credit cards and the facility to make cash withdrawals. He was shocked to learn that cash withdrawals were possible on a credit card. He did not consider such a situation to constitute good financial governance (Brown PN 147 - 148):

MR NASSIOS: Did the National office have any policies dealing with the use of union cards and cash withdrawals at the time?

MR BROWN: No. Well, not to my knowledge, but no, but it did - it shocked me that we had credit cards that we allowed - or that, you know, that there was a cash withdrawal facility on it. It just didn't, you know, make good financial governance sense and I was fairly stunned when I found that staff could - or a staff member anyway or the national secretary, could withdraw cash on the union's credit card.

190. Mr Dick told FWA that the HSU did not have any policies with regard to credit cards or expenditure. He said that the National Executive did not review expenditure. In hindsight, Mr Dick considered the Executive should have probably had a greater level of involvement in monitoring the financial aspects of the HSU (Dick PN 51):

Anything like that, well, I suppose that would be - I suppose I'd be involved in that to a degree because I'd be asked and so I'd tell - you know, as to the way I'd keep the records. That's what I - so I'd be advising how to keep the records but with a low level staff there's not really much reference to keep. But other policies there aren't - when you look at the office there aren't really many policies that can be put in place. Like there's no policies with regard to credit cards, expenditure, because Craig's the one spending the money and he's the one that's authorising it so there's no-one - and there was no policy where the executive was reviewing it and that's probably with the benefit of hindsight the executive should have had a - in a circumstance where there's a lack of internal control the executive should have been probably had their nose deeper into the financial side of the running of the union or the branch.

191. It was not until 19 March 2008, after Ms Jackson became National Secretary, that the National Executive endorsed protocols setting out financial governance procedures ([HSUNO.018.0054](#)). The document addresses the use of credit cards, the authority of persons holding particular positions to expend moneys, budget and reporting).

Mr Thomson's submissions

192. With respect to finding 15, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies contravening Sub-rule 32(j) of the Rules. Mr Thomson has not failed to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures in relation to credit cards and to submit them to National Council and National Executive for approval.
- b. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of cash withdrawals from credit cards. Mr Thomson, as National Secretary, was under no obligation to prepare policies. As set out in paragraph 87.d on page 148 in chapter 3, Sub-rule 32(j) provides that the National Secretary is responsible for the books, records, property and

moneys of the HSU. This does not imply, and cannot be construed to impose, an obligation to create financial policies regarding cash withdrawals.

- c. Mr Thomson was the only HSU employee who had the cash withdrawal facility on his account. This was because there were a number of situations where it was more convenient or appropriate to pay with cash, instead of on a credit card. Mr Thomson reiterates his comments in his interview with FWA that cheques were required to be signed by other National Executive members in multiple states and this was administratively burdensome.
 - d. Mr Thomson implemented a procedure whereby he would reconcile his receipts in respect of any amounts spent using cash withdrawn from an HSU credit card. This was the same procedure that was used for purchases made with the HSU credit cards by all National Office staff. These withdrawals and expenses were recorded in the HSU's accounts and in MYOB, in the same way as purchases. All expenditure was posted to the accounts which were provided to the National Executive.
 - e. Further, even if there was an obligation to prepare policies regarding cash withdrawals (which is not admitted), this obligation did not rest with the National Secretary but instead was with the National Executive. In addition, the obligation, if any, to prepare the policies was not a new obligation and no cash withdrawal policies had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
193. With respect to finding 16, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule.
 - b. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of cash withdrawals. Mr Thomson, as National Secretary, was under no obligation to prepare such policies. As submitted in paragraph 192.e, even if there was an obligation to prepare policies regarding cash withdrawals (which is not admitted), this obligation did not rest with the National Secretary but instead was with the National Executive. In addition, the obligation, if any, to prepare the policies was not a new obligation and no cash withdrawal policies had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002. Accordingly, Mr Thomson has not failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary and a reasonable person in the position of Mr Thomson would not have prepared such policies.
 - c. During his time as National Secretary, the HSU National Office met its budget and continued to repay and reduce its outstanding debts. At the time Mr Thomson resigned, as submitted in paragraph 4.b on page 120 in chapter 3, the HSU's debts had been decreased from \$900,000 to \$50,000.

Conclusion

194. Mr Thomson has acknowledged, both in his interview with FWA and in his written submissions, that he was the only person who was permitted to make cash withdrawals using a National Office credit card. Mr Thomson told me in interview that he limited authority to himself because it enabled him to retain control over cash withdrawals (see paragraph 173 above).
195. This evidence indicates that Mr Thomson clearly recognised the risks inherent in permitting cash withdrawals. In such an environment, it was incumbent upon Mr Thomson, in discharging his obligations under Sub-rule 32(j), to ensure that a formal, written policy regarding cash withdrawals existed and was authorised by National Council or National Executive (even if such a policy was only to apply to him in practice).
196. While staff were aware that this same restriction did not apply to Mr Thomson, it was not as the result of having been provided with any formal policy or other document. Ms Stevens asked whether she too could be permitted to make cash withdrawals (see paragraph 179 above). It is also clear that both Ms Ungun and Ms Ord were aware that Mr Thomson made cash withdrawals (see paragraph 180 above regarding Ms Ungun's evidence and paragraph 292 below regarding Ms Ord's evidence).
197. Sub-rule 32(j) required Mr Thomson to be responsible for the monies of the Union.
198. An informal understanding of National Office staff regarding which staff were permitted to make cash withdrawals could not have been, and was not, sufficient to discharge Mr Thomson's obligation under Sub-rule 32(j) to be responsible for the monies of the Union.
199. Mr Thomson has submitted that cash withdrawals and expenses were recorded in the HSU's accounts and in MYOB, in the same way as purchases. All expenditure was posted to the accounts which were provided to the National Executive. For the reasons set out at paragraphs 157 to 162 of this chapter, I am not persuaded by this argument.
200. As set out at paragraph 108 above, the failure of previous National Secretaries to prepare and obtain approval for financial governance policies does not obviate the obligation that rested upon Mr Thomson once he became National Secretary. Obligations under the Rules are placed upon those who occupy offices from time to time.
201. As also set out at paragraph 109 above, while I agree that there was a collective responsibility upon members of National Executive to ratify policies regarding financial governance, as the full-time, paid officer of the Union who was given responsibility under Sub-rule 32(j) for the monies of the Union, it was incumbent upon Mr Thomson as National Secretary to prepare such policies and to present them to National Executive for ratification.
202. While its relevance to whether there has been a contravention regarding the existence and authorisation of a policy regarding cash withdrawals is unclear, Mr Thomson has also submitted that, during his time as National Secretary, the HSU's debts had decreased from \$900,000 to \$50,000. This is incorrect. My

examination of the liabilities of the National Office during the period in which Mr Thomson was National Secretary is set out in chapter 8 (see, in particular, paragraphs 71 and 72). Figures disclosed in the National Office's financial reports indicate that its liability to trade creditors as at 30 June 2007 (being almost six months before Mr Thomson's resignation) was \$552,035. Further, by 30 June 2008 (being just over six months after Mr Thomson's resignation) the liability to trade creditors had reached \$1,009,019. This is a substantial figure for an organisation that had an annual turnover in 2006 and 2007 of around \$2 million (see paragraph 67 of chapter 8).

203. A reasonable person in Mr Thomson's position as National Secretary would have ensured that appropriate financial governance policies and procedures regarding the use of credit cards by staff of the National Office to make cash withdrawals were prepared and submitted to National Council or National Executive for approval.

Findings 15 and 16 - Failing to prepare policies regarding cash withdrawals

15. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures regarding the use of credit cards by staff of the National Office to make cash withdrawals and by failing to obtain the approval of the National Council and the National Executive in relation to such policies.
16. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to prepare financial governance policies and procedures regarding the use of credit cards by staff of the National Office to make cash withdrawals and obtain the approval of the National Council or the National Executive in relation to such matters.

Failure to prepare policies regarding travel related expenses

Evidence

204. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 17 to 22 - Failure to prepare policies regarding travel related expenses, which are set out below at page 259.
205. There is no evidence before FWA that the National Office had any policy regarding the circumstances in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business.
206. There is no evidence before FWA that the National Office had any policy regarding the circumstances in which employees of the National Office could seek

reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located.

207. There is no evidence before FWA that the National Office had any policies in place regarding the circumstances (if any) in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business.
208. Mr Thomson's actual expenditure on travel related expenses is discussed later in this chapter (under the heading 'Incursion of expenditure on Mr Thomson's credit cards on accommodation and travel related expenses in Melbourne during 2006 and 2007' on page 367) and more generally in chapter 6.

Mr Thomson's submissions

209. With respect to finding 17, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(j) of the Rules. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of travel related expenses. Mr Thomson, as National Secretary, was under no obligation to prepare such policies. There were informal policies in place in respect of travel expenses which existed prior to Mr Thomson's commencement as National Secretary.
 - b. Even if there was an obligation to prepare formal policies regarding travel related expenses (which is not admitted) this obligation did not rest with the National Secretary but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal travel policies had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
210. With respect to finding 18, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of travel related expenses.
 - b. As submitted at paragraph 209.b above, even if there was an obligation to prepare formal policies regarding travel related expenses (which is not admitted), this obligation did not rest with the National Secretary but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal policies regarding travel related expenses had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
 - c. Accordingly, Mr Thomson has not failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would

exercise if they were National Secretary and a reasonable person in the position of Mr Thomson would not have prepared such policies.

211. With respect to finding 19, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(j) of the Rules. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of when employees of the National Office could seek reimbursement of accommodation and meal expenses, when staying in the city in which an HSU official's primary place of work is located and submit them to the National Council and National Executive for approval.
 - b. Even if there was an obligation to prepare formal policies regarding travel related expenses incurred when staying in the city in which a National Office employee's primary place of work is located (which is not admitted), this obligation did not rest with the National Secretary to prepare the policy, but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal policies regarding travel related expenses had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
212. With respect to finding 20, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of when employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located and submit them to the National Council and National Executive for approval.
 - b. Accordingly, a reasonable person in the position of National Secretary would not have ensured that appropriate financial governance policies and procedures regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located.
 - c. As stated above in paragraphs 130 and 132, even if there was an obligation to prepare formal policies regarding travel related expenses incurred when staying in the city in which a National Office staff member's primary place of work is located (which is not admitted) this obligation did not rest with the National Secretary, but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal policies regarding travel related expenses had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
 - d. If the National Executive or National Council required such policies then this would have been discussed and implemented by the National Executive or National Council.

213. With respect to finding 21, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(j) of the Rules. It was not the responsibility of the National Secretary to prepare financial policies regarding the circumstances, if any, in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business and submit them to the National Council and National Executive for approval.
 - b. Even if there was an obligation to prepare formal policies regarding travel related expenses incurred in the general vicinity of the home of an HSU official or National Office staff member (which is not admitted), this obligation did not rest with the National Secretary, but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal policies regarding travel related expenses had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
214. With respect to finding 22, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of when employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the general vicinity of their home on HSU business and submit them to the National Council and National Executive for approval.
 - b. Even if there was an obligation to prepare formal policies regarding travel related expenses incurred in the general vicinity of an HSU official or National Office staff member's home (which is not admitted) this obligation did not rest with the National Secretary, but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal policies regarding travel related expenses had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
 - c. Accordingly, a reasonable person in the position of National Secretary at the time Mr Thomson was National Secretary would not have ensured that financial governance policies and procedures regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the general vicinity of their home on HSU business, were prepared.

Conclusions

215. Although Mr Thomson has submitted at paragraph 209.a above that there were informal policies in place in respect of travel expenses which existed prior to Mr Thomson's commencement as National Secretary, he has not provided me with

any information regarding the terms of those policies or how (or, indeed, whether) such informal policies were communicated to National Office staff. Although Mr Thomson has not given me any information to this effect, it appears, since the policies to which he has referred are 'informal', that any informal travel policies which existed while he was National Secretary had not been authorised or ratified by National Council or National Executive. Certainly no resolution recording such authorisation appears in any of the minutes of National Council or National Executive meetings provided to FWA.

216. Mr Thomson has given evidence that credit cards were used by a 'wide variety of staff' in the National Office because they were working 'in a national office in particular where people were interstate, travelling, spending more time outside their home state than others [who were employed by the State branches]' (see paragraph 85 above). Mr McLeay gave evidence that he was required to travel 'probably weekly' and 'certainly at the very least monthly' (McLeay PN 402).
217. Information regarding the amount of monies that were expended by the National Office on travelling and accommodation between 2002 and 2007 is set out in paragraph 79 in chapter 8. There was a sharp jump in expenditure on travelling and accommodation once Mr Thomson became National Secretary, with the amount spent in the year ended 30 June 2002 being \$29,284 compared with \$149,838 in the year ended 30 June 2003. Apart from the year ended 30 June 2006 (in which \$116,278 was spent on travelling and accommodation), the National Office spent over \$135,000 on travelling and accommodation in each year during which Mr Thomson was the National Secretary.
218. While there may have been an informal policy regarding travel expenses prior to Mr Thomson becoming National Secretary, the existence of informal policies could not have been, and was not, sufficient to discharge Mr Thomson's obligation under Sub-rule 32(j) to be responsible for the monies of the Union. This is particularly so when Mr Thomson presided over a period during which the amount expended by National Office staff on travel and accommodation increased substantially over previous years.
219. In being responsible for the monies of the Union under Sub-rule 32(j), it was incumbent upon Mr Thomson to ensure that proper financial governance policies and procedures existed in relation to travel related expenses.
220. As set out at paragraph 108 above, the failure of previous National Secretaries to prepare and obtain approval for financial governance policies does not obviate the obligation that rested upon Mr Thomson once he became National Secretary. Obligations under the Rules are placed upon those who occupy offices from time to time.
221. As also set out at paragraph 109 above, while I agree that there was a collective responsibility upon members of National Executive to ratify policies regarding financial governance, as the full-time, paid officer of the Union who was given responsibility under Sub-rule 32(j) for the monies of the Union, it was incumbent upon Mr Thomson as National Secretary to prepare such policies and to present them to National Executive for ratification.

222. A reasonable person in Mr Thomson's position as National Secretary would have ensured that appropriate financial governance policies and procedures regarding the circumstances in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business were prepared and submitted to National Council or National Executive for approval.
223. A reasonable person in Mr Thomson's position as National Secretary would have ensured that appropriate financial governance policies and procedures regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located, were prepared and submitted to National Council or National Executive for approval.
224. A reasonable person in Mr Thomson's position as National Secretary would have ensured that appropriate financial governance policies and procedures regarding the circumstances (if any) in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business were prepared and submitted to National Council or National Executive for approval.

Findings 17 to 22 - Failure to prepare policies regarding travel related expenses

17. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare appropriate policies and procedures in place regarding the circumstances in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business and submit them to the National Council and National Executive for approval.
18. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to ensure that the National Office had appropriate policies and procedures in place regarding the circumstances in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business, and by failing to ensure that such policies were submitted to either the National Council or National Executive for their approval.

19. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare appropriate policies in place regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located and submit them to the National Council and National Executive for approval.
20. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to ensure that the National Office had appropriate policies in place regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located, and by failing to ensure that such policies were submitted to either the National Council or National Executive for their approval.
21. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare appropriate policies in place regarding the circumstances (if any) in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business and submit them to the National Council and National Executive for approval.
22. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to ensure that the National Office had appropriate policies in place regarding the circumstances (if any) in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business, and by failing to ensure that such policies were submitted to either the National Council or National Executive for their approval.

Failure to prepare policies regarding spousal travel

Evidence

225. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 23 and 24 - Failure to prepare policies regarding spousal travel, which are set out below at page 265.
226. Mr Brown, Mr Williamson and Ms Jackson in interview confirmed that the HSU did not have a policy about spousal travel.

227. In interview, Mr Brown stated: (Brown PN 316 - 323)

MR NASSIOS: All right. Spousal travel. There was a report, or the BDO Kendall report, states that the union paid for some flights made by Mr Thomson's wife, Ms Christa Thomson, or Mrs Christa Thomson. Were you previously aware of such expenditure?

MR BROWN: No.

MR NASSIOS: Was it your understanding that such expenditure was approved?

MR BROWN: No.

MR NASSIOS: Did the union have a policy about spousal travel?

MR BROWN: No.

MR NASSIOS: There seemed to also be some travel in terms of a Ms Alison Soutar and a Mr Joshua Stevens who may or may not be in some way related to Mr Burke and Ms Stevens. Were you aware of that expenditure?

MR BROWN: I wasn't aware of it at the time. I became aware of it afterwards when we were going through the accounts. Given that it was a trip to Hobart and I'm the secretary of the branch in Hobart it certainly had nothing to do with anything associated with my branch.

228. Mr Williamson stated in interview that he did not believe that the issue surrounding spousal travel was discussed at the National Executive. In particular he said: (Williamson PN 387-396)

MR NASSIOS: All right. In terms of spousal travel, did the national office have a policy on spousal travel?

MR WILLIAMSON: Not that I'm aware of, no.

MR NASSIOS: Diners Clubs statements for Mr Thomson show that the union paid for some flights made by Mr Thomson's wife. Were you aware of this?

MR WILLIAMSON: No, I was not.

MR NASSIOS: Do you know if Mr Thomson ever sought the permission of - for the national office to pay for travel by his wife?

MR WILLIAMSON: I can't recall it.

MR NASSIOS: Do you regard that as legitimate expenditure for the national office?

MR WILLIAMSON: I would in terms of the amount of work and hours that have to be put into this job; that I think it's not an unreasonable request that a spouse might travel with their partner from time to time. It's common accepted practice in the private sector in that we work equally as hard as they do so - I don't think it's a given all the time but I think it's not an unreasonable practice, not an unreasonable request.

MR NASSIOS: Are you aware whether the issue was ever discussed by the national executive?

MR WILLIAMSON: No, I can't recall that, Terry.

229. Ms Jackson in interview noted that there was no policy about spousal travel (Jackson PN (1) 256 - 257):
- MR NASSIOS: Was there a policy about spousal travel?
- MS JACKSON: No.
230. At interview, Mr Thomson asked whether the National Office had a policy about spousal travel (Thomson PN 1766-1776):
- MR NASSIOS: All right. Can I ask you about spousal travel. Did the national office have any particular policy on it?
- MR THOMSON: They didn't have a policy. There was a practice though that was there and it was - it existed before I was there and was reaffirmed to me on a number of - well, reaffirmed with me on a number of occasions. Firstly by Chris Brown because of the amount of travel that was being done particularly compared to the past, that, you know, if you can where you can, provided it's not every time, kind of thing it's appropriate to do so and branches applied that as well.
- MR NASSIOS: So in terms of, what, their own officials you mean?
- MR THOMSON: Yes.
- MR NASSIOS: Okay. So now I just want to make clear - so we're talking that you're entitled to take your spouse with you not every time - - -
- MR THOMSON: It was a custom and practice but I mean - there wasn't a hard rule that was there with it. It was, yes, we expect that to happen but particularly the amount of travel that I was doing, we don't expect it to happen every time.
- MR NASSIOS: All right. Was there anyone else other than Mr Brown that would have reaffirmed this practice?
- MR THOMSON: Yes, Dan Hill in Western Australia, Mr Williamson. You know, it was not - it was - well, done - they're the three of the bigger branches, the Victorians were in a slightly different situation in which you had a husband and wife who were in the union together so - - -
- MR NASSIOS: All right. Are you aware whether the issue was ever discussed by the national executive in terms of your travel?
- MR THOMSON: It wasn't formally discussed. It was, you know, in the - we fell within our kind of budget limits with travel. I mean there were things where clearly the trip to the United States and so forth, I met those costs rather than said that they were and again I didn't actually ask because it was the implied principle that was there, that you bring your spouse to some of the meetings but not overdo it.
231. No documents have been produced by HSU to FWA evidencing that the National Council and the National Executive authorised Mr Thomson or other National Office staff to use credit cards to pay for spousal travel or other family related travel. In addition, Ms Jackson in interview stated that National Executive was not aware that spousal travel was authorised expenditure. (Jackson PN (1) 254-255)

- MR NASSIOS: Travel of spouses, again we've got the BDO Kendalls report, it says that the union has paid for some flights by Mr Thomson's wife. Are you aware whether that expenditure would have been approved?
- MS JACKSON: No. The executive, we have spoken about this with the executive and the executive were not aware that spouse travel was an authorised expenditure.

Mr Thomson's submissions

232. With respect to finding 23, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(j) of the Rules. It was not the responsibility of the National Secretary to prepare financial policies, in particular in relation to the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff.
 - b. The HSU did not have a formal written travel policy concerning partner travel. There was an informal understanding that National Executive members' partners and some HSU National Office staff were permitted to travel to attend National Executive Meetings and significant functions. The amount of spousal travel was minimal.
 - c. The members of the National Executive were aware that National Executive members and National Office staff were sometimes accompanied by their partners and this was not considered unreasonable, considering the hours worked and the amount of travel away from home by the National Office staff and National Executive members.
 - d. Even if there was an obligation to prepare formal policies regarding spousal travel (which is not admitted) this obligation did not rest with the National Secretary, but instead was with the National Executive. In addition, the obligation, if any, to prepare formal policies was not a new obligation and no formal policies regarding spousal travel related expenses had been established by previous National Executives or National Secretaries prior to Mr Thomson's commencement as National Secretary in 2002.
233. With respect to finding 24, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. It was not the responsibility of the National Secretary to prepare financial policies, in particular in respect of the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff.
 - b. As submitted at paragraph 232.d above, even if there was an obligation to prepare formal policies regarding spousal travel (which is not admitted) this obligation did not rest with the National Secretary during the period 2002 and 2007. Accordingly, Mr Thomson has exercised his powers and duties with the degree of care and diligence that a reasonable person would exercise if they

were in the position of National Secretary, as it was not a duty or responsibility of the National Secretary to prepare any such formal policy.

Conclusions

234. Mr Thomson acknowledges in his submissions that there was no formal written policy regarding spousal travel. He has, however, submitted that there was an 'informal understanding' that the partners of National Executive members and some (unspecified) National Office staff could travel in two scenarios, being to attend National Executive meetings and for 'significant functions' (which are not defined). Mr Thomson has provided no evidence in support of this submission and has not provided any details regarding which partners of National Office staff could travel at National Office expense or regarding what constituted a 'significant function'. Mr Thomson's claim was not supported by Mr Williamson, Ms Jackson or Mr Brown.
235. Mr Thomson has also submitted that members of National Executive were aware that the National Office paid for spousal travel and that such expenditure was 'not considered unreasonable' without providing any evidence from members of National Executive in support of these contentions.
236. I note that Mr Thomson has characterised the informal arrangement as an 'understanding' and has not sought to go so far as to suggest that it was a 'policy'.
237. I also note Mr Thomson's claim that the amount of spousal travel was 'minimal' and refer to the table at paragraph 541 of chapter 6 which sets out evidence before FWA of 14 separate occasions on which Mrs Thomson travelled at National Office expense between 21 February 2003 and 21 August 2007. I do not regard this as 'minimal', particularly having regard to the fact that on at least one occasion Mrs Thomson appears to have travelled, without Mr Thomson, on an airline ticket which had been purchased using National Office funds.
238. The fact that some members of National Executive may have been aware that some partners of National Executive members or National Office staff travelled at National Office expense and did not object to such expenditure (if it was so) is not to the point.
239. Sub-rule 32(j) required Mr Thomson to be responsible for the monies of the Union. The fact that some members of National Executive acquiesced in expenditure of National Office funds on spousal travel (if this did happen) did not discharge Mr Thomson's obligations under Sub-rule 32(j). It was incumbent upon Mr Thomson to ensure that a formal written policy regarding spousal travel existed and that such policy was authorised by National Council or National Executive. It was for National Executive, as a collective body, to then determine whether such a policy should be authorised, particularly given that such expenditure was not for the purpose of carrying out the objects of the Union or part of the general administration of the Union.
240. As set out at paragraph 108 above, the failure of previous National Secretaries to prepare and obtain approval for financial governance policies does not obviate the obligation that rested upon Mr Thomson once he became National Secretary. Obligations under the Rules are placed upon those who occupy offices from time to time.

241. As also set out at paragraph 109 above, while I agree that there was a collective responsibility upon members of National Executive to ratify policies regarding financial governance, as the full-time, paid officer of the Union who was given responsibility under Sub-rule 32(j) for the monies of the Union, it was incumbent upon Mr Thomson as National Secretary to prepare such policies and to present them to National Executive for ratification.
242. I consider that a reasonable person in the position of National Secretary would have ensured that appropriate policies and procedures were prepared in relation to the use of National Office funds to pay for travel and related expenses for partners of National Office officials and staff and would have sought and obtained the approval of National Council or National Executive in relation to such policies and procedures.

Findings 23 and 24 - Failure to prepare policies regarding spousal travel

23. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare a policy regarding the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff and to submit them to the National Council and National Executive for approval.
24. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to take steps to cause the National Office to have a policy regarding the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff and have any such policy approved by either National Council or National Executive.

Expending the funds of the HSU

Not supervising or authorising payments of expenditure from National Office funds on a daily basis

Evidence

243. The following information which is set out elsewhere in this report is also relevant to Finding 25 - Not supervising or authorising payments of expenditure from National Office funds on a daily basis, which is set out below at page 277:
- a. paragraphs 87 to 117 of chapter 2, which discuss practices surrounding 'day to day expenditure' by the National Office, including approval of such expenditure by Mr Thomson;

- b. paragraphs 82 to 83 and 114 to 120 of chapter 3, which discuss Mr Thomson's 'introductory' submissions regarding control of expenditure and my responses to those submissions;
- c. paragraphs 4 to 67 above of this chapter, which discuss the obligations of the National Secretary with respect to expenditure of the National Office; and
- d. paragraphs 378 to 403 below of this chapter, which discuss Mr Thomson's authorisation of expenditure by other staff of the National Office on their credit cards.

Mr Thomson's authorisation of expenditure on his own credit cards

244. When he was first appointed National Secretary in August 2002, Mr Thomson worked at the National Office in Melbourne. Ms Ungun was his personal assistant at that time until she left her employment with the HSU in October 2004. Ms Ord commenced in the position of National finance officer in February 2005. In this position, Ms Ord was responsible for processing credit card statements, which Ms Ungun had previously undertaken. Mr Thomson moved to Sydney in or about late 2005.

Mr Thomson's evidence

245. In the radio interview on 1 August 2011 Mr Thomson stated: '*[y]es, I authorised all credit card bills and there were a number of people who had cards.*' (PUB.005.0011 at 0015)
246. In reference to the time when he was working in Sydney, Mr Thomson gave evidence to FWA outlining the processes and procedures that he understood were followed in respect of the review and approval of credit card statements for payment, which is set out below. He stated that he did not personally review each credit card statement. That was undertaken by Ms Ord.¹²² Ms Ord would refer any questions about the status of expenses in a statement to Mr Thomson for instruction. Mr Thomson accepts that he was the person who approved credit card statements for payment (Thomson PN 538 - 539):

Can I make a general statement first about the credit cards and the way they operated, particularly when I was living on the Central Coast and operating either out of Sydney or the Central Coast, and we had the office in Melbourne. Everyone who had a card was given their statement, they had to supply either the receipts or explanations with receipts or - and, you know, in hindsight we may have been a little too generous.

There were occasions where people didn't have them but they had to be very small occasions. They married that up, they sent it down to Belinda, Belinda would then come back to me if there were questions or things that were done. I didn't see these, and I'm not saying that I didn't approve, I clearly did, and that's my position, but that was the process that occurred and it was the only way we could deal with the tyranny of distance of how we operated those things. So it wasn't sitting down in the same office going through those particular issues.

¹²² This is confirmed by Ms Ord. See her evidence at paragraph 382 below.

247. Mr Thomson stated that he authorised expenditure paid for by credit cards in a 'general sense'. He says that he provided guidance or instruction to staff about the parameters within which they were authorised to use credit cards issued to them. Credit cards were only to be used for expenses that related to the work of the HSU. If staff members were unsure about whether an expense was work related or not or if an expense was a large sum they were to speak with him about the matter (Thomson PN 1132 - 1141):

MR NASSIOS: In terms of the authorisation, again I believe you've answered the question, and I do apologise for asking again. How was the authorisation or approval of moneys that was spent on the cards, how was that all authorised?

MR THOMSON: Well, they spent it, I authorised it in the general sense, but it went, in a practical sense, to Belinda who checked them off and asked the questions.

MR NASSIOS: That happened similarly with your - - -

MR THOMSON: Yes.

MR RAWSON: Sorry, when you say you authorised it in a general sense, what did you actually do to authorise it?

MR THOMSON: Well, say that you needed to relate your expenses to work related issues, and if there was something you're unsure about, you should ask me.

MR RAWSON: So you had authorised it in the sense of having given them guidance or instruction about the parameters within which they were authorised to go out and use them?

MR THOMSON: That's right.

MR RAWSON: Not in an ex post facto sense.

MR THOMSON: No, and not in a specific issue. But we're a small office, relatively speaking. If there was a big expenditure issue that they were going to use, they have to come and talk to us, and particularly early on, you know, all the way through there wasn't a lot of money there.

248. In relation to his own credit card transactions, Mr Thomson said that he stored the receipts he received from a credit card merchant in two plastic sleeves. Each month he would send the receipts to Ms Ord in Melbourne, who was to match them up with the entries on his credit card statement. Alternatively, he would provide a voucher that explained what the expense related to. Mr Thomson did not provide memoranda for expenses on the credit cards (Thomson PN 1182 - 1193):

MR NASSIOS: Now, many of your CBA MasterCard statements that we have seen do not have receipts attached. Are you able to explain why that would be?

MR THOMSON: I have no idea why that's the case. As I said, Belinda was not inflexible, so if there was one or two that weren't there you'd write your explanation and so forth, but generally that's what happened. I used to have, which is probably, again, not the most efficient way,

but I had two big plastic sleeves - envelopes that I put my Diners and/or MasterCard in and send them down each month down to Melbourne for her to go through and look at and match them up.

MR NASSIOS: Would there have been any memo with the expenditure - any other documentation of that nature?

MR THOMSON: Not any more than we had - we had a voucher system. If you took it out and needed to explain what it was and then you - if you got receipts after that, you would - either the voucher would go, or if it was in - that very small percentage, the voucher would be the explanation, but almost entirely you would replace the voucher with details - receipts of what's actually happened, but there was no memos other than that. That was the way that we did it.

MR NASSIOS: Would you have ever seen what other people did with their credit card statements and receipts?

MR THOMSON: No. We said that you have to get them down to Melbourne to be - --

MR NASSIOS: But you never personally would have seen what it is they actually did?

MR THOMSON: Not in particular, no.

MR NASSIOS: Okay.

MR THOMSON: I'm trying to think if there was ever a - we did have an issue enough that was - I mean, we had an issue with Nurten that was raised about what she was using a card for at one stage, and that was subsequently resolved. Was it the best system? Obviously not, but as I said, we were coming then from a situation of there being nothing in place, nothing to do, no procedures - this not an area of my expertise.

MR NASSIOS: This voucher - just again because I'm not - I can't picture it. I'm not exactly sure what you're referring to when you talk about a voucher, so what would this voucher have been?

MR THOMSON: For example, say I took cash out of the ATM machine. I would say I've taken X amount out for this purpose. You would then have to try and reconcile that after the fact and presumably - and in, you know, most cases you would then have receipts that were there, but it was meant to try and catch it before and after the event rather than just after the event.

249. Mr Thomson acknowledges in submissions that were made on his behalf by Holding Redlich in their letter of 2 March 2012 (FWA.024.0002) that he did not personally verify transactions even on his own credit card statements but rather left it to Ms Ord to identify any anomalies. Holding Redlich has submitted, with respect to charges made to his credit cards in relation to escort services that 'Mr Thomson was unaware that the expenditure related to escort services as this was not explicit in the credit card statements and these were not raised with Mr Thomson by the National Finance Officer as anomalies on his credit card statement.'

250. In the radio interview Mr Thomson accepted that there are legitimate criticisms in terms of some of the processes and procedures of the HSU. (Thomson PUB.005.0011 at 0015)
251. In the same interview Mr Thomson stated that *there are a lot of things that are queried*. (Thomson PUB.005.0011 at 0013) Mr Thomson does not explain how or when matters were queried. The evidence obtained indicates that very few statements or items of expenditure were queried. No evidence has been obtained that any specific credit card transaction was reviewed by Mr Thomson. There is no evidence before FWA that suggests he did so.
252. Mr Thomson stated during the radio interview that he ordered an investigation and report into expenses when he was with the HSU concerning the expenses of another member. (PUB.005.0011 at 0014) However there is no evidence that he did so and he made no such claim when interviewed by FWA.
253. On 30 August 2011 FWA wrote to Mr Thomson to invite comment from him about a number of matters ([WIT.THO.006.0003](#)). One of those matters was his statement that he ordered an investigation and report into expenses when he was with the HSU concerning the expenses of another member. In particular, FWA invited Mr Thomson to provide the following information in relation to this 'complete review':
- a. the date on which Mr Thomson ordered such a review;
 - b. the person or persons to whom Mr Thomson ordered such a review;
 - c. whether his order was given orally or in writing;
 - d. the name of the person or persons who were ordered to conduct the review;
 - e. the date on which any such review concluded;
 - f. whether any such review made any findings or recommendations;
 - g. if so, what were the findings/recommendation?
254. On 13 September 2011 Mr Thomson responded by email ([WIT.THO.006.0001](#)) to FWA, stating:
- I refer to your letter of 30 August which asks for my response to a number of matters. I am aware that both the NSW Police and the Victorian Police are investigating matters that may overlap with your inquiry. In those circumstances I have been advised by my lawyers to decline the opportunity to respond to your specific questions.

Ms Ungun's evidence

255. Ms Ungun has given evidence that Mr Thomson authorised credit card transactions. (Ungun PN 73 - 88; 198 - 207)
256. Ms Ungun processed credit card statements from at least August 2002 until October 2004, when she left employment with the HSU. She has advised that on receipt of the statements she sent them to each staff member to review and explain the expenditure. The staff would provide relevant receipts or explain on the statement what it related to and they had to sign that '*It is a work related expense*' and sign the

statement. The staff members then returned their statement to Ms Ungun and Mr Thomson authorised them.

257. Details of expenditure were entered by Ms Ungun into an MYOB program on the HSU accounting system in accordance with the explanation provided on the statements for each expense. The National Executive and the Finance Committee were not involved in reviewing or approving credit card statements. Ms Ungun prepared profit and loss statements that she provided to Mr Thomson, which he would approve and provide to the Executive or the Finance Committee. The profit and loss statements recorded details of expenses in very broad terms.

258. Ms Ungun gave the following evidence:

MR NASSIOS: To your knowledge - I mean, with expenditure of the national office, can you recall how it used to be recorded? You know, what sort of authorisation processes there were?

MS UNGUN: Okay. With the accounts, it used to go to Craig first and he used to tell me if there isn't any paperwork or receipts for it then he used to tell me where it should go on the MYOB so that's how it really - yes, worked.

MS CARRUTHERS: Did you say if there were not receipts he would tell you where it would go in MYOB?

MS UNGUN: Yes, if there wasn't any documentation for it then he'll tell me where to put it, you know, work related expenses, which section to put it in MYOB.

MR NASSIOS: All right. Was that verbal? Was it written?

MS UNGUN: Verbal.

MR NASSIOS: Okay.

MS UNGUN: Yes.

MR NASSIOS: So it was not - you don't recall a situation where you would have got a memo of some description with a bill that would have come in?

MS UNGUN: No.

MR NASSIOS: All right. If you received a credit card statement what would happen in those circumstances?

MS UNGUN: Okay. The credit card statements will come in and they will be - I used to give it to the staff who has got the credit card and they used to go through them and put down - there used to be a section next to the - on the statement, there used to be a section of explanation of what they paid for and they used to explain that on the paperwork and then sign it, give it back to me, and then it used to go to Craig and Craig used to authorise the payment and I used to do the payment over the internet.

MR NASSIOS: All right, okay. Can I ask were there receipts with the paperwork that you would have got?

MS UNGUN: Mostly, yes, mostly. They had their receipts. If they didn't had it they will explain what it is and they had to sign it saying, 'It is a work-related expense.'

MR NASSIOS: All right. Can I ask who 'they' are in this instance? I'm not quite sure.

MS UNGUN: Karene Walton.

(Ungun PN 73 - 88)

.....

MR NASSIOS: All right. Now, in terms of the cash withdrawal, did you get any documentation of any description as to what that cash withdrawal was for?

MS UNGUN: No, no.

MR NASSIOS: So he would - I'm trying not to put words - - -

MS UNGUN: He would - - -

MR NASSIOS: - - - into your mouth.

MS UNGUN: No, he will tell me what to do and, you know, when he - well, you had received the statements. The statements, as I said before, would go to the staff first and they will have to explain where they spend the - each transaction, they need to explain it to me where they spend it so I can put it on MYOB and, yes, when it was Craig's statement he will tell me where to put it on MYOB and, you know, that's how it worked.

MR NASSIOS: All right. I need to just get absolute confirmation. Often that would have been a verbal instruction.

MS UNGUN: Yes.

MR NASSIOS: I'm putting that probably a bit higher than what I should put it but there was not a written memo.

MS UNGUN: No.

(Ungun PN 198 - 207)

.....

MR NASSIOS: All right. In terms of an approval process can you describe to me what you thought it was?

MS UNGUN: As I said before, the statement used to go to the staff and they will explain to us where they spent the money and it will come back to me and then I will take it to Craig. Craig will authorise it and then it will go onto MYOB.

MR NASSIOS: All right. You're not aware of any process that would have involved the national executive?

MS UNGUN: We used to give profit and loss statements to executive, yes, we used to do that.

(Ungun 212 - 215)

Ms Ord's Evidence

259. Ms Ord commenced in the position of National finance officer in February 2005. In this position, Ms Ord was responsible for processing credit card statements, which Ms Ungun had previously undertaken. Ms Ord states that the same processes applied to both Diners Club cards and CBA Mastercards. Credit card statements were handed to staff working in Melbourne or mailed to interstate staff. Staff attached supporting documents to the statement and returned them to her. On some occasions supporting documents were not attached or there would not be a receipt. Ms Ord would speak with the staff member about these expenses requesting provision of supporting documents or the item may be queried with the bank if there was an anomaly. Ms Ord states (Ord (1) PN 144 - 179):

MR NASSIOS: All right. Well, can I ask you, just on a different topic, in terms of Mr Thomson's Commonwealth Bank credit card, did you know of its existence.

MS ORD: Yes.

MR NASSIOS: All right. Did you process the payment of his monthly credit account statements?

MS ORD: If it was with all of his other ones I'd say so, yes.

.....

MR NASSIOS: It was? Okay. So expenditure on that credit card, you would have believed it was approved in some way?

MS ORD: Yes, it existed before I did.

MR NASSIOS: All right, but how were approvals of that expenditure, how did that take place? What actually happened?

MS ORD: I don't think it was any different to the other credit cards.

MR NASSIOS: So the statement came in?

MS ORD: Yes.

MR NASSIOS: You looked at it?

MS ORD: Well, I probably wouldn't have initially because I didn't hold the receipts. All the staff did their own. So whatever credit cards came in, whatever statements came in, were given to the staff in question and they attached all their stuff.

MR NASSIOS: All right. How did that all happen? I'm just curious in terms of - - -

MS ORD: Sometimes I'd - --

MR NASSIOS: - - - I'm Mr Thomson, I have a credit card.

MS ORD: Yes.

MR NASSIOS: The statement comes in. In terms of the process in the office, what occurred?

MS ORD: Okay, often the people, not just Craig but any of the people weren't in the same office.

- MR NASSIOS: Yes.
- MS ORD: So the statements would go in the mail to them, and then or they might be present in front of me because they're here for a meeting and then they would be given to them. Like, it wasn't - it might have changed depending on what occurred.
- MR NASSIOS: Yes.
- MS ORD: As in if there was an instance they're going to stand in front of me I'd be stupid to pop it in the mail, you would just give it to them. So whatever was convenient from that point of view, and then generally they were either mailed back or given back in person.
- MR NASSIOS: All right. Did anybody - - -
- MS ORD: With their - sorry. With whatever that was attached to them that was required.
- MR NASSIOS: Okay. Assuming there something wasn't attached, what happened?
- MS ORD: And that actually did occur on some occasions with some of the credit cards from time to time, and sometimes I would talk to staff and they'd have a look again and they'd find it, or we might query the bank if there was something that appeared to be an anomaly. And there was also some things that there was not receipts, for like, I can't remember what it was. I think it was on Mark Robinson's - it was one that was like Google Adwords or something, and it was some form on ongoing direct debit that they would have for advertising, so he wouldn't have a receipt for that naturally.

260. Ms Ord states that she was familiar with the A4 plastic sleeve Mr Thomson used to store credit card receipts. The credit card statements were addressed to the Melbourne office, which were mailed to Mr Thomson and he forwarded the receipts to Ms Ord. Mr Thomson provided the receipts to her as regularly as he could. If Mr Thomson was in Melbourne he delivered them to Ms Ord. Predominantly, Mr Thomson attached receipts to the statement (Ord (2) PN 93 - 109).
261. Mr Thomson followed the same processes and procedures that he applied to authorise credit card expenses of other staff members of the National Office in authorising his own expenditure (Ord (2) PN 79 - 146, Thomson PN 1132 - 1141).

The auditor's evidence

262. The auditor, Mr Dick, has also given evidence that he understood that Mr Thomson authorised credit card expenditure. (Dick PN 51)

Review of credit card expenditure

National Executive and National Council

263. There is no evidence that the National Council and the National Executive reviewed or approved specific items of expenditure transacted on credit cards. Members of the National Executive who have been interviewed have said that the National Executive did not do so.

264. Dr Kelly and Mr Brown state that the National Executive did not review expenditure paid on credit cards.
265. Dr Kelly states (Kelly PN 245 - 246):
- MR NASSIOS: Did the national executive ever review specific expenditures on union credit cards?
- DR KELLY: No.
266. Mr Brown states that the National Executive did not review credit card expenditures, and in particular expenses incurred by Mr Thomson (Brown PN 106).
267. Mr Brown said that when reviewing the banking records in 2008 he did not see any supporting documents, except for one cash withdrawal (Brown PN 93 - 94):
- MR NASSIOS: So there was no, shall we say, file notes or memos that would have gone to the purposes behind any particular items of expenditure.
- MR BROWN: Not that I was aware of, no, and I never really saw any. I think there was one note that sort of accompanied a cash withdrawal for, I think, somewhere between \$300 and \$500 and that was the only indication that there was any, I guess, explanation of expenditure but that was really just a note. It wasn't even receipts or invoices or anything else.
268. Mr Thomson gave evidence that items of expense were covered in budgets that were reviewed by the National Executive. He did not consider the mode of payment of expenses to be relevant. Mr Thomson stated that the National Executive approved budgets, which included items of expenditure. Dr Kelly asked questions, but they related to peripheral issues (Thomson PN 148 -151).
- MR NASSIOS: Yes, that's - yes. So I guess with the word 'approval' really in mind here, was the executive approving any other specific items of expenditure?
- MR THOMSON: The executive were approving the budget and all that that entailed in terms of its expenditure. The original budgets were done on - again, on a consensus basis. If there were to 'be substantial changes in the budgets, they would be raised as to why and where, but essentially once that first budget was spent - was set and approved, the concerns were about whether we exceeded those budgets or there were to be changes to them. There were - you know, Rosemary Kelly would ask questions all the time about particular issues, both at the finance committee meeting and at the executive. But they were small questions and they weren't to the heart of the expenditure because that had been dealt with by that process of the budget.
- MR NASSIOS: I specifically ask in terms of union credit cards, expenditure on those, were they ever reviewed by the national executive or national council?
- MR THOMSON: Well, they were - the expenditure of those was included in the budget accounts. It didn't matter how you spent the money, provided it appeared in the accounts that was there. So whether it's by cheque, which was always a more difficult arrangement given the federation style that we had, or credit card or cash payments, the

mode didn't make any difference and there had been credit cards previously as well because I had to cancel credit cards from the previous regime

Finance Committee

269. The establishment and role played by the Finance Committee is addressed elsewhere in this Report.¹²³
270. In relation to credit cards, the evidence indicates that the Committee did not review or have any knowledge of specific credit card transactions undertaken by HSU staff. For instance, see (Thomson PN 175 - 178).

Documentary evidence of expenditure

271. Ms Jackson states that initially Mr Dick could only find statements relating to Mr Thomson's CBA Mastercard back to June 2007. The HSU obtained copies of statements back to 2002 from the CBA (Jackson (1) PN 157):
- But we went back to find, to look for invoices for the cash withdrawals and we found some and I think they were in that box that I brought down here.
272. Ms Jackson states that extensive searches were made of files of the HSU but little was found in relation to the CBA account (Jackson (1) PN 160).
- So we spent a very long time with Slater & Gordon and BDO Kendalls bloke that came to Melbourne looking through all the files and then they even searched the Sydney office to see whether stuff had been up there but we couldn't find anything.
273. Specific items of expenditure that Mr Thomson charged to his credit cards are addressed elsewhere.¹²⁴
274. Many credit card statements have been obtained by FWA in respect of Mr Thomson's credit card accounts for the period from November 2002 to February 2008. Very few receipts have been obtained.
275. The National Office provided the AIR with schedules that had been prepared by the National Office, and which they had augmented with material identified by BDO Kendalls during their investigation, detailing expenditure on Mr Thomson's CBA Mastercard from 8 November 2002 to 21 August 2007 ([HSUNO.018.0025](#)), which was provided to the AIR by Ms Jackson under cover of a letter dated 22 May 2009 (HSUNO.019.0134). Those schedules showed that Mr Thomson had incurred a total of \$48,850.15 on his CBA Mastercard during this period.
276. The National Office also provided to the AIR in the same correspondence schedules detailing expenditure on Mr Thomson's Diners Club card from 9 November 2002 to 20 November 2007 ([HSUNO.018.0025](#)) totalling \$55,440.15.
277. A list of certain expenses incurred that were charged to a credit card but where no vouchers were produced are described in document HSUNO.018.0015.

¹²³ See the discussion under the heading 'Are the particular delegations permitted?' on page 165.

¹²⁴ See, in particular, the discussion in chapter 6.

Mr Thomson's submissions

278. With respect to finding 25, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(n) of the Rules. The National Secretary is under no obligation under Sub-rule 32(n) to supervise or approve payment of expenditure on a daily business (sic).
 - b. Mr Thomson, as National Secretary, established processes in respect of the payment of accounts and followed the processes. Mr Thomson had delegated the responsibility of checking invoices to Ms Ord, the National Finance Officer. As submitted above at paragraphs 392.a to 392.f and at paragraph 393.a below of this chapter, it was the responsibility of Ms Ord to raise issues with Mr Thomson as and when they arose.
 - c. However, where expenditure was within the budget and was not raised by Ms Ord Mr Thomson was entitled to rely on this in approving payment. The National Secretary is not required to supervise and authorise every individual payment of expenditure from the National Office.

Conclusions

279. Mr Thomson has submitted that, where expenditure was 'within the budget', he was not required to supervise or authorise individual payments. For the reasons set out at paragraph 154 to 156 above of this chapter, I do not accept the argument that expenditure is 'approved' simply because it has been included in the budget. Approval of a forecast budget and the authorisation of individual items of actual expenditure are separate processes.
280. Mr Thomson has also submitted that he had delegated responsibility for checking invoices to Ms Ord and that it was therefore her responsibility to 'raise issues' regarding expenditure 'as and when they arose'. I reject this submission. In conducting and controlling the business of the Union under Sub-rule 32(n), Mr Thomson, as National Secretary, was required to supervise payments made from National Office funds. This is not to say that Mr Thomson was required to personally pay each invoice but he was required to establish processes whereby he regularly reviewed all invoices that were awaiting payment using National Office funds and to give instructions to Ms Ungun or Ms Ord regarding whether such payments should be made.
281. The evidence which is set out above (including the matters that are referred to in paragraph 243 above) regarding the day to day processes surrounding authorisation by the National Secretary of expenditure indicates that the process was one of 'authorisation by exception'. That is, Mr Thomson would only scrutinise and/or authorise payment of particular invoices when specifically asked to do so by Ms Ord or when he had concerns regarding the cash flow of the National Office and it was necessary to prioritise the payment of some invoices over others. Given the HSU was a federation and the branches expended the vast bulk of funds, it was not an

onerous task for Mr Thomson to have exercised a process which was not authorisation by exception.

Finding 25 - Not supervising or authorising payments of expenditure from National Office funds on a daily basis

25. Mr Thomson contravened Sub-rule 32(n) by failing to conduct and control the business of the HSU between meetings of National Executive by failing to supervise or approve payment of expenditure from National Office funds on a daily basis.

The administration of credit cards

Use of credit cards to withdraw cash

Evidence

Cash withdrawals transacted on credit cards

282. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 26 to 28 - Use of credit cards to withdraw cash, which are set out on page 289 below.

Value of cash withdrawals made and refunds claimed

283. Documentary evidence obtained by FWA indicates that Mr Thomson made cash withdrawals on his CBA Mastercard while National Secretary totalling in or about the sum of \$103,338.70.
284. Details of the specific withdrawals are set out in Annexure A.
285. The total annual value of the cash withdrawals made in each year between 2002 to 2007 drawn on Mr Thomson's CBA Mastercard as set out Annexure A is as follows:

Year	<i>Total value of cash withdrawals on Mr Thomson's CBA Mastercard</i>
2002 [approx 4 months]	\$901.25
2003	\$9,603.15
2004	\$21,290.07
2005	\$21,094.25
2006	\$28,985.00
2007	\$21,465.00
Total	\$103,338.70

286. A total of 24 Memoranda dated between 28 April 2005 and 29 May 2006 has been provided by the HSU to FWA regarding amounts claimed by Mr Thomson as a

'business expense'. Twenty two of these memoranda ('**the memoranda**') (which I have considered in more detail in my conclusions regarding cash withdrawals at paragraphs 320 and 321 below) relate to expenses stated to be incurred by Mr Thomson. Extract details of the 22 memoranda with the date, location, a description of the function and amount claimed in Mr Thomson's name are set out in Annexure B.

Why were cash withdrawals necessary?

287. Mr Thomson stated that it was important that he make cash withdrawals because there were a number of situations where it was more convenient to pay with cash:

MR NASSIOS: Is there a particular reason that you felt it was important for you to be able to make cash withdrawals?

MR THOMSON: There were a number of situations where it was more convenient to have cash to pay and reconcile it later, particularly with some people that you were having dinner or meeting with. It was a better thing. There were also some groups - and, you know, this is an example but it's not atypical - obviously - but at one of our conferences the Aboriginal group who did the welcome to country - you could only pay cash. There was no other way of doing it. Now, I don't put that up as being typical but that's how it kind of went, and we sort of, I mean, got into the - maybe "habit" is not the right word, but there was no issue as to - it didn't matter how the expenditure took place.

(PN 1202 - 1203)

...

MR NASSIOS: I have to ask, in terms of a restaurant, why would you not have used your credit card to pay your bill [instead of withdrawing cash]?

MR THOMSON: It was just sometimes more convenient for who and where you were meeting and who you were meeting with to pay in cash.

MR NASSIOS: I'm not sure quite what you mean by "more convenient".

MR THOMSON: If I was travelling down to Melbourne, you could take the money out at the start, you would be there for a couple of days, you'd spend the money, you'd give the receipts back and it would be done, rather than take the card out five or six times on a trip while you were away.

(PN 1231 - 1234)

Authorisation of cash withdrawal transactions

288. Mr Thomson stated that the same procedures applied to processing payment of cash withdrawals as that followed in relation to other credit card expenditure (Thomson PN 1205 - 1206):

MR NASSIOS: In terms of the authorisation of those withdrawals, there was no different practice to what it would have been with using the credit card with a purchase.

MR THOMSON: That's right, yes.

289. Mr Thomson gave evidence to FWA that there was cash left over on 50% of those occasions in which he had made a cash withdrawal. Mr Thomson said that he delivered the surplus cash to Ms Ord with receipts and vouchers for a complete reconciliation. Mr Thomson said that he did not know whether details of the cash withdrawal and expenditure were entered into MYOB (Thomson PN 1258 - 1277):

MR RAWSON: Obviously most restaurants - you could have paid by credit card. One of the obvious difficulties with the way you're doing it is that you need to estimate, when you withdraw the cash, how much you need.

MR THOMSON: Yes.

MR RAWSON: I don't know how you did that.

MR THOMSON: There should be cash going back as well. There was a complete reconciliation.

MR RAWSON: That was the next thing I was going to ask.

MR THOMSON: Yes.

MR RAWSON: Why isn't there - - -

MR THOMSON: But there is.

MR RAWSON: At least on 50 per cent of the occasions there's cash going back?

MR THOMSON: Yes, that's right.

MR RAWSON: On the other 50 per cent there should be almost a supplementary claim.

MR THOMSON: Probably I would - there was - I don't remember many occasions of claiming more but there was, you know - most occasions there was money going back.

MS CARRUTHERS: How did it go back?

MR THOMSON: It would go back to Belinda with the receipts and so forth, and they would bank it back into the - make the payment back in.

MS CARRUTHERS: Do you know how she would expense that in MYOB?

MR THOMSON: No idea.

MS CARRUTHERS: But it would presumably have been expensed in MYOB, because otherwise she couldn't have put it into your accounts.

MR THOMSON: No idea.

MR RAWSON: Your best guess is that probably in over half of the cases where you withdrew cash, there would have been some cash that went back to Belinda with the vouchers and the receipts.

MR THOMSON: Yes. I think I actually said that to the BDO as well, too, in their report, from what they told me I said.

Ms Ord's evidence

290. Ms Ord has advised that she did not receive cash from Mr Thomson or bank cash. Mr Thomson did not attach pre-vouchers and post-vouchers to statements or return cash to her (Ord PN (2) 137 - 166):

MR NASSIOS: Can I ask whether Mr Thomson ever attached cash to any of the statements?

MS ORD: Cash?

MR NASSIOS: Yes.

MS ORD: No, I don't think so.

MR NASSIOS: If, for example, he withdrew money and, you know, withdrew \$200 and the expenditure was \$100, what happened to that \$100?

MS ORD: I don't know.

MR NASSIOS: It never came back to you?

MS ORD: Not that I'm aware of; not that I can recall.

MR NASSIOS: Any other way - did you ever get cash back from Mr Thomson?

MS ORD: I don't - no, look, I don't think so.

.....

MR NASSIOS: That's okay. I think basically you have answered the question. I just really wanted to make certain that that was the case and I think, as I say, you have answered the question. Could I go back to the cash payments because I have to say to you Mr Thomson has told us that he returned cash to you in circumstances where the withdrawals were greater than the expenditure. Now, if you have got a voucher that suggested, as I said before, that \$200 had been taken out but the receipts only totalled \$100, (1) can you recall such an occasion and (2) what would you have done?

MS ORD: If there ever was such an occasion, then the cash would've been banked. I can't recall that there was. I'm not saying that there wasn't but I can't recall that there was.

MR NASSIOS: All right. By 'banked', do you think anyone else would have done that?

MS ORD: No.

MR NASSIOS: Do you think he would have done that?

MS ORD: That's possible.

MR NASSIOS: All right, but you certainly have not done that.

MS ORD: If you go back through the bank records and see if there's any cash banked because we wouldn't really get cash from any other source -
--

MR NASSIOS: Right.

MS ORD: So if you go back and see if there's any cash banked - it's quite possible that there may have been a one-off occasion of that. I can't recall it, to be honest. If you showed me in my writing that I banked cash, then I'd say, 'Well, yeah, I must have.' I can't recall it happening on a regular basis at all because then I certainly would know of it, you know, it would trigger something, but I don't know.

MR NASSIOS: You certainly wouldn't have made any - that being the case, you wouldn't have made any particular entering of transactions in MYOB to reflect that.

MS ORD: If there was cash banked, I would've had to have, otherwise I couldn't have done a bank reconciliation.

291. Ms Ord states that she could not see any reason why a dinner expense could not be paid by credit card (Ord (1) PN 346 - 349):

MR NASSIOS: All right. Can I ask in terms of why there would have been so many cash withdrawals? I mean, is that a usual type of way to do business?

MS ORD: I don't know, I don't usually do business for the HSU. I don't know what their practices are or how they come about, or who makes them up.

MR NASSIOS: For example, if it was a dinner expense why wouldn't he have just paid with a credit card?

MS ORD: I don't know. It's a good question. I don't know.

292. Ms Ord has said that in her experience where a cash withdrawal occurred there was normally a memo attached stating what the transaction related to. If a memo was not provided she would ask the staff member for one. There were occasions where no receipt or memo was provided (Ord (1) PN 180 - 189) (See also (Ord (2) PN 124 - 130)):

MR NASSIOS: All right. In terms of cash withdrawals from the card, what - how were they processed and what did you look at in terms of those cash withdrawals?

MS ORD: Sure. Normally they would have been a memo attached as to what that might have related to and signed off by the staff member or members involved depending on whose card it was.

MR NASSIOS: All right. Again, on the assumption that there may have been some that didn't have a memo, what would occur?

MS ORD: Then I guess you would just ask for one like you did with anything that had a missing receipt.

MR NASSIOS: Do you believe that happened all the time?

MS ORD: I think sometimes some of the statements were really late in coming back to me or held up in the mail. Some of them never came back to me and I'd have to follow them up and get another copy from the bank and staff would have to re do whatever it was because, you know. That was irregular, but it did occur, sure. And I also think that

the follow up on some of those things was - required a fair amount of follow-up on things.

MR NASSIOS: Are you able to say that even after follow-up there won't ever have been an occasion on which a payment has been made in which either a memo, receipt or some other documentary evidence wasn't - -

MS ORD: I would have to say it's quite possible that that's occurred over time, sure given just the vast number of them I would say.

MR NASSIOS: But you don't believe that there was any sort, you know, consistency in that? It wasn't a regular occurrence in which that happened?

MS ORD: To me it didn't occur to be purposeful.

293. Ms Ord states that there would be a memo provided to her for each cash withdrawal recording details of '*what it has been used for.*' (Ord (1) PN 328). The following exchange then occurred (Ord (1) PN 338 - 339):

MR NASSIOS: Now the detail you're suggesting may very well have been dinner expenses or meeting expenses. Would there have been any further detail or was that pretty much it?

MS ORD: I dare say it would have had who was in attendance as well, or if it wasn't the individuals who were in attendance, who the business was or who the company was, or who the company sitting down to have dinner, whether it was a company based thing or, you know, there would have been some kind of detail around the outside of it.

294. Meetings could be with non HSU members, for example a hospital administrator (Ord (1) PN 340 - 341).

295. There could be a number of memoranda attached to a single statement. In relation to the contents of memoranda, Ms Ord states that it could include details of matters discussed:

MS ORD: As to what it would have been - they may have even had on some of them what was discussed and what wasn't.

(Ord (1) PN 343)

...

MS CARRUTHERS: No, but in that instance, he wouldn't provide any further documentation to verify that it was in fact a restaurant?

MS ORD: As long as - sometimes there would be, you know, other stuff stapled to the memo, and he wouldn't actually give me just one memo for that one item, it would be the whole lot given with the credit card statement. Do you know what I mean? It's not like I'd be given one thing. The whole lot would come in with the statement. So sometimes there would be other stuff attached to them, but I don't think it was every time.

(Ord (1) PN 354-355)

296. Where receipts were provided, Ms Ord states, they would be attached with the credit card statement. '*There would also quite often be a memo attached with the date and*

what the function or what the issue or whatever it was used for may have been.'
(Ord (2) PN 111) Receipts and memos would be attached as one (Ord (2) PN 116). A memo was a typed document and it was standard practice to be included if there was not a receipt stating what the expense was for. (Ord (2) PN 111 - 122)

Ms Ungun's evidence

297. Ms Ungun states that Mr Thomson made cash withdrawals, which she recorded on MYOB in accordance with his verbal instructions to her. Mr Thomson did not provide supporting documentation to Ms Ungun in relation to cash withdrawals that he had made.

MR NASSIOS: Do you know of any process that was in place as to when you would make a cash withdrawal rather than potentially using the credit card itself?

MS UNGUN: We weren't allowed to use it as a cash withdrawal but the ones that spent on Craig's card, he has been telling me where to put it on MYOB so that's how it worked, yes.

(Ungun PN 186 - 187)

.....

MS UNGUN: No, he will tell me what to do and, you know, when he - well, you had received the statements. The statements, as I said before, would go to the staff first and they will have to explain where they spend the - each transaction, they need to explain it to me where they spend it so I can put it on MYOB and, yes, when it was Craig's statement he will tell me where to put it on MYOB and, you know, that's how it worked.

MR NASSIOS: All right. I need to just get absolute confirmation. Often that would have been a verbal instruction.

MS UNGUN: Yes.

(Ungun PN 203 - 205)

....

MR NASSIOS: All right. Now, in terms of the cash withdrawal, did you get any documentation of any description as to what that cash withdrawal was for?

MS UNGUN: No, no.

(Ungun PN 198 - 199)

Evidence of officers of the National Executive

298. Mr Brown told FWA that he was shocked to learn that cash withdrawals were possible on a credit card. He did not consider such a situation to constitute good financial governance (Brown PN 147 - 148):

MR NASSIOS: Did the National office have any policies dealing with the use of union cards and cash withdrawals at the time?

MR BROWN: No. Well, not to my knowledge, but no, but it did - it shocked me that we had credit cards that we allowed - or that, you know, that there

was a cash withdrawal facility on it. It just didn't, you know, make good financial governance sense and I was fairly stunned when I found that staff could - or a staff member anyway or the national secretary, could withdraw cash on the union's credit card.

299. Ms Jackson states in relation to paragraph 41 of the BDO Kendall report and Mr Thomson's processes, paragraphs (a) to (g) were 'pretty much in line' with how things were done except for paragraph (f). The fact that cash withdrawals had been occurring was a surprise to her and was not what she expected (Jackson PN 64 - 66):

To some extent but not in relation to the cash withdrawals. My understanding is and when I say my understanding, my expectation is that no branch of the union, not of the HSU but in any union of this nation or anywhere else, has cash withdrawals. So the cash withdrawals here is a surprise but as far as how you to get from (a) to (g) on this document you're showing me is pretty much in line with how things are done except for (f) where it says:...

300. Ms Jackson states that she personally did not review specific expenditure or card statements. When asked whether any one from the National Executive looked at the statements, she said: '*I don't think so but I don't know. I didn't.*' (Jackson (1) PN 67 - 72)
301. Ms Jackson's evidence about cash withdrawals is set out at paragraphs 118 to 120.
302. Dr Kelly has said that she did not know about the existence of CBA Mastercards. She also says that cash withdrawals had not been approved (Kelly PN 349 - 354):

MR NASSIOS: In terms of the CBA credit card, did you know about the existence of this account prior the executive order?

DR KELLY: No.

MR NASSIOS: Was it ever the subject of discussion report before the finance committee?

DR KELLY: No.

MR NASSIOS: The ATM cash withdrawal in terms of the CBA card account, did you understand that expenditure of that type had been approved?

DR KELLY: No, not at all. I don't even regard it as expenditure, really. Yes, anyway,no.

303. Dr Kelly states that the existence of the CBA card and the cash withdrawals totalling \$100,000 was a complete surprise to her. (Kelly PN 63)
304. Dr Kelly states that she was not aware that Mr Thomson was away overseas in May 2004 and did not regard credit card cash withdrawals overseas as legitimate expenditure (Kelly PN 528 - 531):

MR RAWSON: Could this have been legitimate expenditure of the national office?

DR KELLY: In my opinion, no. I didn't know he was there, gone. No, it was never taken to national executive or national finance committee, no..

305. Dr Kelly states that Mr Thomson did not seek approval of cash withdrawals in the 6 week period prior to the November 2007 election (12 October to 24 November

2007) by the National Executive or the finance committee. Dr Kelly did not believe it to be legitimate expenditure of National Office. (Kelly PN 551 - 556)

306. Ms Knight states she was not aware that cash withdrawals using the CBA Mastercard were occurring. She was also unaware of any policy of either the National Executive or the finance committee in relation to cash withdrawals from ATMs (Knight PN 169 - 174):

MR NASSIOS: Can I specifically ask you about the CBA credit card. Were you aware of that credit card existing at any time?

MS KNIGHT: A credit card?

MR NASSIOS: Yes. The Commonwealth Bank. There was a - well, the auditor identified that there were ATM, automatic teller machine cash withdrawals using that card. Were you aware of that occurring?

MS KNIGHT: No.

MR NASSIOS: Was there any policy that either the national executive or the finance committee had in relation to cash withdrawals from an ATM?

MS KNIGHT: Not that I'm aware of.

307. Mr Williamson states he has no idea why CBA Mastercards were issued to Mr Thomson, Mr McLeay, Ms Walton and Mr Robinson with ability to draw cash advances. He cannot recall whether it was approved by the National Executive. He doesn't know what the purpose of giving the cards were. Mr Thomson's frequent withdrawals were not disclosed to the National Executive. Mr Williamson became aware of the matter via the BDO Kendalls report. (Williamson PN 445 - 459)

Auditor's evidence

308. When auditing the HSU's financial accounts, Mr Dick states he had not seen supporting documentation for cash withdrawals. In his opinion, unless cash withdrawals were approved there had been a breach of the RAO Schedule/Reporting Guidelines. He has observed that '*.. it's a funny way of doing business, isn't it, using cash.*' (Dick PN 121)

309. Mr Dick states that he did not consider it to be his role to check credit card statements to verify each expenditure and cash withdrawal (Dick PN 150):

... I didn't think it was up to me to go and check that every credit card bill or every bill coming through was cash. I'd be checking the fact there was a bit of paper there but not going the next step and it depends.

310. In relation to the preparation of the 2007/08 financial statements, Mr Dick states that he had not gone back to take account of subsequent events in relation to cash withdrawals (Dick PN 170 - 171):

Well, the only events that have occurred that are relevant to these cash withdrawals about 25 grand a year, well, they're not material anyway. Even if they were, if they were fraudulent withdrawals they don't really matter much in the whole scheme of 25 grand a year and if they weren't fraudulent, well, they've been correctly treated. You know, so on those the only ones I'd been thinking which haven't been lodged anyway and haven't been, as it turns out, haven't been signed, would be the 2007 ones where there were

another \$25,000 worth of cash transactions which I don't know whether they've been treated correctly or not which still wouldn't be material and these donations which haven't been disclosed and those donations should be disclosed, or the political thing should be disclosed. So the financials I prepared for 2007 didn't take this into account and so if I could go back and change them I'd have to change them.

311. Mr Dick states that he was not aware of any approvals of ATM cash withdrawals on the CBA card account. He had not sighted any documents and had not been aware that such a credit card existed. (Dick PN 228 - 229)

Mr Thomson's submissions

312. With respect to finding 26, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules. There were no policies regarding cash withdrawals and it was not the requirement of the National Secretary to implement such procedures.
 - b. He did not require the authority of the National Council or National Executive to withdraw cash from a National Office account prior to doing so as he was withdrawing cash for work related expenses, which were accounted for and reconciled later, in the same way as purchases made on credit cards.
 - c. Withdrawing cash was administratively convenient.
 - d. The National Executive and the National Council did not formulate policies in relation to the use of credit cards by staff to make cash withdrawals. As there were no policies regarding cash withdrawals, Mr Thomson did not use his credit card in a manner which was contrary to those policies.
313. With respect to finding 27, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. Mr Thomson did not require the authority of the National Council or National Executive to withdraw cash from a National Office account prior to doing so as he was withdrawing the cash for work related expenses, which were accounted for and reconciled later. Cash withdrawals were properly documented.
 - b. A reasonable person in the position of National Secretary may have withdrawn cash from a National Office account without the authority of National Council or National Executive if the withdrawals were made in relation to future expenses which were reasonably incidental to the administration of the HSU.
314. With respect to finding 28, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 286(1) of the RAO Schedule. Mr Thomson has exercised his powers and discharged duties in good faith for what he believed to be in the best interest of the HSU, and for a proper purpose.
 - b. The National Executive members and National Council were aware of Mr Thomson's ability to make cash withdrawals. An example of this was at the

“Welcome to Country” at Brighton Le Sands where cash was the only method of payment available to the HSU.

- c. Further Ms Ungun, as discussed in her interview with FWA (see paragraph 297 above at page on page 283), indicates that the cash withdrawals were appropriately accounted for and imported into MYOB. Further records for cash withdrawals were retained. This was corroborated by Ms Ord’s interview. See paragraph 144 on page 849 in chapter 9.
- d. It was not the responsibility of the National Secretary to prepare policies regarding cash withdrawals. Had the National Executive been concerned with Mr Thomson’s ability to make cash withdrawals it would have, no doubt, discussed and prepared a policy.

Conclusions

315. As set out above under the heading ‘Failing to prepare policies regarding cash withdrawals’ on page 245, the National Office did not have any policies regarding cash withdrawals using National Office credit cards.
316. Mr Thomson used his CBA Mastercard to withdraw \$103,338.70 in cash over a period of just over five years.
317. Mr Thomson has submitted that he was not required, as National Secretary, to implement a policy regarding cash withdrawals. However, I have found at Findings 15 and 16 - Failing to prepare policies regarding cash withdrawals on page 254 that, in failing to develop such a policy and in failing to have such a policy authorised by National Council or National Executive, Mr Thomson has contravened Sub-rule 32(j) of the Rules and subsection 285(1) of the RAO Schedule.
318. Mr Thomson has also submitted that, in the absence of any policy which had been formulated by National Council or National Executive regarding cash withdrawals, his use of a credit card to make cash withdrawals could not be contrary to policy. I have found that it was Mr Thomson’s own failure to develop and seek authorisation of a policy regarding cash withdrawals.
319. Mr Thomson has submitted that he did not require the authority of National Council or National Executive to make cash withdrawals from a National Office account prior to doing so as he was withdrawing cash for work related expenses.
320. The memoranda (see paragraph 286 above of this chapter) are the only documents before FWA which evidence the purposes for which Mr Thomson claims that he used cash which he had withdrawn on his CBA Mastercard. The purposes which are identified in the memoranda primarily relate to functions attended concerning HSU meetings, dinner functions, staff functions or political functions. The value of expenditure by Mr Thomson which is the subject of the memoranda totals \$8,490.
321. I have examined each of the memoranda set out in Annexure B. Almost without exception, there is a paucity of detail such that it is not possible to determine the purpose(s) for which the cash was expended. The one memorandum which may contain sufficient detail concerns withdrawal of \$500 cash on 15 May 2006 which the memorandum states related to the National Executive in Melbourne at which 20

“delegates” were present. On the face of this memorandum there is no explanation of why \$500 was spent for 20 delegates at a National Executive meeting, although it may be reasonable to conclude that a light meal or some refreshments were provided for the 20 persons. In contrast, by way of example, the memorandum dated 7 May 2005 indicates that \$770 was withdrawn in cash for a ‘dinner function’ in Sydney which was attended by the National Secretary alone. Similarly, the National Secretary was the only person named in the memorandum as having attended a dinner function for which \$200 was withdrawn on 10 May 2005 on the Central Coast. On 5 May 2006 six persons attended a lunch located at ‘CC’ [Central Coast] at a cost of \$300.

322. Given the paucity of detail in the memoranda, I am not satisfied that the cash withdrawn on each of the 22 occasions described in the memoranda was expended for ‘work related purposes’. Even if I was so satisfied, however, that would not be sufficient to establish that Mr Thomson was empowered by the Rules to approve the expenditure simply because it was ‘work related’. The authority of the National Secretary to authorise expenditure does not depend upon whether the expenditure was ‘work related’.¹²⁵ Rather, the National Secretary only has authority to authorise expenditure which is on the general administration of the Union or for the purposes reasonably incidental to the general administration of the Union. For all expenditure which is not on the general administration of the HSU, the National Secretary must seek prior authority of National Council or National Executive (see paragraphs 14 to 26 of this chapter above on pages 210 and 211).
323. Further, I have no evidence before me regarding the purposes for which cash was expended for the occasions regarding which I do not have memoranda before me.
324. I am not satisfied that the cash which was withdrawn by Mr Thomson on his CBA mastercard was expended on each and every occasion on the general administration of the Union or for a purpose reasonably incidental thereto. The evidence includes the memoranda which have been provided to FWA and the evidence given by Mr Thomson about why he would withdraw cash (set out at paragraph 287 of this chapter). I consider that the likely explanation is that Mr Thomson considered he was entitled to withdraw cash whenever he expected to meet at a meal time with another union official or union member, or with other persons he would come into contact with in the course of his duties, and use that cash to pay for meals and drinks consumed with such persons. For the reasons set out at paragraphs 1097 to 1111 below of this chapter, I do not consider that such expenditure was on the general administration of the Union or for a purpose reasonably incidental thereto.
325. I reject Mr Thomson’s submission that National Executive members and National Council were aware of his ability to make cash withdrawals. It is clear from the evidence of National Executive members that none of Mr Brown, Ms Jackson, Dr Kelly, Ms Knight or Mr Williamson were aware that Mr Thomson had used his CBA Mastercard to make cash withdrawals. It is also apparent that, once they became aware, members of National Executive did not consider that cash withdrawals were

¹²⁵ For a discussion of expenditure that is ‘work related’, but not necessarily part of the general administration of the Union, see paragraphs 59 to 69 of chapter 2, and especially the example of engagement of a third party mediator. See also paragraphs 1097 to 1111 below of this chapter.

appropriate or that such a practice would ever have been approved by National Executive. Mr Brown stated that he was 'shocked' and 'fairly stunned' when he learnt that staff could make cash withdrawals on credit cards (see paragraph 298 above). Ms Jackson stated that she was 'surprised' and that her expectation was that 'no union of this nation or anywhere else, has cash withdrawals' (see paragraph 299 above). Similarly, Dr Kelly stated that use of a National Office credit card for cash withdrawals was a complete surprise to her (see paragraph 303 above).

326. Mr Thomson has also submitted that cash withdrawals were 'accounted for and reconciled later'. For the reasons set out at paragraphs 157 to 162 of this chapter, I am not persuaded by this argument.
327. Recognising the risks inherent in permitting cash withdrawals, as evidenced by Mr Thomson's instructions to other staff that they were not permitted to make cash withdrawals, a reasonable person in Mr Thomson's position as National Secretary would not have withdrawn cash from a National Office account without obtaining the authority of National Council or National Executive to do so.
328. The best interests of the HSU required that either the National Council or National Executive was given an opportunity to set parameters around what was appropriate use by Mr Thomson of his credit cards, before Mr Thomson used those credit cards to make cash withdrawals. In all of the circumstances, I do not consider that Mr Thomson could have reasonably considered otherwise.

Findings 26 to 28 - Use of credit cards to withdraw cash

- 26.** Mr Thomson breached Sub-rule 36(b) by using his CBA Mastercard to make cash withdrawals in circumstances where neither National Council nor National Executive had authorised any policies or procedures in relation to the use of credit cards to make cash withdrawals, and had not otherwise authorised Mr Thomson to use his CBA Mastercard to make cash withdrawals.
- 27.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to obtain the authority of National Council or National Executive to withdraw cash from a National Office account prior to doing so.
- 28.** Mr Thomson contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by withdrawing cash from a National Office account without obtaining the authority of National Council or National Executive to do so.

Expenditure incurred on Mr Thomson's credit cards for his benefit after the resignation date

Evidence

329. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 29 to 32 - expenditure incurred on Mr Thomson's credit cards for his benefit after the resignation date, which is set out below at on page 297.

Mr Thomson's expenditure on credit cards after his resignation

330. Mr Thomson resigned from the position of National Secretary effective on 14 December 2007 ('the resignation date'). ([HSUNO.025.0012](#))
331. Credit card statements provided by the National Office disclose the following expenditure that appears to have been incurred by Mr Thomson on either his Diners Club card or his CBA Mastercard after the resignation date (or incurred prior to the resignation date, but in relation to services obtained after the resignation date).

Item	Date of expenditure	Amount	Card	Description of expenditure on card
1	13 December 2007	\$330	Diners Club statement 20 December 2007 HSUNO.005.0229	Qantas Holidays Dom P/N Thomson/Craig Mr TKT: Not supplied R/N Not Supplied DATE TRAVEL: 15/12/07 REF: 734790 ABN 24003836459
2	16 December 2007	\$40	Diners Club statement 20 December 2007 HSUNO.005.0229	HILTON SYDNEY ABN 33008419485
3	17 December 2007	\$58.39	Diners Club statement 20 December 2007 HSUNO.005.0229	COLES EXPRESS 1533 ABN 78104811216
4	19 December 2007	\$71.11	Diners Club statement 20 December 2007 HSUNO.005.0229	COLES EXPRESS 1533 ABN 78104811216
5	19 December 2007	\$199	Diners Club statement 20 January 2008 HSUNO.005.0236	QANTAS HOLIDAYS DOM P/N: THOMSON/CRAIG MR TKT: Not Supplied R/N: Not Supplied DATE TRAVEL: 20/12/07 REF:735390 ABN 24003836459

Chapter 5 - Financial Management of the National Office
 Expenditure incurred on Mr Thomson's credit cards for his benefit after the resignation date

Item	Date of expenditure	Amount	Card	Description of expenditure on card
6	20 December 2007	\$550	Diners Club statement 20 January 2008 HSUNO.005.0236	** FORTY ONE RESTAURANT ABN 43098900067
7	21 December 2007	\$31.03	Diners Club statement 20 January 2008 HSUNO.005.0236	CABCHARGE & SERVICE FEE Total Fare incl. GST \$27.95 Service Fee incl. GST \$3.08 HOTEL to AIRPORT Driver ID ABN 83002260605 Ref No 07122102-2565
8	22 December 2007	\$65	Diners Club statement 20 January 2008 HSUNO.005.0236	WILSON PARKING SYD078 ABN 67052475911
9	26 December 2007	\$494.62	Diners Club statement 20 January 2008 HSUNO.005.0236	AVIS RENT A CAR MASCOT Hirer: THOMSON, CRAIG Pickup: ADELAIDE APO 21/12/07 Dropoff: ADELAIDE APO 26/12/07 Days Rented 5.00 KMs Driven: 0145 Car Type: C Agreement No 226224375
10	31 December 2007	\$28	Diners Club statement 20 January 2008 HSUNO.005.0236	FAIRFAX NEWSPAPER SUBS ABN 33003357720
11	4 January 2008	\$59.95	CBA Mastercard statement 24 January 2008 HSUNO.001.0133	CNTRL CST INTERNET BERKELY VALEAU
12	28 January 2007	\$28	Diners Club statement 20 February 2008 HSUNO.012.0344	FAIRFAX NEWSPAPER SUBS ABN 33003357720
13	8 February 2007	\$59.95	CBA Mastercard Statement 25 February 2008 HSUNO.001.0003	CNTRL CST INTERNET BERKELY VALEAU
14	9 February 2008	\$142	Diners Club statement 20 February 2008 HSUNO.012.0344	VALET PARKING SYDNEY AIRPORT ABN 31004407087

Chapter 5 - Financial Management of the National Office
 Expenditure incurred on Mr Thomson's credit cards for his benefit after the resignation date

Item	Date of expenditure	Amount	Card	Description of expenditure on card
15	25 February 2008	\$28	Diners Club statement 20 March 2008 HSUNO.012.0341	FAIRFAX NEWSPAPER SUBS ABN 33003357720

332. No documents have been produced by HSU to FWA which substantiate that the National Council or the National Executive authorised Mr Thomson to use his CBA Mastercard or Diners Club card after the resignation date.

333. No documents have been produced by HSU to FWA that substantiate that the transactions and the payments charged by Mr Thomson to his Diners Club card or his CBA Mastercard after the resignation date were for the purposes of carrying out the objects of the HSU.

334. Mr Thomson was questioned by FWA about expenditure on his credit card after his resignation. He took the issue on notice and was to provide a response (Thomson PN 1755 - 1766).

MR NASSIOS: I want to draw your attention to some expenditure on credit cards after your resignation. Again, I'm going by the union's auditor Mr Dick. In his exit audit report [he stated that] you spent approximately \$2000 on mobile phones and approximately \$5,500 on your union credit card after your election to parliament on 24 November 2007 and nearly half of this was after your resignation on 14 December.

MS CARRUTHERS: So those statements have highlighted transactions in them.

MR THOMSON: There was a - 25 November is highlighted, it wasn't - it's the 13 December one you're talking about?

MR NASSIOS: Yes.

MR THOMSON: 13 December. I'm not sure.

MR NASSIOS: I'm trying to ascertain how this could be HSU expenditure.

MR THOMSON: Yes. I don't recall. I can take it on notice and get back to you if you like.

MR NASSIOS: Is there any possibility that this was expenditure prior to your resignation but just - - -

MR THOMSON: I don't know, yes. I mean I went to Adelaide reasonably frequently. It was a small branch; we used to look after it. But - - -

MS CARRUTHERS: Do you recall when you gave back your credit card?

MR THOMSON: I think I gave back credit card and cars all on resignation but I don't - I don't have a clear recollection of that either.

335. Mr Thomson has not provided a response about the matter to FWA.

336. Other members of the National Executive and National Office staff were questioned about Mr Thomson's expenditure.

337. Mr Williamson gave evidence that he could see no basis for the expenditure to be approved by the National Office (Williamson PN 585 - 586):

MR NASSIOS: According to Mr Dick in his exit audit report, Mr Thomson spent approximately \$2000 on mobile phones and approximately \$5500 on his union credit card after his election to parliament on 24 November 2007, and nearly half of this was after his resignation on 14 December 2007. Are you aware of any basis on which this could have been approved expenditure of the national office?

MR WILLIAMSON: No.

338. Dr Kelly also gave evidence that she could see no basis for the expenditure to be approved by the National Office (Kelly 767 - 768):

MR NASSIOS: All right. Now, according to Mr Dick in his exit audit report Mr Thompson spent approximately \$2,000 on mobile phones and approximately \$5,500 on his union credit card after his resignation on 24 November 2007. Are you aware of any basis on which this could have been approved expenditure in a national office?

DR KELLY: No, I don't.

339. Ms Ord said that Mr Thomson's credit card transactions may have been incurred prior to the termination of his employment with the HSU but were not processed until one to three months later (Ord (1) PN 545 - 552):

MR NASSIOS: Okay. I need to ask you basically just one final question in terms of expenditure. There was a payment in, I'm trying to work out the date here, but certainly it was after Mr Thomson's resignation on 24 November 2007, and there was a payment of \$2,000 on mobile phones and about five and a half thousand on a union credit card, after his resignation. Do you recall that being the case?

MS ORD: I don't think there would be anything unusual about it. It probably is the case because it's probably things - as you know the credit statements don't come in until a month after - often, like, you know, we've got a credit card statement here is dated, it ends 27th of March but it's got 28th of February transactions on it.

MR NASSIOS: Yes.

MS ORD: So I wouldn't see that as being irregular at all. And on top of all of that your credit card providers and that whole EFTPOS system and everything else, they've got up to 90 days to put a transaction through that might have been pre-approved however long ago. So I think you would find that even though they were definitely processed after he left, they would have pertained to business that occurred while he was there.

MR NASSIOS: All right. And is there - well, that being case would that mean that so long as you knew there was a connection to a period prior, you wouldn't need to contact anyone to actually, you know, to formally instruct you pay that, or make that payment?

MS ORD: Well, there was actually a bit of a changeover time when a lot of that was uncertain, sure, and then there was a period of time when Kathy

did want to know what was being paid, and - I don't know if she made it particularly clear from a paperwork point of view, maybe it was just a stated thing, I can't recall. But there was - at some point she did say that she wanted to know about, like what was - at one point she wanted to sit through and go through what was still owing. Like what we still owed.

MR NASSIOS: Yes.

MS ORD: And I think that whatever was available in the office, whatever we had received she had a look through at the time. And I do think that she would give instruction as to what was a priority to be paid. I don't think there's anything that she did say not to pay though.

My power to make findings of contravention regarding transactions that were incurred after the resignation date

340. I have investigated, under section 331 of the RO Act, whether (amongst other things) officials of the National Office have contravened provisions of:
- a. Part 3 of Chapter 8 of the RAO Schedule
 - b. The Reporting Guidelines that were made under the RAO Schedule;
 - c. The Rules relating to finances or financial administration; or
 - d. Section 237 or sections 285 to 287 of the RAO Schedule.
341. I am only able to make findings of contravention regarding expenditure that was incurred by Mr Thomson while he was an official of the Union prior to the resignation date. Once Mr Thomson had resigned on 14 December 2007, he was no longer an official of the Union.
342. With the exception of item 1, all of the transactions in the table at paragraph 331 above were incurred after the resignation date. As a result, I am not able to make findings of contravention regarding any of the transactions at items 2 to 15.
343. Immediately below are my findings regarding the expenditure at item 1 in the table at paragraph 331. Following these findings is my analysis of transactions at items 2 to 15 of the table.

Transactions that were incurred before the resignation date

Hotel accommodation on the night of 15 December 2007

344. The transaction details set out at item 1 in the table at paragraph 331 above were posted to Mr Thomson's Diners Club card on 13 December 2007, the day before the resignation date. This transaction is likely to relate to a reservation made by Mr Thomson through Qantas Holidays for a hotel booking for the night of 15 December 2007 (the day after his resignation). The cost of this expenditure was \$330.

Mr Thomson's submissions

345. With respect to finding 29, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules in respect of incurring expenditure on his HSU credit card in relation to hotel accommodation in Sydney for 15 December 2007, the day after Mr Thomson's resignation. Mr Thomson is unable to recall the precise circumstances of the payment but denies contravening Sub-rule 36(b). Mr Thomson is of the view that the National Executive was comfortable with the accommodation after his resignation from the HSU, given the extent of Mr Thomson's service and his significant contribution to the HSU during his time as National Secretary.
 - b. However, Mr Thomson also notes that there have been incidents of misuse of HSU credit cards in the past and refers to submissions made at paragraphs 39.c and 39.d on page 134 in chapter 3.
346. With respect to finding 30, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 285(1) of the RAO Schedule.
347. With respect to finding 31, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 286(1) of the RAO Schedule.
348. With respect to finding 32, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 287(1) of the RAO Schedule. In particular, Mr Thomsonn denies gaining any personal advantage.

Conclusions

349. The description of the transaction on Mr Thomson's Diners Club card statement clearly indicates that this expenditure was incurred for a reservation on the night of 15 December 2007. It is difficult to see any basis upon which this expenditure could have been expenditure related to the objects of the HSU, or expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU. It appears that this expenditure was for Mr Thomson's personal benefit. A reasonable person in Mr Thomson's position as National Secretary would not have used funds of the National Office to pay for accommodation for his own use after the resignation date without having obtained the specific authority of National Council or National Executive to do so.
350. It was not in the best interests of the HSU for Mr Thomson to incur this expenditure without having obtained the specific authority of National Council or National Executive to do so.
351. Despite Mr Thomson's statement that the National Executive was 'comfortable' with his expenditure on accommodation after the resignation date, Mr Thomson has provided no evidence in support of this submission and there is no other evidence

before me that National Executive members were 'comfortable' with, or even aware of, this expenditure. On any view, given that this expenditure was not on the general administration of the Union, or on a purpose reasonably incidental thereto, it was beyond Mr Thomson's power to authorise even if members of the National Executive had been 'comfortable' with it.

352. Mr Thomson has also made reference in his submissions to 'incidents of misuse' of HSU credit cards in the past, although he has provided no evidence in support of this statement and no details concerning the particular incident(s) of misuse to which he is referring in paragraph 345.b above.
353. Mr Thomson has specifically referred to submissions (which are set out at paragraphs paragraphs 39.c and 39.d on page 134 in chapter 3) concerning a 'history of factional rivalry' and to the fact that there were 'a number of officials who did not support [him] as National Secretary'. Mr Thomson submits that, had I interviewed Mr Struan Robertson, I would have become 'aware of threats made against Mr Thomson by at least one other official of the HSU who, in 2004, threatened to ruin Mr Thomson's life, to destroy his political ambitions and to "set him up with a bunch of hookers and ... ruin him."' Mr Thomson has not, however, provided any evidence in support of this submission in the form of a statement or statutory declaration from Mr Robertson, or indeed from any other individual who may be able to verify this submission. In any event, the relevance of this submission to Mr Thomson's response to this proposed finding is not apparent.
354. I have considered Mr Thomson's claims regarding misuse of his credit card in the procurement of escort services in chapter 6. In particular, I have considered Mr Thomson's claim that in 2009 Mr Jeff Jackson, former Secretary of the Victoria No.1 Branch of the HSU, repaid to the HSU \$15,000 in confidential settlement following allegations of using credit cards at the escort agency 'Keywed' (see paragraphs 30 to 33 of chapter 6). I have stated at paragraph 33 of chapter 6, however, that I do not accept Mr Thomson's suggestion that Mr Jackson was responsible for expenditure on escort agencies which was incurred on Mr Thomson's credit cards.
355. Further, the only submissions that have been put to me by Mr Thomson (including his submission which is set out in paragraph 353 above) concern misuse of HSU credit cards in procuring escort services. Such information is not relevant to whether Mr Thomson used his HSU credit card for expenditure on accommodation after the resignation date. Notably, although he makes a broad general reference to 'incidents of misuse of HSU credit cards in the past', Mr Thomson has not made any submission to me that his credit card was misused on the night of 15 December 2007 to pay for accommodation, nor do I have any evidence before me that such misuse occurred on that date.
356. This is the first occasion on which Mr Thomson has indicated that Mr Robertson has evidence that may be relevant to the alleged misuse of his Union credit cards, whether for escort services or otherwise. I have considered whether, even at this late stage, I should interview Mr Robertson. Mr Thomson has, however, merely made an assertion which is not supported by any evidence and which does not

appear relevant to the proposed finding against him and I am not persuaded that I should do so.

Findings 29 to 32 - expenditure incurred on Mr Thomson's credit cards for his benefit after the resignation date

- 29.** Mr Thomson contravened Sub-rule 36(b) by incurring expenditure on his credit card account of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation without the authority of either National Council or National Executive to do so.
- 30.** Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure on his credit card account of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation without the authority of either National Council or National Executive to do so.
- 31.** Mr Thomson has contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose when he incurred expenditure on his credit card account of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation without the authority of either National Council or National Executive to do so.
- 32.** Mr Thomson has contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself, namely to use his HSU credit card to incur expenditure of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation.

Transactions that were incurred after the resignation date

Vehicle expenditure

- 357.** As discussed below at paragraphs 60 and 61 of chapter 6, transactions incurred by credit cards are not always posted by the vendor on the day on which they are incurred.
- 358.** On this basis it is certainly possible that the transactions set out at items 3, 4, 7 and 8 in the table at paragraph 331 above were incurred by Mr Thomson prior to the resignation date. Each of these transactions was posted only a few days after Mr Thomson's resignation.

Expenditure on a subscription to a Fairfax Newspaper

359. The transaction details set out at items 10, 12 and 15 in the table at paragraph 331 above indicate that Mr Thomson charged a subscription to a Fairfax newspaper to his HSU Diners Club card after the resignation date, on or about 31 December 2007, 28 January 2008, and 25 February 2008. These three charges total \$84. There is no information before FWA, however, regarding whether the newspapers that were the subject of this subscription were delivered to Mr Thomson's residential address or to the National Office. In my view, there is insufficient information before FWA to form the view that the expenditure was not related to the general administration of the Union or for purposes reasonably incidental thereto.

Expenditure on internet services

360. The transaction details set out at items 11 and 13 in the table at paragraph 331 above indicate that Mr Thomson continued to charge a monthly fee to an internet service company after the resignation date, on or about 4 January 2008 and 8 February 2008. These charges total \$119.90. There is no information before FWA, however, regarding whether the internet service was provided to Mr Thomson's residential address or to the National Office. In my view, there is insufficient information before FWA to form the view that the expenditure was not related to the general administration of the Union or for purposes reasonably incidental thereto.

Expenditure at the Hilton Hotel on 16 December 2007

361. The expenditure detailed at item 2 in the table at paragraph 331 above was posted to Mr Thomson's Diners Club card on 16 December 2007, being the day after the hotel accommodation which is discussed at paragraphs 344 and 349 above. The transaction is a charge of \$40 at the Sydney Hilton Hotel. It seems possible that:
- a. On 13 December 2007 Mr Thomson used his Diners Club card to purchase accommodation for himself at the Sydney Hilton Hotel for the night of 15 December 2007 at a cost to the National Office of \$330;
 - b. On 14 December 2007 Mr Thomson resigned as the National Secretary of the HSU;
 - c. On 15 December 2007 Mr Thomson stayed at the Sydney Hilton Hotel;
 - d. On 16 December 2007 Mr Thomson checked out of the Sydney Hilton Hotel, and used his Diners Club card to pay for \$40 in additional charges when he did so.
362. For the reasons discussed at paragraphs 60 and 61 of chapter 6, it is not possible to say with confidence on the evidence that is before me that this expenditure was incurred on the date that it was charged, or even that it was incurred after the resignation date.
363. If evidence was available indicating that the expenditure was incurred by Mr Thomson after the resignation date, however, it would be difficult to see any basis upon which this expenditure could have been expenditure related to the objects of the HSU, or expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Hotel Accommodation on the night of 20 December 2007

364. The transaction details set out at item 5 in the table at paragraph 331 above are likely to relate to a reservation made by Mr Thomson through Qantas Holidays on 19 December 2007 (five days after his resignation) for a hotel booking for the night of 20 December 2007. The cost of this expenditure was \$199. The description of the transaction on Mr Thomson's Diners Club statement clearly indicates that this expenditure was incurred for a reservation on the night of 20 December 2007. It is difficult to see any basis upon which this expenditure could have been expenditure related to the objects of the HSU, or expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Restaurant Forty One on 20 December 2007

365. It is possible that the expenditure set out at item 6 of the table at paragraph 331 above of \$550 at Forty One Restaurant related to a restaurant charge that Mr Thomson incurred on the same evening as his hotel accommodation that is discussed at paragraph 364 (20 December 2007). Certainly it appears to have been charged by the vendor to Diners Club card on 20 December 2007.
366. For the reasons discussed at paragraphs 60 and 61 of chapter 6, it is not possible to say with confidence that this expenditure was incurred on the date that it was charged, or even that it was incurred after the resignation date.
367. If evidence was available indicating that the expenditure was incurred by Mr Thomson after the resignation date, however, it would be difficult to see any basis upon which this expenditure could have been expenditure related to the objects of the HSU, or expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Travel and accommodation from 21 December 2007 to 26 December 2007

368. The transaction details set out at item 9 in the table at paragraph 331 above indicate that Mr Thomson used his Diners Club card to hire a car which he picked up from Adelaide Airport on 21 December 2007 and returned to Adelaide Airport five days later on 26 December 2007. It appears from the Diners Club statement that Mr Thomson paid the sum of \$494.62 for this hire on 26 December 2007, presumably when he returned the car. The hire period was well after the resignation date. It is difficult to see any basis upon which this expenditure could have been expenditure related to the objects of the HSU, or expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Valet Parking at Sydney Airport on 9 February 2008

369. The transaction details set out at item 14 in the table at paragraph 331 above indicate that Mr Thomson used his Diners Club card to pay \$142 for valet parking at Sydney Airport on 9 February 2008, almost two months after the resignation date. Even given that transactions incurred by credit cards are not always posted by the vendor on the day on which they are incurred, this is a considerable time after the resignation date. It is difficult to see any basis upon which this expenditure could have been expenditure related to the objects of the HSU, or expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Conclusions regarding expenditure after the resignation date

370. It appears probable that Mr Thomson spent the following amounts of National Office funds for his own personal benefit after the resignation date:
- a. \$199 on accommodation for the night of 20 December 2007;
 - b. \$494.62 for a hire car between 21 December 2007 and 26 December 2007; and
 - c. \$142 at Valet Parking at Sydney Airport on 9 February 2008.
371. Although I do not have before me original credit card transaction slips, or evidence from Diners Club regarding the date upon which the transactions were incurred by Mr Thomson, I am of the view that it is possible that Mr Thomson also spent the following amounts of National Office funds for his own personal benefit after the resignation date:
- a. \$40 at the Hilton Hotel in Sydney on 16 December 2007; and
 - b. \$550 at Restaurant Forty One on 20 December 2007.
372. The figures in paragraphs 370 and 371 above total \$1,425.62. There does not appear to have been any legitimate reason for Mr Thomson to have charged the amounts set out in paragraphs 370 and 371 above to his Diners Club card after the resignation date.
373. I have set out at paragraph 70 of chapter 21 my observations to the General Manager regarding referral of the expenditure set out in paragraphs 370 and 371 above to the DPP.
374. I have decided to recommend that the amounts set out in paragraphs 370 and 371 above should be referred to the DPP because the DPP would not be constrained in gathering evidence, as I have been, by the terms of the RO Act. The power that is conferred upon me under paragraph 335(2)(b) of the RO Act to compel production of documents for the purposes of the Investigation is limited to production of documents by persons who are:
- a. A designated officer or employee of the National Office;
 - b. A former designated officer or employee of the National Office; and
 - c. A person who held the position of auditor of the Reporting Unit during the period that is the subject of the Investigation.
375. As a result, under the terms of paragraph 335(2)(b) of the RO Act, I do not have access to documents that are held by financial institutions unless those documents are also in the custody of, or under the control of, or able to be accessed by, one of these persons.
376. Moreover, because these amounts each appear to have been spent by Mr Thomson after he ceased to be an officer of the HSU, there does not appear to be any provision of the Rules, or of the RAO Schedule, which would relate to the expenditure. Whether or not any of this expenditure could contravene the criminal law is beyond the scope of my Investigation.

Authorisation of expenditure incurred by National Office staff on their credit cards

Evidence

377. The following matters are relevant to Findings 33 to 38 - Authorisation of expenditure incurred by National Office staff members on their credit cards, which are set out at page 309.

Transactions of specific staff members

378. The following information which is set out elsewhere in this report is relevant to Mr Thomson's authorisation of expenditure incurred by National Office staff on their credit cards:
- a. paragraphs 87 to 117 of chapter 2, which discuss practices surrounding 'day to day expenditure' by the National Office, including approval of such expenditure by Mr Thomson;
 - b. paragraphs 82 to 83 and 114 to 120 of chapter 3, which discuss Mr Thomson's 'introductory' submissions regarding control of expenditure and my responses to those submissions;
 - c. paragraphs 4 to 67 above of this chapter, which discuss the obligations of the National Secretary with respect to expenditure of the National Office; and
 - d. paragraphs 244 to 281 above of this chapter, which discuss Mr Thomson's authorisation of expenditure on his own HSU credit cards.
379. Mr Thomson also gave specific evidence regarding his processes and practices in approving credit card expenses of Ms Stevens. He said that the same processes and procedures were followed as that for other staff members. Mr Thomson admits that he approved the credit card statement of Ms Stevens. He did not review the contents of the credit card statements. Mr Thomson says that he set parameters for Ms Stevens regarding the types of expenses for which she could use a credit card. If expenses fell outside the parameters, Ms Stevens had to specifically ask Mr Thomson about the matter. In addition, if Ms Ord had an issue with any expense on a statement at the time of processing them for payment she would raise them with Mr Thomson (Thomson PN 683 - 684):

MR NASSIOS: I asked you before in terms of approving. Again we've gone into it a little bit but I really want to make this clear to myself. In terms of reviewing the expenditure - - -

MR THOMSON: As I said at the start, I didn't at any stage see her credit card bills and go through them and sit down with her and do that at all. We'd set up parameters as to what she could use them for. If it was outside that, she had to ask me specifically. When she sent in her dockets and her credit card issue and there were the explanations were things that Belinda had an issue with, she would raise them with me, and that was the process. So yes, I approved them, but I didn't specifically sit down with each of them, and I'm not in any sense trying to lessen the

approval but I didn't put through that process. Maybe if the office was in one spot, it would have been slightly easier and less time-consuming, but they got sent to Melbourne.

380. Mr Thomson states that the Diners Club card issued to Ms Stevens entitled her to use it for petrol, telephone and some expenses in relation to the up keep of her car. Mr Thomson gave a general approval for such expenditure. Mr Thomson did not see every docket relating to Ms Stevens' expenditure. (Thomson PN 542 - 551)

Ms Ord's evidence

381. Ms Ord states that the process of approving credit card statements of Mr Burke and Ms Stevens was the same as that for all other statements. The expenditures were approved, but she does not state by whom. Ms Ord recalls a document that set out details of expenses that could be paid for by use of a credit card, that may have been provided to her by either Mr Thomson or Ms Walton (Ord (1) PN 206 - 213):

MR NASSIOS: Okay. And did you process any payments on their club cards? Did you ever get any of their statements?

MS ORD: Yes. Yes.

MR NASSIOS: Again, was there a particular instruction that they would come to you or was it just part of the normal course of all credit cards?

MS ORD: It was just the same as all the other cards.

MR NASSIOS: All right. And again, did you understand that that expenditure had been approved?

MS ORD: Of course, yes.

MR NASSIOS: How? How did you understand that?

MS ORD: In fact I think initially I might have had some - in fact, I can't remember what it was, but there was something or other on Criselee's card or something, but I know that she'd even got a document at some point that either Karene or Craig may have looked at. It kind of outlined what she could do with that credit card.

382. Ms Ord states she does not believe that Mr Thomson personally reviewed the credit card statements of Ms Stevens and Mr Burke or that of other staff (Ord (2) PN 91 - 92):

MR NASSIOS: Sorry, my apologies. My voice I appreciate went then. The statements that Ms Stevens and Burke had in terms of their HSU Diners Club statements - did Mr Thomson ever get those statements to review them?

MS ORD: I don't think he reviewed any of them, not just theirs. I think that was - look, everything was there and able to be viewed at any time if anyone wanted to, but I don't recall that he would specifically review any of them.

383. Ms Ord states that she understood that Ms Stevens and Mr Burke were permitted to pay for petrol and car expenses on the Diners Club card because that is what other

staff who had a credit card did. Cards could be used for HSU business expenses (Ord (2) PN 81 - 88):

- MR NASSIOS: How did you get that understanding?
- MS ORD: Well, that's what everyone used theirs for.
- MR NASSIOS: Okay, but when you say everybody - I don't wish to go into exactly who everybody is - - -
- MS ORD: The other people who had credit cards.
- MR NASSIOS: All right. Now, does that - -
- MS ORO: I was never told that they couldn't so - -
- MR NASSIOS: All right. Do you think Mr Thomson may have introduced this everybody can use these cards for those purposes?
- MS ORD: No, maybe I presumed it. I don't know. I just - when I was asked to have them, you know, accommodated with a credit card - I can't remember the conversation. I've got to be honest. I can't remember the exact conversation of hardly any of these things, but I can remember the instances. So there was no - I just figured it was exactly the same as everyone's credit card. If it was, like, something that was a personal expense, that wasn't okay along the lines - I think there was a few minor things that came up along those lines and that was - that was pretty quickly stopped. So anything the credit cards were given over for and receipts were provided for that could be considered to be business expenses that's I would've considered them to be.

384. Mr Brown states that in his view the expenses of Mr Burke and Ms Stevens paid for by use of their credit cards related exclusively to activities connected with Mr Thomson's seat of Dobell. Mr Brown was not aware that they were employees of the HSU. (Brown PN 167 - 178)
385. Dr Kelly states that it was not reported to the National Executive or the finance committee that Mr Burke was employed by the HSU, that he had a HSU issued Diners Club card or that he continued to use the credit card after he had left the employ of the HSU. Dr Kelly only became aware of these matters after the Exit Audit (Kelly PN 473):

No, and was never reported to the national executive or the finance committee that he was employed - that he had a Diners Club card or that he continued to spend on it. It was only after the exit audit and all of that that it came out that he had spent money after his employment had been terminated, came to an end.

Expenses of Mr Burke after his employment by the HSU

386. Mr Burke did a lot of travel by car for HSU work. (Burke PN 424 - 425) Petrol was an accepted expense that did not require approval. (Burke PN 432- 433) For expenditure other than petrol Mr Burke sought prior verbal approval from Mr Thomson. (Burke PN 457 - 464) Belinda Ord also authorised expenses. (Burke PN 472)

387. Mr Burke states that, pursuant to an agreement with Senator Hutchins and Mr Thomson, he was permitted to charge work related expenses for the HSU to the credit card. (Burke PN 398 - 411) Mr Thomson stated that he approved arrangements with Mr Burke to apply after his employment with the HSU had terminated. The arrangement included that the HSU would pay for petrol expenses. Mr Thomson said that Mr Burke was introduced to the National Executive and the National Council and informed about his role. Those bodies thereby had an explanation of matters. Mr Thomson said that the processes for approval of expenses incurred by Mr Burke were the same as those for Ms Stevens. (Thomson PN 702) The following exchange occurred (Thomson PN 746 - 753):
- MR NASSIOS: All right. Do you know whether the national executive or the finance committee would have been aware of these particular arrangements with the credit card after he was - - -
- MR THOMSON: Well, Matt was introduced at executive and national council, and said what he was doing and how he was doing it, and then what role he was going to and how he was being paid. So they had an explanation.
- MR NASSIOS: So even after he had resigned from the union?
- MR THOMSON: Yes.
- MR NASSIOS: Okay. All right. In terms of that expenditure on petrol, who would have approved that?
- MR THOMSON: It was again generally approved - I approved the general concept that we would pay for his petrol.
- MR NASSIOS: As we've asked with Ms Stevens, did you review the expenditure in any way?
- MR THOMSON: It was done exactly the same way as Criselee Stevens. He sent explanations and dockets down - - -
388. Dr Kelly states she did not consider Mr Burke's expenditure after he had ceased employment with the HSU to be legitimate HSU expenditure. (Kelly PN 458 - 465)
389. Mr Williamson has no knowledge about the expenditure by Mr Burke on a HSU credit card after he left employment with HSU in April 2007. He is not able to say whether it was appropriate expenditure. The expenditure was not reported to the National Executive or the finance committee. (Williamson PN 316 - 327)
390. Mr McLeay states that he has no knowledge about why HSU continued to pay for credit card purchases made by Mr Burke after he had left the employ of the HSU. (McLeay PN 117 - 118)
391. Ms Ord states that she believes that she was aware that Mr Burke was no longer an employee of the National Office when he incurred expenditure on the credit card after cessation of his employment. She was of the view, however, that it is possible that the expense was incurred before Mr Burke left the HSU and that the credit card statement had been received later on (Ord (1) PN 233 - 239):
- MR NASSIOS: Mr Dick had an exit audit report that he drafted and in that report, in terms of Mr Burke it said that 'Mr Burke has spent \$6,705 on his

union credit card after his resignation on 6 April 2007'. Did you know that Mr Burke had resigned at that time?

MS ORD: I must have, because if he was, if he was an employee I would have paid him. So I guess I must have. Also sometimes I might not have noticed what date the statement, the credit card statement was, but also the credit company's got up to 90 days to process anything, so I think that might have been - I can't remember having a look into it in depth. I most likely would have asked around at the time and there most likely would have been some - when I say asked around, I would have most likely asked Craig or possibly even Matthew. Or maybe I even knew before he left that that was going to occur, or some of those things may have happened.

MS ORD: Were they union related expenses?

MR NASSIOS: I'm not sure I have the details on that? Do we?

MS ORD: That's a surprise to me to be honest.

MR NASSIOS: All right, but it could be that you were aware he had left but statements had come in, in terms of activity that had occurred before he left?

MS ORD: May have been, yes. I can't remember that even occurring or it being an issue at the time. I can't remember Iaan ever pointing it out to me either.

Mr Thomson's submissions

392. With respect to finding 33, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies contravening Sub-rule 32(j) of the Rules. While the National Secretary is not responsible for creating financial policies for the HSU, Mr Thomson did establish financial processes, including employing a National Finance Officer (Ms Ord) who was responsible for checking the credit card statements of National Office staff.
- b. Staff had been informed of the parameters associated with an HSU credit card. Some staff members such as Mr Burke and Ms Stevens had been instructed that the card was to be used for specific expenses such as petrol only.
- c. The National Secretary is not responsible for checking credit card statements that are received in relation to expenditure by HSU National Office staff. This responsibility was properly delegated to the National Finance Officer who was expected to question expenses which did not appear to be legitimate. This process was made clear by Ms Ord in her interview with FWA, as set out in the Preliminary Findings.
- d. The HSU had processes in place for the authorisation of payment of credit cards. During August 2002 to October 2004, the period which Ms Ungun was employed as the Administrative Assistant for the National Office, Mr Thomson authorised that Ms Ungun pay the amounts owing on credit card statements. Ms Ungun

provided evidence, which is set out above in paragraphs 256 to 258 of this chapter, which indicates those processes.

- e. Staff were required to provide relevant receipts or, where a receipt could not be provided, a written explanation on the credit card statement as to what the expenditure related to. Staff were required to sign that it was a “work related expense”. Staff members then returned the statement to Ms Ungun for payment. If staff members fraudulently signed off that an expense was work related (where it was not), it is not the responsibility of the National Secretary to second guess the honesty of staff members.
 - f. Ms Ord had been told that if there was anything unusual or any expenses that she had questions about, she was to raise these with Mr Thomson. If, as a result of human error, oversight or false statements by HSU staff there are examples of credit card expenses being paid which should not have been, this does not amount to authorisation by the National Secretary and there is no evidence to support the alleged contraventions.
393. With respect to finding 34, Holding Redlich’s submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules. The National Secretary is not responsible for creating financial policies for the HSU. Further, the National Secretary is not responsible for checking every credit card statement that is received in relation to expenditure by HSU staff members.
 - b. As submitted at paragraph 115.a on page 155 in chapter 3, the power given by Sub-rule 32(n) is sufficiently wide to include the expenditure of funds in the course of controlling and conducting the business of the HSU, and is limited (sic) to funds on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union. In addition, Sub-rule 36(b) specifically provides that where expenditure is on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.
 - c. Accordingly, under the Rules Mr Thomson did not require the prior authority of the National Council or National Executive.
 - d. As submitted above at paragraph 392.b on page 305 of this chapter, HSU staff members were aware of the parameters regarding credit card use, Mr Thomson had put processes in place and if, as a result of human error or oversight there are examples of credit card expenses being paid which should not have been, this does not amount to a contravention of Sub-rule 36(b).
394. With respect to finding 35, Holding Redlich’s submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 285(1) of the RAO Schedule. A reasonable person in the position of National Secretary with the same processes in place and administrative staff would have authorised the payment of sums owing on credit card accounts transacted by National Office staff, unless anomalies were raised, in order to minimise the interest payable.

395. With respect to finding 36, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(j) of the Rules. As already submitted,¹²⁶ while the National Secretary is not responsible for creating financial policies for the HSU, Mr Thomson did establish financial processes, including employing a National Finance Officer Ms Ord, who was responsible for checking the credit card statements of National Office staff. Ms Ord outlined her role and responsibility in her interview. An extract of the relevant parts of that interview are found at paragraphs 290 to 294 on page 280 to 282 of this chapter.
 - b. The National Secretary is not responsible for checking every credit card statement that is received in relation to expenditure by HSU Staff members, and this responsibility was delegated to the National Finance Officer who was expected to question expenses which did not appear to be legitimate, or needed to be followed up.
 - c. Staff had been informed of the parameters associated with an HSU credit card. Some staff members such as Mr Burke and Ms Stevens had been instructed that the card was to be used for specific expenses such as petrol only.
 - d. The HSU had processes in place for the authorisation of payment of credit cards. During August 2002 to October 2004, the period which Ms Ungun was employed as the Administrative Assistant for the National Office, Mr Thomson authorised that Ms Ungun pay the amounts owing on credit card statements. Ms Ungun provided evidence, which is set out at paragraphs paragraphs 256 to 258 of this chapter, which indicates those processes.
 - e. Staff were required to provide relevant receipts or a written explanation on the credit card statement as to what the expenditure related to and staff were required to sign that it was a "work related expense". Staff members then returned the statement to Ms Ungun for payment. If staff members fraudulently signed off that an expense was work related (where it was not), it was not the responsibility of the National Secretary to second guess the honesty of staff members in these circumstances.
 - f. Ms Ord had been told that if there was anything unusual or any expenses that she had questions about, she was to raise these with Mr Thomson. If, as a result of human error or oversight there are examples of credit card expenses being paid which should not have been, this does not amount to authorisation by the National Secretary and there is no evidence to support the alleged contraventions.
396. With respect to finding 37, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening Sub-rule 36(b) of the Rules. Mr Thomson had instructed Ms Ord to raise concerns regarding anomalies in the credit card statements, including a change in spending patterns. It is not the responsibility of the National Secretary to check each individual transaction incurred by staff members of the National Office on HSU credit cards.

¹²⁶ See paragraphs 105, 152, 153, 192, 193, 209, 210, 211, 212, 213, 214, 232, 233, 312 and 314 of chapter 5.

397. With respect to finding 38, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 285(1) of the RAO Schedule. A reasonable person in the position as National Secretary with the same processes and administrative assistance would have authorised Ms Ord to pay the outstanding sums on the credit cards

Conclusions

398. A substantial body of evidence has been obtained from Mr Thomson and other HSU staff members that Mr Thomson authorised, either personally or through his administrative assistant, credit card statements of National Office staff for payment. Mr Thomson has given evidence to FWA and public statements to this effect.
399. On his own evidence, Mr Thomson took no steps to review and authorise any expenditure incurred by other staff members on their credit cards unless Ms Ord specifically queried with him an item which appeared on a credit card statement. On his own evidence, Mr Thomson could not have been aware of whether expenditure that had been incurred by National Office staff on their credit cards was expenditure on the general administration of the Union or for purposes reasonably incidental thereto.
400. The general authority to expend funds of the HSU resides with the National Council and the National Executive pursuant to sub-rule 36(b). However, the National Secretary has authority to authorise a transaction where the expenditure is on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU (but not otherwise). See paragraphs 14 to 26 of this chapter above on pages 210 and 211.
401. A reasonable person in Mr Thomson's position as National Secretary would have ensured that he did not approve any payments made by National Office staff on credit cards unless he had considered such expenditure and formed the view that such expenditure was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
402. I do not accept Mr Thomson's submission that it was reasonable for him to rely on Ms Ord to identify, and liaise with him regarding, any expenditure which did not appear to her to be expenditure on the general administration of the Union or for a purpose reasonably incidental thereto. It was for Mr Thomson to form this judgement.
403. A reasonable person in Mr Thomson's position as National Secretary would not have authorised Ms Ord to pay those sums without being satisfied that all of the unpaid expenditure on each credit card was either approved by the National Council or the National Executive or was expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.

Findings 33 to 38 - Authorisation of expenditure incurred by National Office staff members on their credit cards

- 33.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by purporting to authorise payment of sums owing on credit card accounts transacted by National Office staff without informing himself regarding whether the expenditure was on the general administration of the HSU or for purposes reasonably incidental to the general administration. Where such expenditure was not on the general administration of the Union or for a purpose reasonably incidental thereto, Mr Thomson purported to authorise payment of credit card charges which were not authorised by the National Council or the National Executive.
- 34.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise payment of sums owing on credit card accounts transacted by National Office staff without informing himself regarding whether the expenditure was on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. Where such expenditure was not on the general administration of the Union or for a purpose reasonably incidental thereto, Mr Thomson purported to authorise payment of credit card charges without the approval of either National Council or National Executive to do so.
- 35.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by purporting to authorise payment of sums owing on credit card accounts transacted by National Office staff without informing himself regarding whether the expenditure was on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. Where such expenditure was not on the general administration of the Union or for a purpose reasonably incidental thereto, Mr Thomson purported to authorise payment of credit card charges without the approval of either National Council or National Executive to do so.
- 36.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by authorising Ms Ord to pay sums owing on credit card accounts transacted by National Office staff that were not approved by the National Council or the National Executive when he had not informed himself regarding whether such unpaid amounts included expenditure which was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

37. Mr Thomson contravened Sub-rule 36(b) by authorising Ms Ord to pay sums owing on credit card accounts transacted by National Office staff that were not approved by the National Council or the National Executive when he had not informed himself regarding whether such unpaid amounts included expenditure which was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
38. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by authorising Ms Ord to pay sums owing on credit card accounts transacted by National Office staff that were not approved by the National Council or the National Executive when he had not informed himself regarding whether such unpaid amounts included expenditure which was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

Expenditure incurred on Mr Thomson's credit cards for incidental goods or purported authorisation of expenditure for incidental goods incurred by staff members of the National Office on their credit cards

Evidence

404. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 39 to 42 - Expenditure incurred on Mr Thomson's credit cards for incidental goods and purported authorisation of expenditure for incidental goods incurred by staff members of the National Office on their credit cards, which are set out below at page 315.
405. Some of Mr Thomson's Diners Club statements obtained by FWA have receipts attached that record charges for the payment of goods that included cigarettes, chocolates, drinks and other goods of small monetary value (collectively, '**incidental goods**') that were purchased at the same time as paying for the cost of petrol.
406. For example, charges recorded in Mr Thomson's Diners Club statement issued 20 June 2006 ([HSUNO.002.0188](#)) and attached receipts record the following charges for incidental goods:

Date	Retail outlet	Items purchased	Value	Receipt ID
22 May 2006	Caltex Star Mart, Forresters Beach	2 x Powerade Berry Ice	\$7	WIT.WIL.001.0321
		2 x Powerade 600 ml range	\$6 .50	

Chapter 5 - Financial Management of the National Office

Expenditure incurred on Mr Thomson's credit cards for incidental goods or purported authorisation of expenditure for incidental goods incurred by staff members of the National Office on their credit cards

Date	Retail outlet	Items purchased	Value	Receipt ID
		Cadbury Cherry Ripe	\$2.20	
		B & H Darkblue 25	\$12.55	
3 June 2006	Caltex Wamberal, Tafbac Pty Ltd, 656 The Entrance Rd	Jelly babies	\$3.25	HSUNO.002.0132
		B & H Darkblue 25	\$12.10	
	The Royal Bar and Brassie	1 x middy soft drink	\$3	
9 June 2006	Caltex Star Mart, Forresters Beach	B & H Darkblue 25	\$12.55	WIT.WIL.001.0322
17 June 2006	Caltex Wamberal, Tafbac Pty Ltd, 656 The Entrance Rd	B & H Darkblue 25	\$12.10	WIT.WIL.001.0316
		Firewood Kindling, 2 packets	\$27.90	

407. Other Diners Club statements issued to Mr Thomson held by FWA also record charges for incidental goods purchased by him:
- Diners Club statement issued 20 April 2006; [HSUNO.002.0333](#)
 - Diners Club statement issued 20 May 2006. [HSUNO.002.0075](#)
408. Mr Thomson was asked by FWA whether he accepted that expenditure on incidentals, such as cigarettes and chocolate bars, was not legitimate expenditure for the purposes of the HSU. Mr Thomson replied '*Probably not, no*'. But Mr Thomson went on to say that he considered some food was '*probably not an issue*'. He said that cigarettes were not appropriate. Mr Thomson stated that he did not smoke (Thompson 1278 - 1290).
- MR NASSIOS: All right. In terms of some of the expenditure on the credit cards, cigarettes and chocolate bars when filling up with petrol, is that okay?
- MR THOMSON: Probably not, no.
- MR NASSIOS: But that's what's been claimed.
- MR THOMSON: Mm'hm.
- MR NASSIOS: So what do we say in terms of whether that's legitimate expenditure of the HSU?
- MR THOMSON: I think in terms of some of the food, it's probably not an issue. Cigarettes certainly shouldn't be - - -

Chapter 5 - Financial Management of the National Office

Expenditure incurred on Mr Thomson's credit cards for incidental goods or purported authorisation of expenditure for incidental goods incurred by staff members of the National Office on their credit cards

MS CARRUTHERS: Those two, they are two Diners statements of yours that have cigarette purchases - - -

MR THOMSON: I don't smoke, by the way.

MR NASSIOS: You look too healthy.

MS CARRUTHERS: I'm sure you don't. You just buy them to support the tobacco industry, no doubt.

MR THOMSON: In fact, I've never smoked.

MS CARRUTHERS: I sound like I smoke today. All of those purchases were ones that you made.

MR THOMSON: Sure. I don't know.

409. Mr Williamson did not consider there to be a problem with staff purchasing a bottle of water or the like since they work hard and get thirsty (Williamson PN 627 - 633).

MR NASSIOS: We have reviewed numerous receipts submitted by various persons employed by the national office and as part of that review it seems to be quite common for employees who had HSU vehicles to charge items such as cigarettes and chocolate bars to their credit cards when filling up with petrol. Can I ask whether you have a view as to whether that is legitimate expenditure?

MS CARRUTHERS: I have actually ended up gathering together the receipts into mainly one document and writing on the top of it which credit card statement they match up with but the credit card - - -

MR WILLIAMSON: Okay.

MS CARRUTHERS: - - - statements are behind if you would like to verify them.

MR WILLIAMSON: Well, I don't know whose they relate to.

MS CARRUTHERS: All of these ones are Craig Thomson's expenditure.

MR WILLIAMSON: Then I have to say in terms of the state registered union if any of my staff go and buy a bottle of water or a whatever it is, I don't blink twice at it because they work hard and they get thirsty so I have no commentary in relation to this.

Mr Thomson's submissions

410. With respect to finding 39, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies contravening Sub-rule 36(b) of the Rules. Expenditure on the purchase of incidental goods did not require the authority of the National Council or National Executive.
- b. The purchases were made while on HSU business. The HSU did not provide a "travel allowance" as is common practice in many other industries and in government, instead reimbursing staff for expenses incurred while travelling, including incidental expenses. To the extent that any such expenditure incurred

(which is not admitted) the amounts are immaterial and do not amount to a breach of any law, HSU rule or HSU policy.

411. With respect to finding 40, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 285(1) of the RAO Schedule. A reasonable person in the position of National Secretary would not have obtained the approval of the National Council or National Executive before authorising the expenditure of National Office funds on incidental items such as chocolates and PowerAde, assuming that this occurred. The National Secretary had the discretion to authorise these minor purchases and they were reasonable in the circumstances. Further, given that 7 years have elapsed since these purchases are supposed to have occurred Mr Thomson is unable to recollect the precise circumstances.
412. With respect to finding 41, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 286(1) of the RAO Schedule. Mr Thomson has not failed to exercise his powers and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose by purchasing incidental items, or authorising the expenditure on incidental items, on credit cards without the authority of the National Council or National Executive (neither is admitted). While Mr Thomson cannot recall the precise circumstances surrounding the purchases, given they were over 5 (sic) years ago, it is likely that the expenditure incurred by Mr Thomson while he was on HSU business and was reasonable in the circumstances.
413. With respect to finding 42, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 287(1) of the RAO Schedule. Mr Thomson denies improperly using his position to gain an advantage for himself or someone else by purchasing incidental goods such as chocolates and drinks. Mr Thomson denies gaining any advantage and also denies ever having smoked or having purchased cigarettes.

Conclusions

414. Mr Thomson was shown in interview a number of his Diners Club card statements that had attached to them receipts for purchases at petrol stations which included the purchase of cigarettes. While he stated in interview that he did not smoke and had never smoked, Mr Thomson did not deny in interview that he had incurred the expenditure that is evidenced by the receipts that were shown to him. Mr Thomson stated in interview that cigarettes 'certainly shouldn't be' legitimate expenditure of the HSU (see paragraphs 405 to 408 above).
415. Although the National Office has only retained a very small number of transactional records which relate to expenditure incurred on credit cards, in at least one instance another employee of the National Office has used her Diners Club card to purchase cigarettes and confectionary together with petrol ([HSUNO.021.0382](#)).

416. Mr Thomson's evidence that he authorised all expenditure by National Office staff on National Office credit cards is set out at paragraphs 379 to 380 above of this chapter.
417. Mr Thomson has submitted that the HSU did not provide a 'travel allowance' but rather reimbursed staff for incidental expenses incurred while travelling.¹²⁷ He has described these purchases as being 'reasonable' and 'minor', that the amounts were 'immaterial' and that they were incurred while travelling on HSU business.
418. The fact that purchases may have been made while National Office staff were travelling on HSU business does not determine whether the purchases themselves were related to the business of the Union. In my view, the purchase by staff of drinks whilst travelling on Union business would not be unreasonable, given the requirement that an employer provide a safe place of work. In an office environment employees are provided with kitchen facilities. Where employees are driving cars whilst carrying out Union business, the purchase of drinks would be an appropriate expense to be borne by the employer.
419. I do not accept that the purchase of chocolates and, in particular, cigarettes could have been expenditure related to the objects of the Union or expenditure on, or reasonably incidental to, the general administration of the Union. The fact that the cost to the Union of such purchases is small is not relevant to whether or not the purchases were permitted under the Rules.
420. Mr Thomson has submitted that he has a 'discretion to authorise these minor purchases'. The Rules do not give Mr Thomson a discretion to authorise expenditure which is not on, or reasonably incidental to, the general administration of the Union. Further, in the absence of any policy which had been authorised by National Council or National Executive concerning expenditure by National Office staff on incidental goods, Mr Thomson did not have such a discretion.
421. FWA has not been provided with any policy document regarding expenditure on incidental goods by National Office staff.
422. A reasonable person in Mr Thomson's position as National Secretary would have ensured that he obtained the approval of either National Council or National Executive to do so before authorising expenditure of National Office funds on incidental goods which were not related to the objects of the Union or on, or reasonably incidental to, the general administration of the Union.
423. It was not a proper purpose for Mr Thomson to spend monies of the National Office on incidental goods such as chocolates, drinks and cigarettes for himself, or to purport to approve such expenditure by other National Office staff where such expenditure was not related to the objects of the Union and was not on, or reasonably incidental to, the general administration of the Union.

¹²⁷ While he has not specifically submitted that staff were also permitted to charge incidental expenses to their HSU credit cards, I take his submission to mean that he is of the view that staff were so permitted.

Findings 39 to 42 - Expenditure incurred on Mr Thomson's credit cards for incidental goods and purported authorisation of expenditure for incidental goods incurred by staff members of the National Office on their credit cards

- 39.** Mr Thomson contravened Sub-rule 36(b) by incurring expenditure on the purchase of incidental goods such as chocolates and cigarettes on credit cards and by purporting to authorise such expenditure by others without the authority of either National Council or National Executive to do so when such expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 40.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure on purchase of incidental goods such as chocolates and cigarettes on credit cards and purporting to authorise such expenditure by others without the authority of either National Council or National Executive to do so.
- 41.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose when he incurred expenditure on purchase of incidental goods such as chocolates and cigarettes on credit cards and purporting to authorise such expenditure by others without the authority of either National Council or National Executive to do so when such expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 42.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage for himself or someone else (namely, the purchase of incidental goods such as chocolates and cigarettes).

Providing Mr Thomson's CBA Mastercard to another person

Evidence

424. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 43 to 47 - Providing Mr Thomson's CBA Mastercard to another person, which are set out below at page 319.

425. On at least three occasions, as set out below, it appears that Mr Thomson gave his CBA Mastercard to another person while he travelled to Melbourne and that other person withdrew cash from his CBA Mastercard while Mr Thomson was in Melbourne. In particular it appears that this has occurred:
- a. On 7 August 2006 when Mr Thomson's CBA Mastercard was used to withdraw \$500 in cash from a CBA ATM in Bateau Bay on the Central Coast of NSW, while Mr Thomson appears to have been in Melbourne;
 - b. on 27 February 2007 when Mr Thomson's CBA Mastercard was used to withdraw \$500 in cash from an ATM in Huntfield, Adelaide, while Mr Thomson appears to have been in Melbourne;
 - c. on 16 April 2007 when Mr Thomson's CBA Mastercard was used to withdraw \$500 in cash at Girrawheen, near Perth, while Mr Thomson appears to have been in Melbourne.
426. There is no evidence which suggests that any of these three cash withdrawals were authorised by either National Council or National Executive. There is no evidence which suggests that any of these three cash withdrawals was for the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
427. Mr Thomson's CBA Mastercard statement dated 25 August 2006 ([HSUNO.001.0284](#)) discloses that on 7 August 2006 someone used his CBA Mastercard to withdraw \$500 cash from a CBA ATM in Bateau Bay on the Central Coast of NSW.
428. It is likely that on 7 August 2006 someone used Mr Thomson's CBA Mastercard to withdraw \$500 cash from the ATM in Bateau Bay. As Mr Thomson was in Melbourne on this day it appears that somebody else had his CBA Mastercard on this day. Further information regarding this transaction is set out under the heading Trip 17 - 6 and 7 August 2006 Pacific International Suites Melbourne, which appears on page 394.
429. Mr Thomson's CBA Mastercard statement dated 27 March 2007 ([HSUNO.014.0088](#)) discloses that on 27 February 2007 someone withdrew \$500 cash from an ATM at 'Shop 1, 26 Honey Po, Huntfield'.
430. The CBA Mastercard statement dated 26 February 2007 discloses that Mr Thomson or someone using his CBA Mastercard, withdrew cash from an ATM in Huntfield, Adelaide on 27 February 2007. There is no other evidence indicating that Mr Thomson was in Adelaide on that date. To the contrary, the charges incurred on Mr Thomson's Diners Club card on that date and the next day suggest that he drove to Sydney on 27 February 2006, flew to Melbourne, staying overnight at accommodation and returning to Sydney the following day. Further information regarding this transaction is set out under the heading Trip 30 - 27 February 2007 Melbourne, which appears on page 412.
431. It is possible that either:
- a. another person had possession of Mr Thomson's CBA Mastercard on 27 February 2007 and withdrew cash in Adelaide; or

- b. Mr Thomson flew from Sydney to Adelaide on 26 February 2007, and from Adelaide to Melbourne on 27 February 2007.
432. Mr Thomson's CBA Mastercard statement dated 26 April 2007 ([HSUNO.001.0263](#)) discloses that on 16 April 2007 someone withdrew \$500 cash from an ATM at Girrawheen, near Perth.
433. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that Mr Thomson incurred the following charges:
- a. on 15 April 2007:
 - i. \$53.18 at the Caltex Starshop
 - ii. \$100 at Valet Parking, Sydney airport
 - b. on 16 April 2007:
 - i. \$73 at the Grand Hyatt on Collins
 - ii. \$44.40 'Your Taxi Trip' taxi fare for 'suburbs to airport'.
434. The cash withdrawal on 16 April 2007 in Girrawheen which appears on Mr Thomson's CBA Mastercard statement dated 26 April 2007 may suggest that Mr Thomson was in Western Australia on that date. However, there is no other evidence indicating this. To the contrary, Mr Thomson appears to have checked out of the Grand Hyatt on Collins in Melbourne and returned to Sydney on 16 April 2007.
435. It is possible that Mr Thomson flew from Melbourne to Perth on 16 April 2007 and returned to Sydney late on that day or the next day. Alternatively, someone else may have had and used his CBA Mastercard in Western Australia on 16 April 2007. In the absence of any other evidence, the most plausible explanation is that someone else had Mr Thomson's CBA Mastercard on that date.

Mr Thomson's submissions

436. With respect to finding 43, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies that he contravened Sub-rule 32(j) of the Rules. Mr Thomson never provided his credit cards to anyone else and has no knowledge of these withdrawals. Mr Thomson notes that there may have been instances of fraudulent use of his credit card. I am also referred to submissions that are set out at paragraph 39.d which is set out at page 134 in chapter 3. It is submitted that I have made an error in my conclusions in respect of this allegation and it is of concern that I have relied on dates contained in credit card statements, which are neither indicative nor reliable and do not constitute evidence.
437. With respect to finding 44, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies that he contravened Sub-rule 36(b) of the Rules. However, it is noted that there may have been instances of fraudulent use of Mr Thomson's credit card, as set out in submissions at paragraph 39.d on page 134 in chapter 3. It is submitted that I have made an error in my conclusions in respect of this allegation and it is of concern that I have relied on

dates contained in credit card statements, which are neither indicative nor reliable and do not constitute evidence.

438. With respect to finding 45, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies that he contravened subsection 285(1) of the RAO Schedule. It is noted that there may have been instances of fraudulent use of Mr Thomson's credit card, as set out in submissions at paragraph 39.d on page 134 in chapter 3. It is submitted that I have made an error in my conclusions in respect of this allegation and it is of concern that I have relied on dates contained in credit card statements, which are neither indicative nor reliable and do not constitute evidence.
439. With respect to finding 46, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies that he contravened subsection 286(1) of the RAO Schedule. It is noted that there may have been instances of fraudulent use of Mr Thomson's credit card, as set out in submissions at paragraph 39.d on page 134 in chapter 3. It is submitted that I have made an error in my conclusions in respect of this allegation and it is of concern that I have relied on dates contained in credit card statements, which are neither indicative nor reliable and do not constitute evidence.
440. With respect to finding 47, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. Mr Thomson never provided his credit cards to anyone else and has no knowledge of these withdrawals. It is noted that there may have been instances of fraudulent use of Mr Thomson's credit card, as set out in submissions at paragraph 39.d on page 134 in chapter 3. It is submitted that I have made an error in my conclusions in respect of this allegation and it is of concern that I have relied on dates contained in credit card statements, which are neither indicative nor reliable and do not constitute evidence.
 - b. He did not use his position to gain an advantage for someone else as he never provided his credit cards to another person.

Conclusions

441. Mr Thomson has submitted that it is of concern that I have relied on dates contained in credit card statements regarding cash withdrawals at ATMs, which are neither indicative nor reliable and do not constitute evidence. Unlike credit card transactions with vendors (which are discussed at paragraphs 60 and 61 of chapter 6), cash withdrawals that are made from credit cards at ATMs are recorded by financial institutions on the day on which the transaction occurred, even where that transaction occurred on a weekend or on a public holiday. For this reason, the date that appears on a credit card statement indicates the actual date of the cash withdrawal transaction. I therefore reject this submission.
442. Mr Thomson has referred in his submissions to information (which is set out in chapter 3) that he has submitted regarding the fraudulent use of his credit card, although he has not provided any details concerning the particulars of the misuse to which he is referring in his submissions above at paragraphs 436 to 440.

443. I have set out at paragraphs 353 to 356 above information which has been provided by Mr Thomson to FWA regarding the alleged misuse of HSU credit cards. All of that information, however, concerns the alleged misuse of credit cards in procuring escort services. Such information is not relevant to whether Mr Thomson has provided his credit card to another individual to enable them to make cash withdrawals.
444. Notably, although he makes broad general references to 'instances of fraudulent use of [his] credit card', Mr Thomson has not made any submission to me that his credit card was misused on 7 August 2006, 27 February 2007 or 16 April 2007 by another person who withdrew cash from his CBA Mastercard without his authority, nor do I have any evidence before me that such misuse occurred on those dates. Nor has Mr Thomson suggested that his CBA mastercard was ever stolen or that he had reported it as stolen. I am satisfied that Mr Thomson allowed another person to have his CBA mastercard, and to use it on each of 7 August 2006, 27 February 2007 and 16 April 2007.
445. A reasonable person in Mr Thomson's position as National Secretary would not have allowed a credit card which had been issued in his name to be used by another person.
446. The best interests of the HSU required that Mr Thomson did not provide his CBA Mastercard to any other person.

Findings 43 to 47 - Providing Mr Thomson's CBA Mastercard to another person

- 43.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by providing his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowing that person to make cash withdrawals using that card.
- 44.** Mr Thomson contravened Sub-rule 36(b) by providing his CBA Mastercard to another person on at least three occasions when he was travelling interstate, thereby allowing that person to expend the funds of the HSU without their being authorised by either National Council or National Executive to do so, and without such expenditure being expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.

45. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he provided his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowed that person to make cash withdrawals using that card without their being authorised by either National Council or National Executive to do so, and without such expenditure being expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
46. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose when he provided his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowed that person to make cash withdrawals using that card.
47. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage to someone else by providing his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowing that person to make cash withdrawals using that card.

Specific payments which are contrary to the Rules

Authorisation of invoice from Marriott Hotel to be paid by the National Office

Evidence

447. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Finding 48 - Authorisation of invoice from Marriott Hotel to be paid by the National Office, which is set out below at page 322.

Requirements of the Rules

448. Rule 24 states as follows:

National Executive shall determine from time to time the fares and expenses to be paid to or on behalf of members of the National Executive when attending meetings of the same or when attending to the business of the Union. In the case of Branch delegates to National Council, such fares and expenses shall be paid by the Branch concerned and in the case of National Executive members such fares and expenses shall be paid out of the funds of the Union.

449. The members of National Executive are set out in Rule 26, which provides that National Executive shall consist of the Officers of the HSU and the Branch Secretary of each Branch. Rule 19 provides that the Officers of the HSU are the National President, the National Vice-President, the two National Trustees, the National Secretary, the Senior National Assistant Secretary and the National Assistant Secretary.
450. It appears that a meeting of National Council took place on 13-15 September 2006, although I have not been provided with any minutes of National Council meetings in 2003 through to 2007. This meeting is referred to in the minutes of the National Executive meeting held on 15-16 February 2006 as 'this year's council meeting' ([HSUNO.018.0259](#)) and in the minutes of the National Executive meeting held on 7-8 August 2006 as 'conference' ([HSUNO.018.0220](#)).

Payment to Marriott Hotel on 7 September 2006

451. MYOB data of National Office transactions shows that on 7 September 2006 an electronic payment of \$56,688 was made by the National Office to the Marriott Hotel ([WIT.WIL.001.0082](#), [HSUNO.003.0173](#)). In interview, Mr Thomson confirmed that this payment related to a Sydney National Council/Conference meeting (Thomson PN 1493).
452. It appears that this payment of \$56,688 related to expenses for the benefit of delegates to a National Council meeting.

Mr Thomson's submissions

453. With respect to finding 48, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Rule 24 of the Rules by authorising a payment of \$56,688 to the Marriot Hotel on 7 September 2006. This expenditure related to the fares and expenses of Branch delegates to a National Council meeting in 2006.
 - b. The payment to the Marriot Hotel was related to expenses for the Sydney National Council Conference.
 - c. I have not construed Rule 24 correctly. Rule 24 does not operate to exclude a discretion of the National Executive or National Secretary to pay for the Branch delegates to a National Council Meeting in appropriate circumstances. It is of concern that I have incorrectly construed Rule 24. Rule 24 is not a strict requirement but rather a statement of the desired intended practice.

Conclusion

454. Mr Thomson has submitted that he has a 'discretion' which enables him to make payments which are contrary to the terms of Rule 24 'in appropriate circumstances' and that Rule 24 is 'not a strict requirement but rather a statement of the desired intended practice'.

455. I reject this construction of Rule 24 and of the Rules in general. The Rules specifically set out in Rule 24 how fares and expenses are to be paid. It is not for the National Secretary to determine how he believes the Rules should operate according to his assessment of the 'desired intended practice' of the Rules. If National Executive or National Council, as a collective body, are of the view that Rule 24 does not appropriately set out how fares and expenses are to be paid then it is incumbent upon National Executive or National Council to alter the Rules in accordance with the rule altering procedure contained therein.
456. Given the day to day practices surrounding payment and authorisation of expenditure by the National Office discussed at paragraphs 27 to 38 above and the fact that Mr Thomson was aware of this payment, I consider that Mr Thomson authorised payment to the Marriott Hotel on 7 September 2007.
457. Mr Thomson described the payment to Marriott Hotel as being related to expenses for the Sydney National Council/Conference meeting.
458. Rule 24 requires the Branches to pay for 'expenses' associated with attendance of delegates at National Council meetings and such expenses would include the cost of food and beverages. The vast majority of this expense would have been incurred on behalf of Branch delegates in contravention of Rule 24. It is not, however, possible to quantify this amount (see later discussion¹²⁸ as to persons for whom the National Office was responsible for payment).
459. Although the amount cannot be quantified, to the extent that National Office funds were expended in paying for expenses of Branch delegates to National Council, I consider that Mr Thomson has contravened Rule 24 in authorising such payment.

Finding 48 - Authorisation of invoice from Marriott Hotel to be paid by the National Office

48. Mr Thomson has contravened Rule 24 by authorising a payment of \$56,688 to the Marriott Hotel on 7 September 2006 which related to fares and expenses of Branch delegates to a National Council meeting.

Authorisation of invoice from University House to be paid by the National Office

Evidence

460. In addition to the matters set out at paragraphs 1 to 67 of this chapter, the following matters are relevant to Findings 49 and 50 - Authorisation of invoice from University House to be paid by the National Office, which are set out below at page 327.

¹²⁸ See the discussion under the heading Payment to ANU University House on 28 August 2007 of \$4,922 on page 251

Payment to ANU University House on 28 August 2007 of \$4,922

461. An invoice from University House at the Australian National University (**ANU**) in Canberra to the National Office for accommodation for \$4,922 states that this charge is for accommodation between 6 and 9 May 2007 ([HSUNO.010.0189](#)). The invoice lists the names of the occupants of the rooms to which the charges relate. The following table lists those names, the positions¹²⁹ occupied by those persons as at May 2007 (as set out in annual returns lodged with the AIR) and charges itemised in the invoice in relation to each of them:

Name	Position	Total Charges
David Shaw	National Council Delegate, WA Branch	\$488
Colin George	National Council Delegate, WA Branch	\$488
Cheryl Hamil	National Council Delegate and WA Branch President	\$488
Anthony Farrall	National Council Delegate, WA Branch	\$488
Ruth Kershaw	National Office employee (research officer)	\$356
Katie Hall	National Office employee (Your Rights at Work in La Trobe)	\$356
Chris Panizza	National Executive member and WA Branch Assistant Secretary	\$356
Karinda Flavell	National Office employee (research officer)	\$356
Mark McLeay	National Office employee (National Industrial Officer)	\$356
Karene Walton	Former National Office employee	\$356
Craig Thomson	National Secretary	\$356
Daniel Hill	National Trustee and WA Branch Secretary	\$356
Clement O'Shanessy	National Executive member and Queensland Branch Secretary	\$122
TOTAL:		\$4,922

462. A Statement of Account sent by University House at ANU dated 2 July 2007 regarding outstanding sums that are owed by the National Office confirms the amount of \$4,922 that was billed on 14 May 2007 ([HSUNO.010.0184](#)).
463. MYOB data also ([HSUNO.010.0187](#)) confirms that an electronic payment of \$4,922 was made by the National Office to the ANU on 28 August 2007. However the invoice number on the MYOB data (30974) does not match the invoice number on the ANU Statement of Account (18198). The receipt of payment to the ANU for \$4,922, however, also refers to invoice 18198 ([HSUNO.010.0188](#)). Since MYOB

¹²⁹ On 8 November 2007 Mr Thomson lodged an annual return of information with the Australian Industrial Registry for the 2006 calendar year (FWA.004.0045). Ms Jackson subsequently lodged an annual return of information dated 15 February 2008 for the 2007 calendar year (FWA.004.0026).

data is entered manually by the finance officer, it is reasonable to assume in these circumstances that this inconsistency in invoice numbers was due to human error.

464. It appears that the payment of \$4,922 to ANU for accommodation related to the National Council/Conference that was held in May 2007 in Canberra.
465. Mr Thomson agreed in interview that the National Office had paid for accommodation at National Council meetings in 2006 and 2007 (Thomson PN 1495). Given the day to day practices surrounding payment and authorisation of expenditure by the National Office discussed at paragraphs 27 to 38 above and the fact that Mr Thomson was aware of this payment, in my view Mr Thomson authorised payment of the invoice from University House.
466. In my view, however, not all of the monies that were paid by the National Office with respect to accommodation at University House between 7 and 9 May 2007 were in contravention of Rule 24. That Rule requires fares and expenses of Branch delegates to be paid by the Branch concerned but the fares and expenses of National Executive members are to be paid by the National Office. Further, the Rules are silent as to the payment of fares and expenses of National Office employees.
467. In looking at the description of the positions that were held by those persons for whom the National Office paid accommodation expenses that was provided by annual returns lodged by the HSU and as set out at paragraph 461:
- a. four were National Council delegates from Western Australia;
 - b. four (including Mr Thomson) were National Executive members;
 - c. four (excluding Mr Thomson) were National Office employees; and
 - d. one (Ms Walton) was a former National Office employee.
468. It seems likely, however, that the description of Mr Chris Panizza in the 2006 and 2007 annual returns as 'National Executive Member' was inaccurate. The National Officers as listed in the 2006 annual return ([FWA.004.0045](#)) were:

National Office held		Other Office held
National President	Michael Williamson	NSW General Secretary
National Vice-President	Chris Brown	Tas No.1 Branch Secretary
National Trustees (2)	Iris Knight	
	Dan Hill	WA Branch Secretary
National Secretary	Craig Thomson	
Senior National Assistant Secretary	Kathy Jackson	Vic No.3 Branch Secretary
National Assistant Secretary	David Stephens	Vic No.2 Branch Assistant Secretary

469. The only other members of National Executive are Branch Secretaries.¹³⁰ In both the 2006 and 2007 annual returns Mr Dan Hill is listed as the Branch Secretary of the Western Australian. Mr Panizza was the Branch Assistant Secretary of that Branch.
470. While it is highly likely that Mr Panizza was not a member of National Executive, he may well have been a delegate to National Council. According to the annual return of information that was lodged by Mr Thomson, the Western Australian Branch had 4,265 members in 2006, which would have given it an entitlement to 5 delegates to National Council under Rule 19. It is therefore reasonable to presume that Mr Panizza may have been the fifth delegate to National Council from the Western Australian Branch.

Mr Thomson's submissions

471. With respect to findings 49 and 50, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening either of Rule 24 or Sub-rule 36(b) of the Rules. Rule 24 does not operate to exclude a discretion of the National Executive or National Secretary to pay for the Branch delegates to a National Council Meeting in appropriate circumstances.
 - b. Rule 24 states the desired intended practice. In the case of 5 Western Australian delegates, the National Secretary was of the view that their expenses would be paid by the National Office of the HSU.
 - c. Further the National Executive in February 2005 gave the National Secretary the overriding delegation to spend up to \$50,000 without the approval of the National Executive. This delegation amounts to approval of the National Secretary to authorise payment of expenditure up to \$50,000 and amounts to a general prior approval of the expenditure.

Conclusions

472. On the basis of the information set in paragraphs 461 to 470 above, it seems highly likely that, of the individuals to whom the University House invoice relates:
- a. five (including Mr Panizza) were National Council delegates from Western Australia;
 - b. three (including Mr Thomson) were National Executive members;
 - c. four (excluding Mr Thomson) were National Office employees; and
 - d. one (Ms Walton) was a former National Office employee.
473. Rule 24 requires the Branches to pay for the 'fares and expenses' associated with attendance by their Branch delegates at National Council meetings. The ordinary meaning of an 'expense' is a 'cost or charge' while a 'fare' relates to the 'price of conveyance or passage' (Macquarie Concise Dictionary, 4th edition, 2006). The requirement in Rule 24 that Branches pay for the fares and expenses of Branch

¹³⁰ See Rule 26.

- delegates therefore appears to mean that Branches are required to pay not only for costs associated with travel, such as airfares, car hire or taxis, but also all other costs or charges associated with a National Council meeting, including accommodation, food and beverages.
474. It is clear from the terms of Rule 24 that the expenses of the five National Council delegates from the Western Australian Branch were required to be paid by that Branch. Payment by the National Office of the accommodation expenses of the five WA Branch delegates would contravene Rule 24.
475. Mr Thomson has submitted that he has a 'discretion' which enables him to make payments which are contrary to the terms of Rule 24 'in appropriate circumstances' and that Rule 24 states the 'desired intended practice'. I have set out at paragraph 455 above my reasons for rejecting this submission.
476. Mr Thomson has also submitted that this expenditure fell within his delegation to spend up to \$50,000 without approval of National Executive. I have set out at paragraphs 49 to 67 above of this chapter, however, my view that the National Executive meeting of 25 and 26 February 2003 did not pass a resolution approving financial delegations. In any event, no delegation could confer authority on Mr Thomson which was contrary to the Rules.
477. A separate question concerns whether the National Office was permitted by the Rules to pay for the expenses related to attendance at a National Council meeting of the four National Office employees or of Ms Walton, who was a former National Office employee.
478. In my view, costs associated with the attendance at National Council of the four National Office employees who are listed in the table above would fall within the general administration of the HSU. Each of the four employees not only attended meetings of National Executive as observers but also gave reports to National Executive at various times - see, for instance, the agenda for the meeting of 22 and 23 August 2007 at which each of Mark McLeay, Karinda Flavell and Ruth Kershaw were to give reports. Similarly, Katie Hall regularly reported to National Executive regarding the Your Rights at Work campaign in La Trobe. I consider that the payment by the National Office of the accommodation expenses of the four National Office employees who attended National Council in Canberra in May 2007 was in accordance with the Rules.
479. This analysis does not, however, apply to payment by the National Office of expenses associated with the attendance by Ms Karene Walton at the National Council meeting in May 2007. Ms Walton ceased to be employed by the HSU in April 2007, at which time she commenced employment with the ACTU. I consider that the payment by the National Office of expenses associated with attendance by a person who was not an employee of the National Office at a National Council meeting was not part of the general administration of the HSU or for purposes reasonably incidental thereto. Further, National Executive minutes that have been viewed by FWA do not disclose any resolution by National Executive authorising payment by the National Office of such costs.

Findings 49 and 50 - Authorisation of invoice from University House to be paid by the National Office

- 49.** Mr Thomson has contravened Rule 24 by authorising a payment of accommodation expenses of five National Council delegates from the Western Australian Branch amounting to \$4,922 which was related to a National Council/Conference meeting to University House in May 2007.
- 50.** Mr Thomson has contravened Sub-rule 36(b) by purporting to authorise payment by the National Office of \$4,922 to ANU for accommodation related to the National Council that was held in May 2007 in Canberra that included accommodation expenses of \$356 for Ms Karene Walton, who was not an employee of the National Office, without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

Authorisation of invoice from Hyatt Catering to be paid by the National Office

Evidence

480. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Finding 51 - Authorisation of invoice from Hyatt Catering to be paid by the National Office, which is set out below at page 329.

Hyatt Catering, Parliament House, Canberra

Hyatt Catering - 30 April and 1 May 2007

481. The National Office paid a total of \$14,786 to Hyatt Catering at Parliament House in Canberra on 30 April 2007 and 1 May 2007 ([HSUNO.008.0005](#)):
- a. 30 April 2007 - \$7,786;
 - b. 30 April 2007 - \$2,000;
 - c. 1 May 2007 - \$5,000.
482. In interview, while not being certain, Mr Williamson suggested that perhaps the payment to Hyatt Catering was for the National Council meeting that was held at a function that was attended at Parliament House (Williamson PN 108).
483. In interview Mr Thomson stated that the payment to Hyatt Catering was for a dinner at Parliament House for persons attending National Council (Thomson PN 1467).

Mr Thomson's submissions

484. With respect to finding 51, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Rule 24 of the Rules. Rule 24 does not operate to exclude a discretion of the National Executive or National Secretary to pay for a function where Branch delegates and National Officers of the HSU are in attendance in the appropriate circumstances.
 - b. Rule 24 states the desired intended practice. In the case of the dinner at Parliament House for delegates of the National Council and staff of the National Office of the HSU and members of Parliament, the National Secretary was of the view that the expenses of the dinner should be paid by the National Office of the HSU as the dinner was for the benefit of the HSU. It is also noted that Object 4(o) provides that the objects of the Union are to foster co-operation and harmonious relations between its members in the various States of Australia. The dinner at Parliament House was an example of the National Office of the HSU fostering and building its relationship with members and discussing key issues and strategies.
 - c. Further at the National Executive meeting in Perth on 25 and 26 February 2003, the National Executive gave the National Secretary the overarching delegation to spend up to \$50,000 without the approval of the National Executive. This delegation amounts to approval of the National Secretary to authorise payment of expenditure up to \$50,000 and amounts to a general prior approval of the expenditure.

Conclusion

485. On the basis of the evidence discussed above at paragraphs 481 to 483 of this chapter, I consider that the payment to Hyatt Catering related to the National Council meeting that may have been held in May 2007 in Canberra.
486. Given the day to day practices surrounding payment and authorisation of expenditure by the National Office which are discussed at paragraphs 27 to 38 above and the fact that Mr Thomson was aware of this payment, I consider that Mr Thomson authorised payment to the Hyatt Catering on 30 April 2007 and 1 May 2007.
487. Mr Thomson described the payment to Hyatt Catering as being for 'a dinner' at Parliament House. Rule 24 requires the Branches to pay for 'expenses' associated with attendance of delegates at National Council meetings and such expenses would include the cost of food and beverages. If there were approximately 80 people attending National Council and the only people who were not Branch delegates were the seven National Officers who are set out above in the table at paragraph 468 of this chapter, the vast majority of this expense would have been incurred on behalf of Branch delegates in contravention of Rule 24. It is not, however, possible to quantify this amount.
488. Mr Thomson has submitted that he has a 'discretion' which enables him to make payments which are contrary to the terms of Rule 24 'in appropriate circumstances'

and that Rule 24 states the 'desired intended practice'. I have set out at paragraph 455 above my reasons for rejecting this submission. He has also set out his view that the payment was in accordance with the objects of the Union. While this may well be so, this does not alter the point that it was necessary for payments to be made in accordance with the requirements of the Rules.

489. Mr Thomson has also submitted that this expenditure fell within his delegation to spend up to \$50,000 without approval of National Executive. I have set out at paragraphs 49 to 67 above of this chapter, however, my view that the National Executive meeting of 25 and 26 February 2003 did not pass a resolution approving financial delegations. In any event, no delegation could confer authority on Mr Thomson which was contrary to the Rules.
490. Although the amount cannot be quantified, to the extent that the invoice which was paid by the National Office to Hyatt Catering included expenses for food and beverages of Branch Delegates to National Council, I consider that Mr Thomson has contravened Rule 24 in authorising such payment.

Finding 51 - Authorisation of invoice from Hyatt Catering to be paid by the National Office

51. Mr Thomson has contravened Rule 24 by authorising payment of an invoice from Hyatt Catering that included expenses for food and beverages of Branch Delegates to National Council.

Payments outside the general administration of the Union

Authorisation of payment to the Julie Williamson Fundraising Appeal by the National Office

Evidence

491. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 52 and 53 - Authorisation of payment to the Julie Williamson Fundraising Appeal by the National Office, which are set out below at page 333.
492. A payment of \$2,400 is recorded in MYOB data ([HSUNO.003.0173](#)) as having been made to the Julie Williamson Fundraising Appeal on 8 August 2006.
493. In interview Mr Williamson explained that a race day was held at Randwick racecourse to raise funds for multiple sclerosis and that the National Office 'purchased a table for that function which has been approved by the national council' (Williamson PN 476). Mr Williamson explained that the charity runs under his wife's banner and that members of National Executive were aware at the time that Julie Williamson is his wife (Williamson PN 488).

494. Mr Thomson stated (Thomson PN 1570):

MR THOMSON: That was a multiple sclerosis fundraising lunch that was held that we made a donation to. That was reported to executive, in fact I think most of the executive were there. That was Michael's wife.

MR NASSIOS: So you - that you would categorise definitely as a donation?

MR THOMSON: Yes.

495. When he was then advised that FWA has not received a statement of loans, grants and donations disclosing this donation as required by subsection 237(1) of the RAO Schedule, Mr Thomson replied 'Yes, well, we should have known that' (Thomson PN 1575) but that 'It wasn't what I did, but, you know, I would say that we spent the money. There was no secret in terms of that' (Thomson PN 1581).

496. Dr Kelly told FWA that the donation to the Julie Williamson Fundraising Appeal 'didn't get passed by National Executive until the subsequent financial year' (Kelly PN 402). Dr Kelly had been (Kelly PN 396):

...concerned that there was \$14,000 in donations and [Belinda Ord] broke down the donations for me and interestingly there was - none of these things had gone to national executive. Some of them were, I suppose, okay but there was one in there to the Multiple Sclerosis Society which I questioned which turned out to be a donation to some function of the Multiple Sclerosis Society which was in the name of Michael Williamson's wife and it never went to national executive and I raised it. I kept raising it and I kept saying, 'Well, this needs to go in the national executive,' and it was passed after the event by national executive.

497. Dr Kelly said that the donation was not discussed or approved by National Executive until she queried it after the event, and that the Executive approved the donation after the event (Kelly PN 396-402).

498. It appears that Dr Kelly may have been referring to the subsequent approval by the National Executive of a donation made to the Julie Williamson MS Fundraising appeal in 2008. Minutes of a National Executive meeting on 9 September 2009 (more than three years after the expenditure was incurred) record the following ([HSUNO.019.0035](#)):

7. General Business

It had come to the attention of the Executive that it had not previously authorised two donations made to the Julie Williamson MS Fundraising Appeal [18/11/08 \$2400 and 16/1/09 \$1200].

Moved Iris Knight/Dan Hill

'That National Executive authorises the donation of \$2400 and \$1200 to the Julie Williamson MS Appeal.'

CARRIED

Mr Thomson's submissions

499. With respect to finding 52, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules. At the National Executive meeting in Perth on 25 and 26 February 2003 the National Executive gave the National Secretary an overarching delegation to spend up to \$50,000. This delegation amounts to approval by the National Executive of the National Secretary being able to authorise payments, and amounts to a general prior approval of the expenditure. Further, the donation to the Julie Williamson Fundraising Appeal on 8 August 2006, in the judgement of Mr Thomson, was in the best interest of the HSU and supported object 4(q) of the Rules, being "to make gifts for bona fide charitable purposes". The Julie Williamson Fundraising Appeal was a bona fide charitable purpose.
 - b. It should also be noted that, while there may have been an oversight with the notification to FWA of the donation, the National Executive did approve the making of the donation, after the event, on 9 September 2009.
500. With respect to finding 53, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. At the National Executive meeting in Perth on 25 and 26 February 2003 the National Executive gave the National Secretary an overarching delegation to spend up to \$50,000. This delegation amounts to approval of the National Secretary to authorise payment and amounts to a general prior approval of the expenditure. Further, the donation to the Julie Williamson Fundraising Appeal on 8 August 2006, in the judgement of Mr Thomson, was in the best interest of the HSU and supported object 4(q) of the Rules, being "to make gifts for bona fide charitable purposes". The Julie Williamson Fundraising Appeal was a bona fide charitable purpose, and Mrs Williamson received no benefit from the donation.
 - b. It should also be noted that while there may have been an oversight with the notification to FWA of the donation, the National Executive did approve the making of the donation, after the event, on 9 September 2009.

Conclusions

501. Mr Thomson has submitted that the donation to the Julie Williamson MS Fundraising Appeal fell within his delegation to spend up to \$50,000 without approval of National Executive. I have set out at paragraphs 49 to 67 above of this chapter, however, my view that the National Executive meeting of 25 and 26 February 2003 did not pass a resolution approving financial delegations. In any event, no delegation could confer authority on Mr Thomson which was contrary to the Rules.
502. Mr Thomson has also submitted that the donation supported object 4(q) of the Rules. While this may well be so, this does not alter the fact that it was necessary for donations to be approved in accordance with the requirements of Sub-rule 36(g).

503. Mr Thomson has also submitted that the donation was approved, after the event, on 9 September 2009. I consider that the terms of the resolution that is recorded in the minutes of the National Executive meeting on 9 September 2009 ([HSUNO.019.0035](#)), which refers to a payment of \$2,400 that was made on 18 November 2008 to the Julie Williamson MS Fundraising Appeal, cannot authorise the payment that was made by the National Office to the Julie Williamson Fundraising Appeal on 8 August 2006. This is for several reasons:
- a. While the amounts that were expended are exactly the same, the dates are so different as to suggest that it is not even likely that a typographical error occurred in recording the terms of the resolution that was passed.
 - b. Further, it is clear from information given to me in interview by Mr Williamson that significant amounts of money are raised by the fundraising appeal each year. Mr Williamson stated that the fundraising appeal runs under his wife's 'banner' and that 'she raised 50 grand last year in 2006 and then this year we're aiming for \$120,000 this year...' (Williamson PN 479). Given that Mr Williamson is the National President of the HSU, it seems likely that funds were donated to the Julie Williamson Fundraising Appeal each year (as is also suggested by the donation on 16 January 2009 of \$1,200 that is also referred to in the minutes of 9 September 2009).
 - c. In any event, the use of the word 'has' in sub-rule 36(g) (instead of the word 'is'), together with the mandatory language in which the prohibition against expenditure is expressed ('*the Union shall not make any loan, grant or donation of any amount exceeding \$1,000 unless the National Council or the National Executive ...has...*') means that that sub-rule operates as a prohibition against the making of any loan grant or donation of an amount exceeding \$1,000 unless the either National Council or National Executive has, before the loan, grant or donation is made, satisfied itself of the two matters set out in subparagraph 36(g)(i) and given the approval required by subparagraph 36(g)(ii). Accordingly it was not open to the National Executive in 2009 to form the satisfaction required by 36(g)(i) and grant the approval required by 36(g)(ii) in respect of a donation which had been made some three years previously.
504. It is clear that the payment to the Julie Williamson Fundraising appeal was not expenditure on, or for a purpose reasonably incidental to, the general administration of the Union, even if it could be expenditure within the objects of the Union.
505. The payment by the National Office of \$2,400 on 8 August 2006 to the Julie Williamson Fundraising appeal was purportedly authorised by Mr Thomson. Mr Thomson agreed in interview that he was aware that the National Office made a payment to the Julie Williamson Fundraising Appeal. Given the day to day practices surrounding payment and authorisation of expenditure by the National Office which are discussed at paragraphs 27 to 38 above and the fact that Mr Thomson was aware of this payment, in my view it is apparent that Mr Thomson purported to authorise the payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006.

506. A reasonable person in Mr Thomson's position would have taken steps to ensure that this payment was approved by National Executive, that National Executive was formally made aware that the recipient of the payment was a charity connected to the wife of the National President and that these matters were recorded in the minutes of National Executive.

Findings 52 and 53 - Authorisation of payment to the Julie Williamson Fundraising Appeal by the National Office

52. Mr Thomson has contravened Sub-rule 36(b) by purporting to authorise payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
53. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary:
- by failing to ensure that the payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 was approved by National Executive or National Council;
 - by failing to formally disclose to National Executive or National Council that the recipient of the payment was a charity connected to the wife of the National President; and
 - by failing to ensure that these matters were recorded in the minutes of National Executive or National Council.

Authorisation of expenditure relating to Ms Angela Humphries to be paid by the National Office

Evidence

507. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Finding 54 - Authorisation of expenditure relating to Ms Angela Humphries to be paid by the National Office, which is set out below at page 338.

Decisions of National Executive in relation to Ms Humphries

508. The minutes of the National Executive meeting held on 7 and 8 August 2006 ([HSUNO.018.0220](#)) record a statement in the middle of a passage about the employment of Katie Hall to work in the seat of La Trobe:

The National President also informed the National Executive of the NSW Branch decision to appoint a political organiser who would be starting shortly. In addition he advised that Angela Humphries had been appointed by four NSW unions to assist in three marginal seats in NSW.

509. Ms Jackson told FWA in her second interview that she could not remember Ms Humphries being appointed by four NSW unions to assist three marginal seats in NSW (Jackson (2) PN 197). Ms Jackson said that she did not know Ms Humphries at that time (Jackson (2) PN 199) and had no idea why the three marginal seats were in NSW, whether Dobell was one of them, or which four NSW unions Mr Williamson had been referring to when he told National Executive about this arrangement (Jackson (2) PN 200-205). Ms Jackson did not know at the time that the HSU National Office had paid for a leased vehicle for Ms Humphries for several months (Jackson (2) PN 207). She did not recall any discussion or approval of this by the National Executive at the time (Jackson (2) PN 209).
510. In August 2007 (which appears, from the information that it set out in the following pages, to be towards the end of the period of the mini-lease paid for by the National Office) Mr Williamson informed the National Executive that Ms Humphries had been employed not by the HSU itself, but by the NSW Union. The inference was that this fact was passed to members of the National Executive for their information only, and not because her activities were of any concern to the National Executive. According to the minutes of this meeting neither Mr Williamson nor Mr Thomson took any steps to inform the National Executive that Mr Thomson had arranged for Ms Humphries to be provided with a rented motor vehicle for two months while she had been employed by the NSW Union ([HSUNO.018.0220](#)).

Knowledge of Ms Humphries among staff of the National Office

511. Ms Ord was asked at her second interview if the name 'Angela Humphries' meant anything to her. Ms Ord replied (Ord (2) PN 28):
- Yes, it does. Now, let me think. Look, I do recall the name, absolutely. I can't recall exactly. I think she may have been - this might be poor wording, but she may have been like a consultant. Now, she did have something to do with - I think she was based up on the New South Wales coast or maybe in our Sydney office. I think I've met Angela once. I'm pretty sure I did. I can't remember exactly what she did. She might have been some form of consultant maybe.
512. Ms Ord was asked whether Ms Humphries had any involvement in Coastal Voice and said that she might have, although Ms Ord was not sure (Ord (2) PN 30). Ms Ord agreed that she thought Ms Humphries had had a leased vehicle for two months in May and June 2006 (Ord (2) PN 32).

Documents relating to Ms Humphries

513. Documents held by the National Office (some of which are undated) suggest that the National Office took steps to arrange a leased vehicle for Ms Angela Humphries in about April 2006.

514. First, an undated page of an exercise book ([HSUNO.022.0133](#)) records Ms Humphries name, mobile phone number and address, email address, and the following additional details:

TWU
27 Cambridge Street
Blacktown NSW 2148 Home
'TWU
Level One
31 Cowper Street
Parramatter NSW 2150
Current Drivers Licence
NSW 222 80 578
Start date 26/4/06

515. On 5 May 2006 Mr Thomson emailed Ms Ord ([HSUNO.022.0142](#)) in the following terms:

Hi Belinda,
Hope you had a good weekend.
I will get Angela Humphries to call you. We need to hire her a car until 30 June up here.
I also need you to check with our insurance company about public liability insurance for our Community group and directors liability as well.
Give me a call,

516. Ms Ord then emailed Ms Humphries on 9 May 2006 (HSUNO.022.0142), copying Mr Thomson's email and asking Ms Humphries to provide her current address and drivers' licence number. Ms Ord also stated: *'Also, Craig said we would be recording your work expenses, are you at the stage that you have any information for me yet?'*

517. On 9 May 2006 Ms Ord emailed Ms Humphries, copied to Mr Thomson, stating as follows ([HSUNO.022.0132](#)):

Hi Angela,
Your car should be delivered sometime tomorrow - someone from Orix will be contacting you on your mobile. The car will be delivered the TWU workplace address you gave me. If you could let me know that you have received the car etc, that would be terrific. If you have any queries, or need to change any details, it may be best to ring Orix direct on 9697 3523 - Athena as I don't start until 10.00am.
Cheers and happy driving!!

518. The National Office has also provided FWA with a form from Orix Australia Limited ([HSUNO.022.0134](#)) which has been completed, requesting a 'Mini-Lease' for Ms Humphries for a period commencing 'ASAP' and ending on 10 July 2006. The form has been dated 9 May 2006.

519. An undated memorandum signed by Ms Humphries and addressed to Ms Ord advises Ms Ord of Ms Humphries E-Tag details ([HSUNO.022.0136](#)).
520. The National Office has also provided a statement in Ms Humphries name of her use of electronic toll facilities between January and March 2006 ([HSUNO.022.0137](#)).

Other possible expenditure relating to Ms Humphries

521. It appears from an email from Ms Ord to Ms Humphries on 9 May 2006 ([HSUNO.022.0139](#)) which enclosed two one page spreadsheets ([HSUNO.022.0140](#) and [HSUNO.022.0142](#)) that arrangements were put in place for Ms Humphries to log expenditure which would be reimbursed by the National Office.
522. MYOB data provided by the National Office to FWA ([HSUNO.003.0173](#)) indicates that the National Office received a payment of \$100 described as being from 'Angela Humphries' on 7 August 2006. The same data indicates that the following day an electronic payment of \$100 was made by the National Office to Ms Humphries.

Mr Thomson's submissions

523. With respect to finding 54, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules.
 - b. The National President informed the National Executive at the National Executive Meeting in Melbourne on 7 to 8 August 2006 of the NSW Branch's decision to appoint a political organiser. In addition the National President advised that Angela Humphries had been appointed by four NSW unions to assist in three marginal seats in NSW. This is contained in the minutes of the meeting and was provided to Mr Thomson with the materials contained in my letter of 12 December 2011.
 - c. Further, the term "organiser" is not synonymous with "volunteer" and it is reasonable to assume that the members of the National Executive knew that there would be costs involved with assisting in marginal seats. Further, Sub-rule 36(h) contemplates the reimbursement of out of pocket expenses incurred by persons for the benefit of the HSU and it is not limited by the requirements of Sub-rule 36(g).
 - d. Work Choices was a significant issue in the 2007 federal election and the ALP was strongly campaigning against it. As part of the ALP's campaign against Work Choices the ALP identified marginal seats around Australia and coordinated significant campaigns in those seats. This campaign against Work Choices was strongly supported by all trade unions, including the HSU. This support is clearly noted in the minutes of the National Executive meetings held on 28 February and 1 March 2005, 7 and 8 November 2005, 15 and 16 February 2006 and 15 and 16 May 2006 and the Special National Executive meeting of 7 April 2005.

- e. It was and is common practice for unions to supply services and individuals to participate in political campaigns. Those individuals who participate in the campaigns were entitled to have their expenses paid. Supporting the Work Choices campaign was considered by the HSU to be a purpose reasonably incidental to the general administration of the HSU as it was about promoting the rights of workers and raising the profile of the HSU.
- f. The appointment of Ms Humphries was supported at the National Executive meeting. Accordingly any such expenditure was authorised by the National Executive and the National Secretary was entitled to authorise the expenses incurred by Ms Humphries. Again, refer to Sub-rule 36(h).
- g. Further it is of concern that I have relied on the comments of Ms Jackson who said that she could not remember Ms Humphries being appointed by four NSW Unions when it was recorded in the minutes of the National Executive meeting which Ms Jackson attended. This attendance is recorded in the minutes.

Conclusions

- 524. Mr Thomson has submitted that it is reasonable to assume that the members of the National Executive knew that there would be costs involved with assisting in marginal seats.
- 525. Mr Thomson's submission states that Mr Williamson informed National Executive that Ms Humphries had been appointed by four NSW unions to assist in three marginal seats in NSW. He has not submitted, however, and no evidence has been provided (nor do any minutes viewed by FWA state) that National Executive had been informed that the National Office rather than the NSW Union was paying for the cost of Ms Humphries' motor vehicle lease. On the information that was presented to National Executive, the most logical conclusion was that members of National Executive would have presumed that it was the NSW Union which was paying for costs of the nature of the cost of Ms Humphries' motor vehicle lease.
- 526. While National Executive may have supported Ms Humphries' appointment, as Mr Thomson submits, they were supporting her appointment by the NSW Union. They were not thereby approving expenditure by the National Office on a motor vehicle lease for Ms Humphries.
- 527. Documents that have been referred to at paragraphs 513 to 520 above indicate that the National Office paid for the cost of a motor vehicle for approximately two months for Ms Humphries, who was not an employee of the Union.
- 528. The National Secretary only has authority to authorise expenditure which is on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. For all expenditure which is not on the general administration of the HSU, the National Secretary must seek prior authority of National Council or National Executive (see paragraphs 14 to 26 of this chapter above on pages 210 and 211). Given that Ms Humphries was not an employee of the Union, such expenditure could not have been, and was not, expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

529. There is no evidence before me that National Council or National Executive gave prior authority for expenditure of National Office funds on a motor vehicle lease for Ms Humphries.

Finding 54 - Authorisation of expenditure relating to Ms Angela Humphries to be paid by the National Office

54. Mr Thomson has contravened Sub-rule 36(b) by authorising the expenditure of funds of the National Office on a motor vehicle lease for Ms Humphries that was not authorised by the National Executive or National Council and was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Travelling overseas and incurring expenditure while Mr Thomson was on approved annual leave

Evidence

530. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 55 and 56 - Travelling overseas and incurring expenditure while Mr Thomson was on approved annual leave, which are set out below at page 347.

Mr Thomson's leave between 20 May and 24 June 2004

531. On 22 April 2004, the minutes of the Special Teleconference of the National Executive ([HSUNO.024.0097](#)) contain (at Item 9) a reference that Mr Thomson would be on leave between 20 May 2004 and 24 June 2004 (**annual leave period**). The accompanying Resolution, which was moved by Mr Thomson and seconded by Mr Lloyd Williams and then carried, was expressed in the following terms:

That in accordance with rule 33 (a) (ii) the Senior National Assistant Secretary shall act in the National Secretary's stead whilst he is absent on leave.

532. The minutes of 22 April 2004 were affirmed (at Item 2) as a true and correct record of that meeting in subsequent minutes of the National Executive on 14 and 15 July 2004 (HSUNO.024.0102, 0103).
533. Mr Thomson agreed at interview that he took the leave as recorded in the minutes of the National Executive on 22 April 2004 (being 20 May to 24 June 2004) because he was overseas (Thomson PN 1047).
534. On 4 June 2004, Ms Jackson signed a Statutory Declaration in her capacity as 'the Acting National Secretary of the Health Services Union of Australia' ([FWA.004.0184](#)). This was consistent with Mr Thomson being on leave at this time.
535. Ms Ungun told FWA that Mr Thomson used to seek approval for any leave from Mr Williamson and that Mr Thomson had to use the same annual leave form as

National Office staff. Ms Ungun stated that Mr Thomson's annual leave forms would have been stored on his personnel file. Ms Ungun was unable to remember whether Mr Thomson had taken leave during 20 May 2004 and 24 June 2004 (Ungun PN 314 - 327). She also stated that, should the need arise, she would contact Mr Williamson if particular authorisation was necessary. Ms Ungun suggested that Mr Thomson was accessible and worked during the times that he was overseas by way of phone calls and e-mail to the office (Ungun PN 291 - 394).

536. The fact that Mr Thomson took leave between 20 May and 24 June 2004 is also consistent with the HSU's own leave records, which are discussed at paragraphs 227 and 233 of this chapter. A table which is set out at paragraph 233 summarises Mr Thomson's leave records that were provided by the National Office to FWA.

Travel itinerary

537. Mr Thomson told FWA that, during the period in which he was on annual leave, he spent time mainly in Austria and Italy (Thomson PN 1425 - 1428):

MS CARRUTHERS: May I ask where you went on your holiday? Did you stay in England?

MR THOMSON: No, France and Italy.

MR NASSIOS: I assume that was personal interest.

MR THOMSON: Actually, not even much in France, it was mainly Austria and Italy.

538. It appears, however, that Mr Thomson travelled overseas on or about 2 May 2004, being about 18 days prior to commencement of his annual leave. Mr Thomson says that he attended conferences for HSU related purposes prior to and immediately following the annual leave period. In the two weeks prior to the commencement of annual leave, Mr Thomson travelled to the United States and London. He advised that in the first week Mark Butler travelled with him, including visiting SEIU 1169, a local Branch of the Service Employees Industrial Union which represents members in health care and the public service in the United States. At the time, Mr Butler was with the Liquor, Hospitality and Miscellaneous Workers Union in South Australia. In the second week, Mr Thomson says that he was in Washington attending a conference where there was a discussion about strategies for increasing union membership in Australia. Mr Thomson was part of a delegation of 15 or 16 ACTU union leaders. He says that he then travelled to London where he was a speaker at a conference. The conference was titled 'Think Globally, Act Locally'.

539. Mr Thomson gave the following evidence concerning his overseas travel and the places to which he travelled and the purpose of the meetings that he attended:

MR NASSIOS: The minutes of the national executive on 22 April 2004, they recorded that you would be on leave from 20 May 2004 until 24 June 2004. Can I ask, did you actually take leave during that period?

MR THOMSON: Yes, I did. I was overseas. This was following the - to the United States with the ACTU delegation.

MR NASSIOS: Okay, so I must admit - what was the trip?

MR THOMSON: We had about 15 or 16 union leaders from around Australia spend time in the United States, a week with a union and then a week in Washington together, looking at strategies for increasing union membership in Australia, and then I went to - then I was a speaker at a conference in London straight after that, and then after that I took leave, and then at the end of it I had a few other meetings in London that didn't actually fit with the time of my holidays, so I put them at the end rather than sequentially there.

(Thomson PN 1047 - 1050)

MR NASSIOS: I'm going to return to your overseas trip in May-June 2004.

MR THOMSON: Yes.

MR NASSIOS: We'll show you some statements of that time. I'd like to just get some clarification in terms of the statements, in terms of the work that you did.

MR THOMSON: Yes.

MR NASSIOS: Well, certainly the - prior to the leave.

MR THOMSON: Yes.

MS CARRUTHERS: I've just handed you your MasterCard.

MR THOMSON: Yes.

MS CARRUTHERS: You've got a Diners as well.

MR NASSIOS: You've indicated to me, you know, what you were doing there in terms of the - - -

MR THOMSON: The first week was - week or two weeks, was in New York, with another, Mark Butler, who was then with the LHMU in South Australia, and we were with SEIU 1169, I think was the - that we were with. We then went to Washington, and then I went to London and had - I said 'a week' but I think it was actually less that I charged the union for in terms of accommodation. I think it was three or four days of accommodation with meetings. So there was a conference, 'Act Globally' - no, 'Think Globally, Act Locally' I think was the name of the conference. I didn't finish all of those meetings, so I had holidays in the middle, which had already been arranged, and came back, and I think there was a couple of nights that were in relation to that. We also met some EU people. I'm not sure where it is on there, but somewhere in Europe, I can't remember where.

MR NASSIOS: Well, France, possibly?

MR THOMSON: Yes, I went to France. It might be there. I also went to Strasbourg as well to - is that Strasbourg? Is that somewhere where they - not Brussels, but outside of Brussels, there's another place that they meet, and was also there as well.

MR RAWSON: They do meet in Strasbourg.

MR THOMSON: I think it was Strasbourg, yes.

MR RAWSON: I think the parliament might be - - -

MR THOMSON: Yes, it's where the - yes, exactly. So we had some meetings there. But predominantly in Europe, outside of London, was essentially holiday, but there was a couple of days of meetings in a couple of places, and I can't exactly recall where they are. And I gave a - had a written report when I came back, both on - in two parts, both on what we did in the United States, which ended up becoming a proper report, and also on the other part of the trip, which was without the ACTU.

(Thomson PN 1382 - 1398)

540. Mr Thomson's credit card statements record expenses incurred during the annual leave period. Mr Thomson was asked about how these expenses were legitimate expenditure of HSU. He advised that meetings for HSU purposes were arranged to be held during the annual leave period. That was the time when meetings were arranged, which it was appropriate for him to attend (Thomson PN 1405 - 1406):

MR NASSIOS: I will ask, in terms of the fact that you're on leave between 20 May and 23 June, how some of the expenses after 20 May could be legitimate expenses for the HSU.

MR THOMSON: Because we just - it was the arrangement of where meetings actually fell. I mean, I took the time off, but if they fell in that time, that's what you could arrange.

541. At the end of his annual leave, Mr Thomson states that he returned to England, where he says that he attended further meetings and conferences for HSU related purposes (Thomson PN 1050):

... and then I went to - then I was a speaker at a conference in London straight after that, and then after that I took leave, and then at the end of it I had a few other meetings in London that didn't actually fit with the time of my holidays, so I put them at the end rather than sequentially there.

542. Mr Thomson states that he prepared a written report in relation to the matters discussed at the conferences. FWA served a Notice to Produce on the National Office of the HSU requiring production of a copy of the report. ([FWA.005.0014](#)) The HSU did not produce a report by Mr Thomson relating to his overseas travel in May and June 2004 to FWA in answer to the Notice to Produce.

Travel expenses charged to credit cards

543. The following expenses, in Australian dollars, were charged to Mr Thomson's Diners Club card or CBA Mastercard, that appear by their terms to relate to his travel overseas in May and June 2004:

Transaction date	Card	Category of expense	Expense description	Amount
28 April 2004	Diners	Hotel reservations	Hotel reservations	\$1,033.54
2 May 2004	Diners	Restaurant expense	'Texas Texas', New York	\$40.56

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Transaction date	Card	Category of expense	Expense description	Amount
4 May 2004	Diners	Restaurant expense	Loco Noche LLC, New York	\$218.51
4 May 2004	M'card ¹³¹		Fleet Bank, New York	\$141.10
4 May 2004	M'card	OS Terminal Cash advance	USA	\$4
6 May 2004	M'card	HSBC Bank, New York		\$281.65
6 May 2004	M'card	OS Terminal Cash advance	USA	\$4
6 May 2004	M'card	Amtrak, New York Penny		\$180.15
7 May 2004	Diners	Retail expense	Grand Slam stores, New York	\$149.98
8 May 2004	M'card	MTA Vending machine SA	212- Metrochrdny	\$14.40
9 May 2004	M'card	George Meany CTR Labor	USA National Labor College, New York	\$58.18
10 May 2004	Diners	Accommodation	Best Western Hotels, New York	\$2,481.68
11 May 2004	M'card	George Meany CTR Labor	USA National Labor College, New York	\$28.88
13 May 2004	Diners	Restaurant expense	McCormick & Schmick, Washington	\$248.04
15 May 2004	M'card	Restaurant expense	All Bar One, London	\$25.80
16 May 2004	M'card		London Trans MFM, Piccadilly CIGBR	\$13.94
17 May 2004	M'card		Woolwich Barcla, Heathrow, GBR	\$518.74
17 May 2004	M'card	OS Terminal Cash Advance	GBR	\$4
17 May 2004	M'card		Chevy Chase Federal, Chantilly, VA	\$444.46
17 May 2004	M'card	OS Terminal Cash Advance	USA	\$4
17 May 2004	M'card		London Trans MFM, Piccadilly CIGBR	\$11.10
18 May 2004	M'card		London Trans MFM, Piccadilly CIGBR	\$57.89

¹³¹ 'M'card' refers to Mastercard.

Chapter 5 - Financial Management of the National Office
 Travelling overseas and incurring expenditure while Mr Thomson was on approved annual leave

Transaction date	Card	Category of expense	Expense description	Amount
19 May 2004	M'card		London Trans MFM, Piccadilly CIGBR	\$20.69
19 May 2004	M'card	Restaurant expense	La Cave, London	\$156.49
20 May 2004 ¹³²	M'card		London, Piccadilly. London	\$520.45
20 May 2004	M'card	OS Terminal Cash advance	GBR	\$4
20 May 2004	M'card	CIT1 Trocadero	GBR	\$780.67
20 May 2004	M'card	OS Terminal Cash advance	GBR	\$4
20 May 2004	M'card		Metro Ligne2 TPV, Paris Cedex 1 FRA	\$34.75
24 May 2004	M'card		Paris St Lazare, Paris FRA	\$523.59
24 May 2004	M'card	OS Terminal Cash advance	FRA	\$4
21 June 2004	M'card		RTRAK Paddington, London GBR	\$548.41
21 June 2004	M'card	OS Terminal Cash advance	GBR	\$4
21 June 2004	M'card		001 Abbey Natio, London GBR	\$274.91
21 June 2004	M'card	OS Terminal Cash advance	GBR	\$4
21 June 2004	M'card	Accommodation	Gresham Hyde Htl, London	\$282
22 June 2004	M'card	CIT1 Trocadero	GBR	\$272.09
22 June 2004	M'card	OS Terminal Cash advance	GBR	\$4
4 July 2004	M'card		Lastminute.com GBR	\$1,000
17 July 2004	M'card		Lastminute.com GBR	\$498
17 July 2004	M'card		Lastminute.com GBR	\$249
Total value				\$11,149.65

Sources:

- Diners Club card statement issued 20 May 2004 [HSUNO.013.0165](#)
- CBA Mastercard statement issued 26 May 2004 [HSUNO.014.0023](#)

¹³² Dates in bold relate to the annual leave period.

- CBA Mastercard statement issued 25 June 2004 [HSUNO.014.0027](#)
 - CBA Mastercard statement issued 28 July 2004 [HSUNO.014.0028](#)
 - Table of Mr Thomson's overseas expenses [WIT.ORD.002.0044](#)
544. Of the expenses set out in the table at paragraph 543, \$3,260.87 appears in credit card statements as having been charged to Mr Thomson's credit cards in the annual leave period.
545. However the date recorded in a credit card statement may not reflect the date the transaction actually took place. There can be delays in the processing of the transaction by the credit card merchant.
546. No documents have been produced by HSU to FWA supporting the cash withdrawals.
547. No transactional documents supporting the amounts that were charged by vendors to Mr Thomson's credit cards whilst he was overseas have been produced by HSU to FWA.

Evidence of persons interviewed

548. Mr Thomson says that the expenditure relating to his overseas travel was approved by the National Executive. (Thomson PN 1399 - 1400) The minutes of the National Executive do not contain a record that it approved of Mr Thomson's overseas travel expenses. Indeed the minutes contain no record of Mr Thomson's overseas trip at all other than the resolution regarding his annual leave that is set out above at paragraph 531 of this chapter.
549. Mr Thomson has said that travel expenses relating to air fares, accommodation in London on 17 July 2004 booked through 'lastminute.com' and cash withdrawals totalling \$3,771.60 were incurred for HSU purposes and not during periods of time when he was on annual leave. Mr Thomson states that there should be supporting documents for the cash withdrawals, which he understood relates to the time that he was in London prior to the annual leave period (Thomson PN 1399 - 1432).

MR NASSIOS: Now, I ask, was this expenditure approved by the national executive?

MR THOMSON: Yes.

MR NASSIOS: Those purposes that you're talking about clearly were HSU purposes?

MR THOMSON: Yes, absolutely.

MR NASSIOS: Did the HSU pay for the air fares?

MR THOMSON: Yes, they did.

MR NASSIOS: I will ask, in terms of the fact that you're on leave between 20 May and 23 June, how some of the expenses after 20 May could be legitimate expenses for the HSU.

MR THOMSON: Because we just - it was the arrangement of where meetings actually fell. I mean, I took the time off, but if they fell in that time, that's what you could arrange.

MR NASSIOS: On 17 July 2004 there was, I think, two charges.

MS CARRUTHERS: Yes.

MR NASSIOS: \$498 and \$249 for - - -

MS CARRUTHERS: Sorry, you haven't got that yet.

MR NASSIOS: - - - I presume it's accommodation, www.lastminute.com.

MR THOMSON: Yes.

MR NASSIOS: Can you recall what that would have been for?

MR THOMSON: Yes. That was before coming back, there were some - I had a couple more meetings in London on the way back and they were entirely HSU-related.

MR NASSIOS: Again, given that they were actually during a period of leave.

MR THOMSON: Yes.

MR NASSIOS: All right. You withdrew \$3,771.60 whilst overseas in May-June 2004.

MS CARRUTHERS: In cash.

MR NASSIOS: In cash. Are you able to explain how this should be regarded as legitimate union expenditure?

MR THOMSON: Yes. There should be documents that go with that, but that was - that's these ones in London, in that first week that I'm there, I think you're talking about there, is that right?

MR NASSIOS: I'd have to ask. Do you have a recollection?

MR THOMSON: Yes, there was - -

MS CARRUTHERS: Your cash withdrawals were basically in the US, London, France. If you look at the MasterCard statement that I handed up - - -

MR THOMSON: That was - the US was entirely work. There was no component there that was holiday at all. The vast majority of the English part was work. In fact, I think all of England was work as well, too.

MS CARRUTHERS: May I ask where you went on your holiday? Did you stay in England?

MR THOMSON: No, France and Italy.

MR NASSIOS: I assume that was personal interest.

MR THOMSON: Actually, not even much in France, it was mainly Austria and Italy.

550. Ms Jackson states that during the Exit Audit process she became aware of cash withdrawals made by Mr Thomson while he was away overseas in the United States and Europe in May 2004. (Jackson (2) PN 107)

551. No documents have been produced by HSU to FWA evidencing that the National Council and the National Executive authorised Mr Thomson to use his Diners Club card and CBA Mastercard to pay for expenses relating to his overseas travel in May and June 2004 or expenses that he incurred during the annual leave period.
552. No documents of the HSU obtained by FWA contain a record relating to Mr Thomson's flight expenses. However, Mr Thomson freely stated to FWA that these were paid for by the National Office.

Mr Thomson's submissions

553. With respects to findings 55 and 56, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies that he has contravened any of Sub-rules 32(j), 32(n) and 36(b) of the Rules. Mr Thomson denies failing to be responsible for the monies of the HSU and denies failing to be responsible between meeting of the National Executive for the control and conduct of the business of the HSU.
 - b. Mr Thomson was on approved annual leave between 20 May and 24 June 2004. Between 2 May and 20 May 2004 Mr Thomson travelled on HSU business, attending a local Branch of the Service Employees Industrial Union which represents members in health care and the public service in the United States. Mr Thomson was part of a delegation of ACTU union leaders to Washington and then travelled to London to speak at the conference "Think Globally, Act Locally".
 - c. Mr Thomson also attended meetings relating to HSU business in London between 20 May and 24 June 2004. During this time Mr Thomson incurred expenditure which was related to HSU business. It was common practice of the HSU to cover expenses associated with work related travel, rather than providing an individual with an allowance. This is contemplated in Sub-rule 36(h).
 - d. Mr Thomson holidayed in France, Austria and Italy. Mr Thomson denies that personal expenses were charged to his HSU credit in relation to his annual leave. In particular, Mr Thomson notes that expenses were not charged to his credit card between 21 May and 21 June 2004, with the exception of 24 May when Mr Thomson travelled from Paris to London via the Eurostar on HSU business.

Conclusions

554. Mr Thomson, as National Secretary, was charged by Sub-rule 32(j) with being responsible for the monies of the Union and by Sub-rule 32(n) with controlling and conducting the business of the Union between meetings of National Executive.
555. By going overseas and being absent from his place of work between (on or about) 2 May 2004 and 19 May 2004 without arranging for someone else to act as National Secretary in his stead, Mr Thomson failed to carry out his responsibilities under Sub-rule 32(j) and 32(n).

556. The National Secretary only has authority to authorise expenditure which is on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. For all expenditure which is not on the general administration of the HSU, the National Secretary must seek prior authority of National Council or National Executive (paragraphs 14 to 26 of this chapter above on pages 210 and 211). Expenditure which is incurred for the purposes of, or during, international travel to represent the Union, while it may constitute the 'business' of the Union, cannot be considered to be part of the general administration of the Union. It is extraordinary in nature and, as such, required the prior authority of National Council or National Executive. This is particularly so when there is no evidence that Mr Thomson ever informed National Council or National Executive of his travel, much less sought its authorisation.
557. There is no evidence before me that National Council or National Executive approved any of Mr Thomson's expenditure for the purposes of, or during, his international travel between (on or about) 2 May 2004 and 24 June 2004. Given that Mr Thomson took no steps to inform, or seek approval from, National Executive in relation to this travel, I consider that this expenditure was not for, or incidental to, the general administration of the Union.

Findings 55 and 56 - Travelling overseas and incurring expenditure while Mr Thomson was on approved annual leave

55. Mr Thomson contravened Sub-rules 32(j) and 32(n) by:

- failing to be responsible for the monies of the HSU; and
- failing to be responsible between meetings of the National Executive for the control and conduct of the business of the HSU

by travelling overseas for an extended period of time, adjacent to a period in which he took annual leave, to attend conferences, at the expense of the HSU, without informing the National Council or the National Executive of his absence and failing to arrange for another person to act in the position of National Secretary during his absence in those periods adjacent to the period in which he took annual leave.

56. Mr Thomson contravened Sub-rule 36(b) by:

- incurring expenditure relating to flights, accommodation and meals incurred prior to taking annual leave in respect of his overseas travel; and
- making cash withdrawals using his CBA Mastercard while overseas

which was not expenditure that is on, or for a purpose reasonably incidental to, the general administration of the HSU and which had not been authorised by either National Council or National Executive.

Incursion or purported authorisation of expenditure charged to Mr Thomson's credit card on travel for Ms Alison Soutar

Evidence

558. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the lack of any National Office Policy about spousal travel is discussed at paragraphs 225 to 231 above. My conclusions and findings regarding the absence of a policy regarding spousal travel are set out at paragraphs 234 to 242 above.
559. The following matters are relevant to Findings 57 to 60 - Incursion or purported authorisation of expenditure charged to Mr Thomson's credit card on travel for Ms Alison Soutar, which are set out below at page 350.

Expenditure by Mr Thomson on travel for Ms Alison Soutar

560. Mr Thomson's Diners Club card was charged on 25 January 2006 the sum of \$962.22 for a return airfare from Melbourne to Sydney for Ms Soutar ([HSUNO.015.0012](#)).
561. In interview Mr Thomson confirmed that Ms Soutar is the partner of Mr Struan Robertson, a former National Office employee, but said that he did not know why she was travelling to Sydney on that day: (Thomson PN 1838 - 1843):
- MR NASSIOS: 25 January 2006, there's a flight booked - a return flight from Melbourne to Sydney, \$962.22, the next day being the Australia Day public holiday. The person who flew was a person by the name of Alison Soutar. Do you know who Alison Soutar is?
- MR THOMSON: Yes, she was the partner of Struan Robertson.
- MR NASSIOS: Do you know why she would have been flying to Sydney and back on that day?
- MR THOMSON: No.
- MR NASSIOS: Is it reasonable to say that if Ms Soutar was there~ Struan Robertson would also have been there?
- MR THOMSON: One presumes that's the case, yes.

Mr Thomson's submissions

562. With respect to findings 57 to 60, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules. There was an informal understanding among National Office staff that partners of National Office staff were sometimes able to accompany their partners on when the staff travelled on business. Mr Thomson does not recall authorising the expenditure and has no knowledge of the travel undertaken by Ms Soutar.

- b. It is of concern that I have failed to adduce any evidence which establishes findings 57 to 60. Further there is no evidence to suggest that any of the expenditure was not on the "general administration of the Union" or for "purposes reasonably incidental to the general administration of the Union".
- c. I have formed my own conclusions without relying on credible testimonies. It is likely that Mr Robertson was travelling on business, however I have failed to interview Mr Robertson. This failure indicates my bias.
- d. Further, Mr Thomson denies contravening any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule. If he did authorise the expenditure (which is not admitted), Mr Thomson had the power and the discretion to authorise such expenditure and a person in his position would have done the same. Finally, Mr Thomson denies using his position to gain an advantage for Ms Soutar.

Conclusions

- 563. I have set out at paragraphs paragraphs 234 to 242 above my conclusions and findings regarding the lack of any policy regarding spousal travel. I have found that Mr Thomson contravened Sub-rule 32(j) and subsection 285(1) of the RAO Schedule by failing to prepare a policy regarding the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff and to submit them to the National Council and National Executive for approval.
- 564. The National Secretary only has authority to authorise expenditure which is on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. For all expenditure which is not on the general administration of the HSU, the National Secretary must seek prior authority of National Council or National Executive (see paragraphs 14 to 26 of this chapter above on pages 210 and 211). Expenditure of National Office funds on travel by persons who are not employees of the Union could not be, and was not, expenditure on the general administration of the Union or for purposes reasonably incidental thereto.
- 565. There is no evidence that expenditure of National Office funds to pay for Ms Soutar's travel was authorised by National Council or National Executive.
- 566. I do not consider it necessary to interview Mr Robertson in relation to this expenditure as it was incurred, and approved, by Mr Thomson, not by Mr Robertson.
- 567. A reasonable person in Mr Thomson's position as National Secretary would have ensured that either National Council or National Executive had approved the expenditure of National Office funds on travel for Ms Soutar before incurring, or purporting to authorise, such expenditure.
- 568. The best interests of the HSU required that Mr Thomson not expend the funds of the National Office on travel for domestic partners of National Office employees without obtaining the approval of either National Council or National Executive to do so.

Findings 57 to 60 - Incursion or purported authorisation of expenditure charged to Mr Thomson's credit card on travel for Ms Alison Soutar

- 57.** Mr Thomson contravened Sub-rule 36(b) by incurring, or by purporting to authorise, expenditure on travel for Alison Soutar without the authority of either National Council or National Executive to do so, when that expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 58.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he incurred, or purported to authorise, expenditure on travel for Alison Soutar without the authority of either National Council or National Executive to do so, when that expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 59.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his power and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose when he incurred, or purported to authorise, expenditure on travel for Alison Soutar without the authority of either National Council or National Executive to do so, when that expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 60.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage for someone else (Alison Soutar) when he incurred expenditure (or purported to authorise such expenditure) on travel for Alison Soutar without the authority of either National Council or National Executive to do so.

Payments to Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Interat Immobiliare, Hawkesfords International and Comme Ci Comme Ca

Evidence

- 569.** In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Findings 61 and 62 - Payments to Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca, which are set out below at page 359.

Emerald Tourist Railway Board \$2,450 - November 2006

570. Financial records of the HSU record that on or about 9 November 2006 the HSU paid Emerald Tourist Railway Board the sum of \$2,450 ([HSUNO.003.0201](#)).
571. No documents have been produced by HSU to FWA evidencing that the transaction and the payment made in connection with Emerald Tourist Railway Board were authorised by the National Council and the National Executive.
572. No evidence has been produced by HSU to FWA substantiating that the transaction and the payment made in connection with Emerald Tourist Railway Board was for the purpose of carrying out the objects of the HSU.
573. Mr Thomson was asked by FWA to explain what the payment in connection with Emerald Tourist Railway Board related to. He stated that he understood the payment may have represented a contribution made by the National Office to the Victoria No 1 Branch for costs for the hire of a train. Mr Thomson also stated that it may have been a payment in respect of aged care, which was an area where the National Office provided cross funding with activities of the Branches.
574. Mr Thomson gave the following evidence about the matter (Thompson PN 1618 - 1625):
- MR NASSIOS: All right. 9 November 2006 there's a payment of \$2,450 to the Emerald Tourist Railway Board which for us in Melbourne know that that's the Puffing Billy tourist railway in the Dandenong Ranges. Do you have any idea what that expenditure was for?
- MR THOMSON: How much was it for?
- MR NASSIOS: \$2,450.
- MR THOMSON: I think it was something that was being organised and run by the Victoria number 1 branch and we were making a contribution. I can't recall exactly what they did and I didn't attend so I don't have a huge memory of it but I remember them doing something around that.
- MR NASSIOS: It was a union picnic at Emerald Lake which is in the same area on 18 and 19 November of that year so a couple of weeks later.
- MR THOMSON: Well, I might have been paying part of our share that we were doing for that to, you know, help them with the particular issue that it was. I can only imagine that it was in some way connected to aged care in some sense because that's what usually the only area that we cross funded some of the activities of branches.
- MR RAWSON: It wasn't to hire a train, was it?
- MR THOMSON: Well, they may have hired a train and we may have been paying for a portion of that.

Sydney Wedding Music \$1,000 - December 2006

575. Financial records of the HSU record that on or about 4 December 2006 the HSU paid the sum of \$1,000 in respect of Sydney Wedding Music. ([HSUNO.003.0201](#))

576. No documents have been produced by HSU to FWA evidencing that the transaction and the payment made in connection with Sydney Wedding Music were authorised by the National Council and the National Executive.
577. No evidence has been produced by HSU to FWA substantiating that the transaction and the payment made in connection with Sydney Wedding Music was for the purpose of carrying out the objects of the HSU.
578. Mr Thomson was asked by FWA to explain the payment to Sydney Wedding Music. He stated that he had no idea about Sydney Wedding Music:

MR NASSIOS: Now, during the period of October and December 2006, the national office of the SGE account made the following payments, \$4,994 on 27 October for Newspoll Market Research, \$8,815 on 27 October, same date, to Novocastrian, and I think this is different to the collectables we were talking before, \$1,000 on 4 December 2006 to Sydney Wedding Music.

(Thomson PN 1593)

MS CARRUTHERS:\$1,000.

MR NASSIOS: Sydney Wedding Music.

MS CARRUTHERS:4 December.

MR THOMSON: No idea - - -

MS CARRUTHERS: Did you get married on 4 December at all?

MR THOMSON: No, I didn't get married on 4 December.

MS CARRUTHERS:4 December 06?

MR THOMSON: I don't know. We did from time to time I think buy music that we used for videos and DVDs but I'm really stretching it to find - you know, I don't know what - the name of the company may be broader than what it actually did and that's - I have no idea about Sydney Wedding Music.

(Thomson PN 1610 - 1617)

579. Dr Kelly states that she did not know what the payment to Sydney Wedding Music related to and that the payment was not discussed or approved by the National Executive. (Kelly PN 706 - 709)

Cairns District Soccer Association \$5,738 - December 2006

580. Financial records of the HSU record that on or about 22 December 2006 the HSU paid the sum of \$5,738 to the Cairns District Soccer Association. (HSUNO.029.0001 at 0010)
581. No documents have been produced by HSU to FWA evidencing that the transaction with and the payment made to the Cairns District Soccer Association were authorised by the National Council and the National Executive.

582. No evidence has been produced by HSU to FWA substantiating that the transaction with and the payment made to the Cairns District Soccer Association was for the purpose of carrying out the objects of the HSU.

583. The draft minutes of meeting of the National Executive of 2 February 2007, held at ANU Canberra ([HSUNO.018.0170](#)) contain the following entry in relation to the matter:

10. Issues relating to Queensland

The National Secretary reported on serious matters that had occurred in relation to the Queensland branch and the Cairns football federation. It was agreed that further urgent discussions with the branch need to take place and that the Executive needs to consider carefully its response in regards to both the Branch and the responsible officer involved.

584. Mr Thomson was asked by FWA to explain the payment to the Cairns District Soccer Association. He said it was discussed by the National Executive and the Finance Committee. The Queensland Branch had obtained a loan from the Cairns District Soccer Association. The National Office repaid the loan. Mr Thomson said that the payment was authorised by the National Executive. He gave the following evidence about the matter (Thompson PN 1626 - 1631):

MR NASSIOS: 22 December 2006, a payment of \$5738 was made to the Cairns District Soccer Association?

MR THOMSON: Yes, this was subject to quite a bit of discussion at both the executive and the finance committee about our Queensland branch and the secretary at the time - our Queensland branch was entirely made up - it was an indigenous branch. They had somehow got themselves in with a loan from the Cairns District Soccer Association. The person who took the loan disappeared and then we heard that they were chasing for the money and we - the national union paid the Queensland debt to make sure it was gone.

MR NASSIOS: All right. So in terms of - - -

MR THOMSON: That was reported quite a bit and there were a number of trips up there - well, about Queensland generally around that time both before and after.

MR NASSIOS: Would you say that that particular payment was authorised by the national executive?

MR THOMSON: Yes, absolutely.

585. Dr Kelly states that she did not know what the payment to Cairns District Soccer Association related to and that the payment was not discussed or approved by the National Executive. (Kelly PN 710 - 713)

586. Mr Brown states the payment related to monies borrowed 'inappropriately' by the Secretary of the Queensland Branch for HSU business from the Cairns District Soccer Association. The National office repaid the monies. He believed that the matter was discussed by the National Executive. It is noted that Mr Brown does not say that the payment was approved by the National Executive (Brown PN 405 - 413):

MR NASSIOS: On 22 December 2006 payments were made from the national office's SGE account to Cairns District Soccer Association and on 22 January 2007 a payment was made from the national office's account of \$3500 to RAAF Edinburgh Rugby Sponsorship. Do you know what these payments were for?

MR BROWN: Can you just state the first one again?

MR NASSIOS: It was the Cairns District Soccer Association on 22 December 2006.

MR BROWN: Yes, I have a recollection of that. We have a branch, or had a branch or could have a branch - - -

MS CARRUTHERS: Clem?

MR BROWN: I don't know whether we've got a branch or not - - -

MS CARRUTHERS: Yes, it's Clem.

MR BROWN: . - - - in Queensland.

MR BROWN: Yes, and apparently we received correspondence from the soccer club advising that some money had been borrowed by the secretary of the Queensland branch and for union business or something or other, and obviously totally inappropriately, so the HSU immediately repaid the moneys and that's what that would have been for.

MR NASSIOS: And was that discussed at the national executive?

MR BROWN: Yes, it was.

Internat Immobiliare \$770 - May 2005

587. The statement issued in relation to Mr Thomson's CBA Mastercard for the period ending 27 May 2005 records an entry for a transaction on or about 7 May 2005 titled 'Internat Immobiliare, Sydney Aus' for \$770. [HSUNO.010.0073](#)

588. No documents have been produced by the HSU to FWA evidencing that the transaction and the payment made in connection with 'Internat Immobiliare' of Sydney were authorised by the National Council and the National Executive.

589. No evidence has been produced by HSU to FWA substantiating that the transaction and the payment made in connection with 'Internat Immobiliare' of Sydney was for the purpose of carrying out the objects of the HSU.

590. Mr Thomson was asked by FWA to explain what the payment in connection with 'Internet Immobiliar' related to. He gave the following evidence about the matter (Thomson PN 1334):

I'm not a hundred per cent sure we did have a national executive meeting in Fremantle, but I don't particularly know. I'm not sure what 'Internet Immobiliare' is in Sydney on 7 May.

Hawkesfords International - January 2006 \$770

591. The statement issued in relation to Mr Thomson's CBA Mastercard for the period ending 24 February 2006 records an entry for a transaction titled 'Hawkesford's Internati Concord Aus' on or about 28 January 2006 for \$770. [HSUNO.014.0056](#)
592. No documents have been produced by the HSU to FWA evidencing that the transaction and the payment made in connection with Hawkesford's International at Concord were authorised by the National Council and the National Executive.
593. No evidence has been produced by HSU to FWA substantiating that the transaction and the payment made in connection with Hawkesford's International at Concord was for the purpose of carrying out the objects of the HSU.
594. Mr Thomson was asked by FWA to explain what the payment in connection with Hawkesford's International related to. He stated that he did not know. He thought that it may have related to the hire of a bus for a political rally at Tony Abbot's office.
595. Mr Thomson gave the following evidence about the matter (Thomson PN 1334 - 1338).

MR THOMSON: ...'Hawkesford International, Concord', I've got no idea what that is.

MS CARRUTHERS: It seems, from inquiries on the internet, to be a bus company at Concord.

MR THOMSON: Okay. I think we hired a bus for a rally, would be my guess in relation to that.

MS CARRUTHERS: What type of rally would that have been?

MR THOMSON: I think we did a protest in Manly outside Tony Abbott's office, from memory. But again, that's me trying to recall it.

Comme Ci Comme Ca \$198 - April 2006

596. The statement that was issued on 20 May 2006 in relation to Mr Thomson's Diners Club card records an entry for a charge by 'Comme Ci Comme Ca' for a transaction on 21 April 2006 for \$198 ([HSUNO.002.0075](#)). The invoice records the store to be a 'Men's shop' located at Qantas Domestic Terminal, Mascot NSW and related to the purchase of two ties made in Italy. ([HSUNO.021.0328](#))
597. No documents have been produced by the HSU to FWA evidencing that the transaction with and payment made to Comme Ci Comme Ca were authorised by the National Council and the National Executive.
598. No evidence has been produced by HSU to FWA substantiating that the transaction with and the payment made to Comme Ci Comme Ca was for the purpose of carrying out the objects of the HSU.

599. Mr Thomson was asked by FWA to explain what the payment in connection with Comme Ci Comme Ca related to. He stated that he recalled there was a presentation to two people who were guests at an Executive meeting. Mr Thomson claimed that the ties were a gift.

600. Mr Thomson gave the following evidence about the matter (Thompson PN 1555 - 1568)

MR NASSIOS: There's a receipt that I'd like to show you in respect of a sum of \$198 that you spent at the Comme Ci Comme Ca store at the Sydney airport. The receipt suggests it's for two ties made in Italy.

MR THOMSON: Yes. We were presenting them to someone as a gift, but I can't remember exactly - what year?

MR RAWSON: 2006.

MR NASSIOS: 2006.

MR THOMSON: 2006?

MR NASSIOS: Well you're flying from - you're flying to Melbourne in the afternoon.

MR THOMSON: I recall we were making a presentation to two people and I can't remember who it is. I suspect they were guests that we'd had at one of our executives but I can't exactly recall who, but I do remember we did do that.

MR NASSIOS: In terms of that payment, and in view of what we've said in either the voucher or some other sort of pre/after document, would you have - -
-

MR THOMSON: There should have been an explanation.

MR NASSIOS: Some sort, you know, explanation that - - -

MR THOMSON: Yes.

MR NASSIOS: Okay. All right.

MS CARRUTHERS: It's just we have all the documents for your credit card statement for that month. While some of them have gone missing, we have the original credit card statement with all of the receipts that you've attached to it, and there is no supporting memorandum for that receipt.

MR THOMSON: Okay. Well, I recall we bought a gift for someone with that, but I can't - you know, if I had my electronic diary and we could find a date around then I would be able to tell you who it was, but that was what that was.

601. Contrary to what was put to him at interview, it seems Mr Thomson purchased these ties at Sydney Airport on his return from Melbourne, and not on the way to Melbourne.

Mr Thomson's submissions

602. With respect to finding 61, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. he denies contravening sub-rule 36(b) of the Rules in respect of the following specific expenditure on his credit card:
 - i. Melbourne Melbourne;¹³³
 - ii. Internat Immobiliare;
 - iii. Hawkesford International;
 - iv. Smartyhost;¹³⁴
 - v. Emerald Tourist Railway Board;
 - vi. Sydney Wedding Music;
 - vii. Cairns District Soccer Association; and
 - viii. Comme Ci Comme Ca.
 - b. The expenditure incurred was appropriate and was for expenses either approved by the National Executive or National Council as expenses which fell within the budget (as approved by them) or reasonably incidental to the general administration of the HSU and accordingly did not require the approval of the National Executive or National Council. As submitted in paragraphs 115.a and 115.d on pages 155 and 157 in chapter 3, Sub-rule 32(n) grants the National Secretary the power to expend funds without the approval of the National Council or the National Executive.
603. With respect to finding 62, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 285(1) of the RAO Schedule. Mr Thomson exercised his powers and discharged his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise as National Secretary. The expenditure incurred by Mr Thomson with Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca was expenditure on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU and that expenditure did not require the approval of the National Executive or the National Council.

Conclusions

604. Mr Thomson has submitted that this expenditure was approved within the budget as approved by National Executive. For the reasons set out at paragraphs 154 to 156 of

¹³³ See Findings 105 to 112 - Expenditure on dining and entertainment when Mr Thomson was not travelling on page 626.

¹³⁴ See Findings 166 to 168 - Failing to keep financial records on page 875.

this chapter and at paragraphs 626 and 1109 of chapter 6, I am not persuaded by this argument.

605. Mr Thomson has also submitted that the expenditure was reasonably incidental to the general administration of the Union. Mr Thomson has given evidence that he guesses that the expenditure with Hawkesfords International related to hire of a bus for a rally outside Tony Abbott's office. He also stated that the expenditure with Cairns District Soccer Association concerned repayment of monies that were owing by the Secretary of the Queensland Branch of the Union. The payment to Emerald Tourist Railway Board may have concerned an event that was organised by the Victoria No.1 Branch. While all of these matters may generally relate to the Union, I do not consider that expenditure on these matters fell within the general administration of the Union.
606. I accept Mr Thomson's claim that he purchased two silk ties at Comme Ci Comme Ca to present as gifts for someone but do not accept his claim that it was for guests at a National Executive meeting given that Mr Thomson was not travelling to (or from) a National Executive meeting when he made his purchase on 21 April 2006.
607. The National Secretary only has authority to authorise expenditure which is on the general administration of the Union or for the purposes reasonably incidental to the general administration of the Union. For all expenditure which is not on the general administration of the HSU, the National Secretary must seek prior authority of National Council or National Executive (see paragraphs 14 to 26 of this chapter above on pages 210 and 211 and the discussion in chapter 2 under the heading 'What is the 'general administration of the Union'?' on page 103).
608. I do not consider that the expenditure incurred by Mr Thomson with Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International, Comme Ci Comme Ca was expenditure on the general administration of the Union, or for a purpose reasonably incidental to the general administration of the Union. Further, there is no evidence before me that any of these transactions were authorised by National Council or National Executive.
609. A reasonable person in Mr Thomson's position as National Secretary would not have incurred this expenditure without the authority of either National Council or National Executive to do so.

Findings 61 and 62 - Payments to Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca

61. Mr Thomson contravened Sub-rule 36(b) by incurring expenditure with Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca which was not expenditure on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union and which was not authorised by National Council or National Executive.
62. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure with Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca which was not expenditure on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union and which was not authorised by National Council or National Executive.

Mr Thomson's decision to move to live in NSW and to open an office in Sydney

Moving to NSW and opening a National Office in Sydney without seeking the approval of the National Executive or National Council

Evidence

610. In addition to the matters set out at paragraphs 4 to 67 of this chapter, the following matters are relevant to Finding 63 - Moving to NSW and opening a National Office in Sydney without seeking the approval of the National Executive or National Council, which is set out below at page 367.

Rental agreement between the National Office and the Victorian No 1 Branch

611. In about September 2002 Mr Thomson, as National Secretary, and Mr Jackson, on behalf of the Victoria No 1 Branch, entered into an agreement in relation to the Victorian No 1 Branch's 'ongoing commitment' to pay capitation fees and ACTU fees as well as dealing with outstanding debts owed to the National Office. As part of that agreement the Victoria No 1 Branch agreed to reduce an outstanding debt to the National Office of \$430,751.33 by providing services in kind to the National Office on the following basis:

Item	Cost per annum
Rent	\$40,000
Electricity	\$15,000
Telephones	\$15,000
Photocopying	\$5,000
Cleaning	\$2,000
Accounts	\$3,000
Sundry Items	\$2,000
Total	\$82,000

612. The agreement recorded that on this basis the Victoria No 1 Branch's debt to the National Office would be repaid in a little over five years. The agreement stated that on the basis of this arrangement the National Office would treat the Victoria No 1 Branch as being financial for all purposes.
613. The copy of the agreement provided by the National Office to FWA ([HSUNO.023.0049](#)) is unsigned. However on the basis of this agreement it appears that the National Office at all times had the use of premises in Melbourne provided to it, by the Victoria No 1 Branch, along with services and utilities, to the value of \$82,000 per year. According to the terms of this agreement the arrangement would not have exhausted the debt owed by the Victoria No 1 Branch to the National Office until approximately the end of 2007. The financial report for the year ended 30 June 2007 that was lodged with FWA on 8 August 2011 ([FWA.009.0001](#)) discloses that the Victoria No 1 Branch still had an outstanding liability to the National Office of \$16,601 with respect to the loan as at 30 June 2007.

The decision to open a National Office in Sydney

614. Despite the fact that the National Office already had an arrangement with the Victoria No 1 Branch to be provided with premises for a National Office, Mr Thomson nevertheless took steps to establish premises of the National Office in Sydney. Mr Thomson told FWA that he moved to the Central Coast when the HSU opened its Sydney office (Thomson PN 381). Mr Thomson told FWA that he 'probably' moved to Sydney in around late 2005, and that this was when he thought the National Office in Pitt Street opened (Thomson PN 550-555). Mr Thomson said that the arrangement with the Victoria No 1 Branch for the National Office to occupy space owned by that Branch 'was coming to an end' 'so we were looking at a situation of having to pay real rent' (Thomson PN 55). Mr Thomson said there was an advantage in having the National Office in Sydney because that was where the biggest Branch was. Mr Thomson said that (Thomson PN 57):

...That was then discussed with the executive and no-one raised any issues or problems with it. In fact the kind of comments that I got were, 'We couldn't understand why you went to Melbourne in the first place,' was more of the reaction. Not from the New South Wales branch, from many of the other branches.

615. In late 2005 the National Office's agreement with the Victoria No 1 Branch to occupy its premises in return for offsetting areas of monies owed by the Branch to the National Office still had approximately two further years to run.
616. Dr Kelly told FWA that she thought the HSU opened an office in Sydney in early 2007 (Kelly PN 424) but agreed that it could have been earlier than this (Kelly PN 428-430). Dr Kelly said (Kelly PN 432-434):

Craig Thomson came to see me in my office because the national office was fairly close then and he sat down and he said, 'I've come to tell you, Rosemary, that we're going to open an office in Sydney.' I said, 'Well, why do we need an office in Sydney, Craig?' He said, 'It's because, you know, I need to be close to the New South Wales branch because, you know, that's the biggest branch in the federation and, you know, things happen in New South Wales. It would be good to have an office in Sydney.' So he actually came to see me to tell me that he was opening an office in Sydney and I'm thinking, 'Well, why do you need to do that?' The Industrial Relations Commission is headquartered in Melbourne and I was -...

It was like, 'I need an office in New South Wales so that's why I'm putting an office in New South Wales. I need to be close to the New South Wales branch,' and I'm saying, 'Well, why don't you just have an office in the New South Wales branch premises? That would seem a good idea to me.'

617. There is no reference in any minutes of National Executive meetings provided to FWA to any discussion, far less a resolution, about whether the National Office should open an office in Sydney. However, when asked if the proposal to open an office in Sydney was ever discussed by the National Executive Dr Kelly told FWA (Kelly PN 437):

I think it did go to national executive. At the next national executive meeting there was a discussion about it but not in any other terms but this would be convenient for the national secretary.

Expenses incurred as a result of Mr Thomson's move to Sydney

618. From financial records discussed below it appears that the National Office has been making periodic payments in respect of an office at 803/70 Pitt Street, Sydney (**the Pitt Street Office**) since at least January 2006, for rent (see paragraph 619 and following of this chapter) and cleaning services (see paragraph 632 and following of this chapter). On the basis of these records, and Mr Thomson's own evidence, it seems probable that Mr Thomson opened the Pitt Street Office no later than January 2006.

Payments made to Ashington Real Estate

619. It appears from MYOB records provided by the National Office ([HSUNO.006.0203](#)) that the National Office paid rental payments in respect of the Pitt Street Office to Ashington Real Estate.
620. A 'GST [Detail - Cash]' report generated from MYOB data provided by the National Office ([HSUNO.003.0086](#)) for the period January to March 2006 indicates that regular payments of over \$3,000 at the end of each month were made to Ashington Real Estate since at least January 2006.

621. MYOB records indicate further payments from the National Office to Ashington Real Estate as follows:
- a. a payment on 28 October 2007 of \$3,275.89.
 - b. a payment on 12 November 2007 of \$491.70. ([HSUNO.006.0296](#)) (and an SGE internet banking receipt dated 12 November 2007 ([HSUNO.006.0297](#)) also shows payment of the same amount).
 - c. a payment on 12 November 2007 of \$1,696.73 ([HSUNO.006.0308](#))
 - d. a payment on 13 November 2007 of \$1,346.40 ([HSUNO.006.0307](#))
 - e. a payment on 19 November 2007 of \$856 ([HSUNO.006.0334](#))
 - f. a payment on 28 November 2007 of \$3,275.89 ([HSUNO.006.0368](#))
 - g. a payment on 28 December 2007 of \$3,275.89 ([HSUNO.006.0401](#))
 - h. a payment on 28 January 2008 of \$3,275.89 ([HSUNO.007.0096](#))
622. The National Office has also produced an invoice dated 12 November 2007 from Ashington Real Estate in respect of the Pitt Street Office ([HSUNO.006.0298](#)). This invoice indicates a charge for the Pitt Street Office of \$491.70 inclusive of GST. An email dated 12 November 2007 from Ashington Real Estate to Ms Ord ([HSUNO.006.0299](#)) states that a rental increase of \$149 per month plus GST became effective from 30 August 2007.
623. The National Office has also produced an invoice dated 17 January 2008 from Ashington Real Estate in respect of the Pitt Street Office ([HSUNO.007.0122](#)). This invoice indicates that the rent for the month of February 2008 was \$3,127.08, but that the HSU's account was \$2,829.08 in credit, and that accordingly an amount of \$298 plus GST (\$327.80 inc GST) remained outstanding.
624. A further invoice from Ashington Real Estate dated 15 February 2008 ([HSUNO.007.0390](#)) for the sum of \$149 excluding GST (\$163.90 including GST) appears to indicate a further monthly charge of \$3127.08, but again this appears to have been set off against a credit of \$2,978.08.
625. On 26 June 2008 the National Office made an electronic banking payment, evidenced by an SGE internet banking receipt ([HSUNO.012.0196](#)) to 'Wavegrow Pty Ltd' in the sum of \$3,083.23. The receipt describes the transaction as being for 'Sydney Rent'.
626. While financial records relating to rental of the Pitt Street Office are incomplete, it appears that the National Office has paid approximately \$3,000 per month between at least January 2006 and November 2007 (approximately 23 months) as a result of Mr Thomson's decision to open an office in Sydney. This represents an overall expense of approximately \$69,000.
627. It is clear that the National Office continued to pay rent on the Pitt Street premises for many months after Mr Thomson resigned as National Secretary

Energy Australia

628. An electricity account statement from Energy Australia dated 7 August 2007 provided to FWA ([HSUNO.010.0138](#)) shows a quarterly electricity expense of \$109.38, for premises described by the invoice as 'The Health Service Union National Office Floor 8/Suite 3 70 Pitt St SYDNEY NSW 2000'.
629. A further electricity account statement from Energy Australia dated 7 November 2007 provided to FWA ([HSUNO.006.0212](#)) shows a quarterly electricity expense of \$121.35 for the same Pitt Street Office.
630. A further electricity account statement from Energy Australia dated 4 February 2008 provided to FWA ([HSUNO.007.0183](#)) shows a quarterly electricity expense of \$133.14 for the same Pitt Street Office.
631. Assuming these quarterly charges are representative of the electricity costs associated with the Pitt Street Office (approximately \$120 per quarter), it is reasonable to assume that the National Office spent approximately \$960 on electricity costs between January 2006 and November 2007 as a result of Mr Thomson's decision to open an office in Sydney.

Melcis Cleaning Services

632. A 'GST [Detail - Cash]' report for January to March 2006 generated from MYOB data provided by the HSU ([HSUNO.003.0086](#)) indicates that regular periodic payments to Melcis Cleaning Services have been made since at least January 2006.
633. Invoices of Melcis Cleaning Services, of Glenwood, NSW from various dates commencing on 27 July 2007([HSUNO.010.0131](#)) indicate that the National Office was being invoiced \$35.00 per week (plus GST) for cleaning services. Some (but not all) of these invoices indicate the address of the Pitt Street Office as the location at which these cleaning services were provided. Given this, and also the location of the cleaning company, it seems clear that these services were for cleaning of the Pitt Street Office. (See also [HSUNO.006.0180](#), [HSUNO.006.0182](#), [HSUNO.007.0080](#), [HSUNO.007.0086](#) and [HSUNO.007.0083](#)). Six invoices provided to FWA, which cover the months of July, to December 2007, total \$945 plus GST). The National Office has also provided SGE internet banking receipts ([HSUNO.006.0179](#) and [HSUNO.006.0181](#)) which indicate that two of these three invoices were paid by the National Office on 25 October 2007.
634. A MYOB report dated 21 January 2008 ([HSUNO.007.0079](#)) and an SGE internet banking receipt of the same date ([HSUNO.007.0081](#)) indicates that the National Office paid \$154 to Melcis on account of its October 2007 invoice.
635. A MYOB report dated 21 January 2008 ([HSUNO.007.0082](#)) and an SGE internet banking receipt of the same date ([HSUNO.007.0084](#)) indicates that the National Office paid \$192.50 to Melcis on account of its November 2007 invoice.
636. A MYOB report dated 21 January 2008 ([HSUNO.007.0085](#)) and an SGE internet banking receipt of the same date ([HSUNO.007.0087](#)) indicates that the National Office paid \$192.50 to Melcis on account of its December 2007 invoice.

637. An invoice from Melcis Cleaning Services dated 29 January 2008 ([HSUNO.012.0026](#)) indicates a charge to the National Office of \$175 plus GST for cleaning services in relation to the Pitt Street Office for the month of January 2008.
638. An invoice from Melcis Cleaning Services dated 29 February 2008 ([HSUNO.012.0041](#)) indicates a charge to the National Office of \$175 plus GST for cleaning services in relation to the Pitt Street Office for the month of February 2008.
639. An invoice from Melcis Cleaning Services dated 29 March 2008 ([HSUNO.012.0027](#)) indicates a charge to the National Office of \$140 plus GST for cleaning services in relation to the Pitt Street Office for the month of March 2008.
640. An invoice from Melcis Cleaning Services dated 29 April 2008 ([HSUNO.012.0155](#)) indicates a charge to the National Office of \$175 plus GST for cleaning services in relation to the Pitt Street Office for the month of April 2008.
641. An invoice from Melcis Cleaning Services dated 29 May 2008 ([HSUNO.012.0176](#)) indicates a charge to the National Office of \$175 plus GST for cleaning services in relation to the Pitt Street Office for the month of May 2008.
642. The available evidence suggests that the cleaning costs of the Pitt Street Office were \$35 per week. Between January 2006 and November 2007 this would total approximately \$3,185 in costs of cleaning the Pitt Street Office, which would not have been incurred but for Mr Thomson's decision to open an office in Sydney.

Mr Thomson's submissions

643. With respect to finding 63, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. Mr Thomson denies that the opening of an office of the National Office in Sydney was motivated by any political aspirations. The largest HSU branch was in New South Wales and the National Executive had identified NSW as being the Branch most likely to need assistance in respect of the introduction of Work Choices in 2005. It should also be noted that the National Office in Melbourne continued to be maintained and staffed after the Sydney office was opened.
 - b. It is of significant concern that my conclusions regarding the opening of a Sydney Office are not based on evidence, but rather an inadequate and flawed analysis of financial documents and invoices. Further, it is submitted that I have acknowledged that I have failed to locate all the National Executive and National Council meeting minutes. The opening of a new National Office was reported, the National Executive had knowledge of it and did not object, and staff were appointed to it.
 - c. Further, subsection 285(2) provides that - an officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection 285(1) and their equivalent duties at common law and in equity, in respect of the judgment if he or she:

- (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the organisation. The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.
- d. Even if the opening of a new office was not reported to the National Executive (which is denied), Mr Thomson has not contravened subsection 285(1) of the RAO Schedule as he made the decision in good faith for a proper purpose, did not have a material personal interest in opening an office in Sydney, had conducted thorough research regarding opening an office in Sydney and rationally believed that opening a Sydney office was in the best interests of the HSU and its members.

Conclusions

644. Based on the analysis set out at paragraphs 618 to 642 of this chapter, the costs to the National Office which are directly attributable to Mr Thomson's decision in late 2005 to move to NSW and open the Pitt Street Office include, at a minimum:
- a. rental payments to Ashington Real Estate between at least January 2006 and November 2007, totalling approximately \$69,000;
 - b. electricity payments to Energy Australia between at least January 2006 and November 2007, totalling approximately \$960;
 - c. payments to Melcis Cleaning Services between at least January 2006 and November 2007, totalling approximately \$3,185.
645. These costs total \$72,185.96.
646. If Mr Thomson did move towards the end of 2005 then this would be:¹³⁵
- a. shortly after he made the decision to employ Ms Stevens;
 - b. about six months before he established Coastal Voice;
 - c. about the time he made the decision that the National Office should enter into the three year Sponsorship Agreement with Central Coast Rugby league (see paragraph 515 and following of chapter 6);
 - d. more than a year before he became endorsed as the ALP candidate for Dobell.
647. It is true, as Mr Thomson said at interview, that the NSW Branch of the HSU was overwhelmingly the largest (and presumably most significant) Branch within the HSU. Moreover it was also the location of the President of the HSU, Mr Williamson. It was

¹³⁵ Each of these issues is discussed in detail in Chapter 6

apparent from answers given at interview by Mr Thomson that he frequently sought guidance from Mr Williamson.

648. In addition, NSW was Mr Thomson's home state, and prior to his election as National Secretary he was employed as an official of the NSW Branch for many years.
649. Equally, it is possible that Mr Thomson's decision to relocate to NSW and open an office of the National Office in Sydney was influenced by his intention to seek pre-selection for a NSW seat in Federal parliament.
650. Irrespective of why he decided to relocate himself to NSW, the more significant question is whether it was appropriate for Mr Thomson to do so given:
- a. that the National Office had a rental agreement with the Victoria No 1 Branch which was valued at \$82,000 per year and which still had two further years to run;
 - b. that Mr Thomson appears to have made his decision unilaterally, without seeking the approval of National Executive;
 - c. the obvious administrative inconvenience which was created by having the National Secretary based in Sydney, but the administrative support for the National Secretary based in Melbourne (for example when he was asked why many of his credit card statements provided to FWA did not have any receipts attached to them, Mr Thomson told FWA (Thomson PN 1183): *'I used to have, which is probably, again, not the most efficient way, but I had two big plastic sleeves - envelopes that I put my Diners and/or MasterCard in and send them down each month down to Melbourne for her to go through and look at and match them up'*);
 - d. the significant extra costs to the National Office which Mr Thomson's decision generated; and
 - e. the absence of any evidence which would suggest that Mr Thomson ever costed the additional expenses which would be borne by the National Office if he moved to NSW and opened an office in Sydney, or reported these expenses to the National Executive.
651. Mr Thomson has submitted that the opening of a new National Office in Sydney 'was reported, the National Executive had knowledge of it and did not object'. While some members of National Executive may have known about the Sydney office, minutes of National Executive meetings do not record the agreement of National Executive to the opening of a second National Office in Sydney or authorisation of expenditure associated with establishing a second office. There was significant cost associated with this decision given that the National Office still had two years of its agreement with the Victoria No.1 Branch regarding the provision of National Office accommodation in Melbourne to run. Further, given that, as Mr Thomson submits in paragraph 643.a of this chapter, the National Office in Melbourne continued to be maintained, the extra costs associated with opening a second office in Sydney could not have been incurred by Mr Thomson as part of the general administration of the

Union. A decision to expend National Office funds on establishing a second office required the prior authorisation of National Council or National Executive.

652. A reasonable person in Mr Thomson's position as National Secretary would not have decided to move to NSW and open a National Office in Sydney without seeking the approval of the National Executive or National Council to do so.
653. Despite Mr Thomson's submission, it is clear that he had a significant personal interest in decision to open an office in Sydney because this decision allowed him to move back to NSW. In all the circumstances, including in particular the significant cost of this decision when the National Office still had two years of its agreement with the Victoria No.1 Branch regarding the provision of National Office accommodation in Melbourne to run, I do not consider Mr Thomson could reasonably have believed that it was in the best interests of the Union for him to open a National Office in Sydney without obtaining the approval of either National Council or National Executive for him to do so.

Finding 63 - Moving to NSW and opening a National Office in Sydney without seeking the approval of the National Executive or National Council

63. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he decided to move to NSW and open a National Office in Sydney without seeking the approval of the National Executive or National Council to do so.

Expenditure on accommodation in Melbourne during 2006 and 2007

Incursion of expenditure on Mr Thomson's credit cards on accommodation and travel related expenses in Melbourne during 2006 and 2007

654. This part of chapter 5 considers Mr Thomson's expenditure using his Diners Club card and CBA Mastercard on accommodation in Melbourne throughout 2006 and 2007, when Mr Thomson was living on the Central Coast of NSW.
655. There is a large volume of material regarding 36 trips that were taken by Mr Thomson during this period. I have therefore divided this information into separate sections:

- a. Part A, which:
 - i. examines documentation regarding expenditure that was apparently incurred in relation to each of the 36 trips. This information is set out under the heading 'Evidence' for each of the 36 trips; and
 - ii. on the basis of the documentation, constructs Mr Thomson's likely movements in relation to each of the 36 trips. This information is set out under the heading 'Analysis' for each of the 36 trips.
 - b. Part B, which examines expenditure on each of the 36 trips against figures set out in the Australian Taxation Office's Taxation Ruling TD2007/21 (**the 2007 Ruling**) (PUB.007.0002) in order to determine whether such expenditure was excessive.
656. Figures concerning the amount of expenditure incurred by Mr Thomson in his travel to, and accommodation in, Melbourne during 2006 and 2007 are set out in Annexure C.

Part A - Information about each of the 36 trips

Notes on methodology

Hotel Reservations and Wotif charges (not supported by other evidence)

Bookings made through Qantas Domestic Holidays

657. For all accommodation bookings made through the Qantas Holidays Domestic website, the charge appears on the relevant Diners Club statement with a narration which discloses the first night of stay.
658. However, the Diners Club statements do not identify how many nights' accommodation each booking is for nor does it identify the hotel the Qantas Domestic Holidays booking relates to. Therefore, in order to attempt to infer the most probable duration of each hotel stay:
- a. all credit card statements, flight bookings, tax invoices and receipts have been analysed and cross referenced to ascertain, to the extent that it is possible, the number of nights that the booking is likely to relate to, based on other evidence about which city or cities Mr Thomson appears to have spent money in on each day,
 - b. the hotel which the booking most likely relates to has been identified where possible by analysing any relevant charges incurred on Mr Thomson's credit cards in the city travelled to - for example Mr Thomson frequently charged amounts from city hotels to his Diners Club card which appear likely to be incidental charges paid upon checking out of a hotel,
 - c. where the hotel which the booking related to can be ascertained, based upon such an analysis, the Wotif website and/or hotel website have been inspected to identify the current range of room rates available at that hotel,

- d. I accept that it is likely that the hotel rates obtained from Wotif or the hotel website will be slightly higher than the rates that applied during the Relevant Period because they are current rates.

Bookings made through Hotel Reservations and Wotif

659. In relation to:

- a. each booking made through 'Hotel Reservations' that appears on Mr Thomson's Diners Club statements between the years 2002-2005 which are not supported by any other evidence (the last booking made through 'Hotel Reservations' was on 11 January 2006); and
- b. each booking made through 'Wotif' that appears on Mr Thomson's credit card statements, for which there was no other evidence to verify the hotel and date which the charge related to,

the hotel which the booking was for and the period for which accommodation was booked have been inferred by analysing Mr Thomson's credit card statements, tax invoices and receipts relating to the period in, and around, the period of travel, to ascertain, to the extent that it was possible, the most likely hotel and period of time that the booking related to - for example Mr Thomson frequently charged amounts from city hotels to his Diners Club card which appear likely to be incidental charges paid upon checking out of a hotel.

Ascertaining whether hotel charges relate to dining and entertainment expenses or to accommodation expenses

660. Annexure D sets out each item of expenditure on Mr Thomson's Diners Club statements and CBA Mastercard statements which appear to relate to dining and/or entertainment expenditure.
661. This Annexure includes hotel charges which appear to relate to incidentals incurred during Mr Thomson's stay at hotels. The nature of some of these hotel expenses is identifiable by supporting documents, such as a tax invoice or receipt issued in Mr Thomson's name, that, at times, also describe the purchase made.
662. Where there is no supporting documentation for hotel charges, I had to infer whether the charge related to either dining/entertainment incurred by Mr Thomson at that hotel or was an accommodation expense. I inferred that it was either dining/entertainment expenditure *or* accommodation expenditure after assessing all the other evidence regarding Mr Thomson's movements immediately prior to and after the relevant charge.
663. I undertook this process in conjunction with the methodology by which I categorised accommodation bookings, as set out at paragraphs 657 to 659 above of this chapter. Therefore, I had regard to the totality of Mr Thomson's expenditure during relevant periods before categorising hotel charges as incurred for incidentals during Mr Thomson's stay at that hotel.

664. In most instances, I have inferred that hotel charges of less than approximately \$150 relate to incidentals incurred during Mr Thomson's stay at that hotel where:
- a. there is other evidence which verifies that Mr Thomson was staying at that particular hotel during the period in which the charge was incurred; **or**
 - b. based on the reasoning set out at paragraphs 657 to 659 above of this chapter, I have inferred that he was staying at that particular hotel during the period in which the date which the charge was incurred.
665. In most instances I have categorised hotel charges greater than \$150 as an accommodation expense, rather than a dining/entertainment expense, where:
- a. there is other evidence which verifies that Mr Thomson was staying at that particular hotel during the period in which the charge was incurred; **or**
 - b. based on the reasoning set out at paragraphs 657 to 659 above of this chapter, I have inferred that he was staying at that particular hotel during a period within which the charge was incurred;
- and
- c. all the evidence in totality otherwise indicates that the charge related to accommodation.

Background

666. All Qantas flights referred to below are booked in Mr Thomson's name except where otherwise specified.
667. According to the Australian Business Register, www.business.gov.au, ([PUB.008.0079](#)) 'Secure Parking Wynyard Lane' which is frequently referred to below is Secure Parking Financial Services Pty Ltd. A search on the Australian Securities and Investment Commission (**ASIC**) website for a current and historical extract reveals that the registered office for 'Secure Parking' is Level 3, 100 Miller Street Sydney ([PUB.008.0081](#)). I have inferred that Mr Thomson used Secure Parking Wynyard Lane when driving from the Central Coast to Sydney for work.
668. In considering all of the evidence, the Qantas Sydney Valet Parking service often process charges hours after the car is delivered to the car park, and also in some instances on the following day(s).

Trip 1 - 8 January 2006 Radisson Hotel on Flagstaff

Evidence

669. Mr Thomson's Diners Club statement dated 20 January 2006 ([HSUNO.015.0003](#)) discloses that on 3 January 2006 he incurred the following expenses:
- a. \$192.85 to Wotif.com Pty Ltd for accommodation
 - b. \$280.62 for a Qantas flight from Sydney to Melbourne on 8 January 2006
670. Mr Thomson's Diners Club statement dated 20 January 2006 further discloses that on 9 January 2006 he incurred the following expenses:
- a. \$135.80 at Radisson Hotel on Flagstaff

- b. \$43.40 taxi fare for 'city to airport'.
671. Mr Thomson's CBA Mastercard statement dated 27 January 2006 ([HSUNO.014.0054](#)) discloses that on 9 January 2006 he:
- a. withdrew \$300 cash from an ATM at the Qantas Domestic Terminal Tullamarine
 - b. withdrew \$500 cash from an ATM at the Westpac Bateau Bay.
672. As at 14 November 2011 the Wotif website identified that the room rates at the Radisson on Flagstaff range between \$189 and \$289 per night ([PUB.008.0150](#)).

Analysis

673. On the basis of this evidence and in the absence of any other explanation, it appears that Mr Thomson:
- a. on Tuesday 3 January 2006:
 - i. used his Diners Club card to pay \$280.62 for a Qantas flight from Sydney to Melbourne on 8 January 2006 and return the following day;
 - ii. used his Diners Club card to pay Wotif \$192.85 for accommodation at the Radisson Hotel on Flagstaff in Melbourne on 8 January 2006.
 - b. on Sunday 8 January 2006:
 - i. flew from Sydney to Melbourne;
 - ii. withdrew \$300 from an ATM at the Qantas Domestic Terminal at Melbourne airport using his CBA Mastercard before catching a taxi to the city;
 - iii. stayed at the Radisson Flagstaff that evening.
 - c. on 9 January 2006:
 - i. upon check out from the Radisson Flagstaff used his Diners Club card to pay \$135.80 for extras incurred during the previous night's stay;
 - ii. flew back to Melbourne, drove home to the Central Coast, stopping at the Mobil in Killara on the North Shore to fill up with petrol on the way home;
 - iii. withdrew \$500 from Westpac at Bateau Bay using his CBA Mastercard.

Trip 2 - 18 January 2006 Langham Hotel

Evidence

674. Mr Thomson's Diners Club statement dated 20 January 2006 ([HSUNO.015.0003](#)) discloses that on 11 January 2006 he incurred the following expenses:
- a. \$269 to Hotel Reservations;
 - b. \$308.41 for a Qantas flight from Sydney to Melbourne on 18 January 2006.
675. Mr Thomson's Diners Club statement dated 20 January 2006 also discloses that between 17 January 2006 and 19 January 2006 he incurred the following expenses:
- a. on 17 January 2006:
 - i. \$63.77 at Mobil Killara;
 - ii. \$23.69 for Secure Parking Wynyard Lane.
 - b. on 18 January 2006, \$106.40 at Blue Train Café
 - c. on 19 January 2006:
 - i. \$71.70 at Langham Hotel Melbourne;

- ii. \$142.00 at Valet Parking Sydney Airport;
 - iii. \$49.28 at Caltex Starshop;
 - iv. \$37.26 at Mobil Killara.
676. Mr Thomson's CBA Mastercard statement dated 27 January 2006 ([HSUNO.014.0054](#)) discloses that on 17 January 2006 he withdrew \$500 cash from a CBA ATM at Mobil Killara.
677. As at 8 November 2011 the Wotif website identified that the room rates at the Langham Hotel, Melbourne, range between \$277 and \$695 per night ([FWA.012.0038](#)).

Analysis

678. On the basis of this evidence it appears that Mr Thomson:
- a. on Thursday 11 January 2006:
 - i. booked and used his Diners Club card to pay Hotel Reservations \$269 for accommodation at the Langham in Melbourne on 18 January 2006; and
 - ii. used his Diners Club card to pay \$308.41 for a flight Sydney to Melbourne on that date and returning on the next day.
 - b. on Tuesday 17 January 2006:
 - i. drove from the Central Coast, stopping at the Mobil in Killara to fill up with petrol;
 - ii. withdrew \$500 from a CBA ATM at the Mobil in Killara using his CBA Mastercard;
 - iii. parked his car at Secure Parking in Wynyard Lane.
 - c. on Wednesday 18 January 2006:
 - i. left his car with Valet Parking at the Sydney airport where he incurred a charge of \$142 on his Diners Club card before boarding a flight to Melbourne;
 - ii. stayed at the Langham Hotel that evening.
 - d. on Thursday 19 January 2006:
 - i. checked out from the Langham Hotel and used his Diners Club card to pay \$71.70 for extras incurred during his stay
 - ii. caught a taxi from the hotel to the Melbourne airport before boarding a flight back to Sydney;
 - iii. collected his car from Valet Parking at Sydney airport;
 - iv. drove home to the Central Coast, stopping at the Mobil in Killara on the way home.

Trip 3 - 24 and 25 January 2006 Langham Hotel

Evidence

679. Mr Thomson's Diners Club statement dated 20 February 2006 ([HSUNO.015.0012](#)) discloses that he incurred the following expenses:
- a. on 20 January 2006 \$573.51 for a Qantas flight from Sydney to Melbourne on 24 January 2006 and return the next day;

- b. on 23 January 2006 \$46.20 Qantas charge incurred for the flight from Sydney to Melbourne on 24 January 2006 and return;
 - c. on 24 January 2006 \$184.85 on Wotif.
680. Mr Thomson's Diners Club statement dated 20 February 2006 also discloses that between 22 January 2006 and 25 January 2006 he incurred the following expenses:
- a. on 22 January 2006 \$50.06 at Caltex Wamberal;
 - b. on 23 January 2006:
 - i. \$61.16 at Caltex Starshop
 - ii. \$602.00 at Valet Parking, Sydney Airport
 - iii. \$239 at Valet Parking Sydney Airport
 - c. on 24 January 2006
 - i. \$92 at Valet Parking Sydney Airport
 - ii. two payments of \$50.47 for Secure Parking Wynyard Lane
 - iii. \$53.28 for Taxilink2 for 'airport to suburbs'
 - iv. \$184.85 on Wotif
 - d. on 25 January 2006
 - i. \$130.55 at the Langham Hotel Melbourne
 - ii. \$19 at the Langham Hotel Melbourne
 - iii. \$13.10 taxi fare for 'Melbourne to Carlton'
681. Mr Thomson's Diners Club statement dated 20 February 2006 ([HSUNO.015.0003](#)) discloses that on 20 January 2006 he paid \$363.85 to Wotif.
682. Mr Thomson's CBA Mastercard statement dated 27 January 2006 ([HSUNO.014.0054](#)) discloses that on 25 January 2006 he withdrew \$500 cash from an ANZ ATM at Qantas Melbourne Tullamarine.
683. As at 8 November 2011 the Wotif website identified that the room rates at the Langham Hotel, Melbourne, range between \$277 and \$695 per night ([FWA.012.0038](#)).

Analysis

684. On the basis of this evidence it appears that Mr Thomson:
- a. on Friday 20 January 2006
 - i. used his Diners Club card to pay Qantas \$573.51 for a flight from Sydney to Melbourne on 24 January 2005 and return the next day;
 - ii. used his Diners Club card to pay Wotif \$184.85 for accommodation at the Langham Hotel that evening.
 - b. on Monday 23 January 2006
 - i. may have driven to and from Sydney from the Central Coast within that day, stopping at both the Caltex Starshop and the Mobil in Killara during the day;
 - ii. used his Diners Club card to pay Wotif \$363.85 for accommodation at the Langham Hotel next evening or for accommodation in Sydney on 25 and/or 26 January 2006;

- iii. used his Diners Club card to pay Qantas \$46.20 related to the Sydney to Melbourne flight the following day, possibly to change the flight details;
- iv. spent \$602.00 and \$239 on Valet Parking at the Sydney airport.
- c. on Tuesday 24 January 2006
 - i. spent two amounts of \$50.47 at Secure Parking Wynyard Lane;
 - ii. used his Diners Club card to pay \$184.85 on Wotif for accommodation for that evening at the Langham Hotel or for accommodation in Sydney on 25 and/or 26 January 2006, see paragraph b above;
 - iii. drove to Sydney airport, left his car with Valet Parking for which he incurred a \$92 charge on his Diners Club card;
 - iv. boarded a flight to Melbourne and caught a taxi from the Melbourne airport to the city;
 - v. checked in at the Langham Hotel where he stayed that evening.
- d. on Wednesday 25 January 2006
 - i. checked out from the Langham Hotel and used his Diners Club card to pay \$130.55 and \$19 for extras incurred during his stay;
 - ii. caught a taxi from the city to Carlton;
 - iii. went to Melbourne airport (the evidence does not demonstrate how);
 - iv. withdrew \$500 from an ANZ ATM using his CBA Mastercard at the Qantas lounge before boarding a flight to Sydney;
 - v. collected his car from Valet Parking at Sydney airport.

Trip 4 - 14 to 16 February 2006 Canberra and Melbourne

Evidence

685. Mr Thomson's Diners Club statement dated 20 February 2006 ([HSUNO.015.0012](#)) discloses that he incurred the following charges:
- a. on 9 February 2006:
 - i. \$422.81 for a Qantas flight from Sydney to Melbourne on 14 February 2006 in the name of Christa Thomson;
 - ii. \$127.60 for a Qantas flight from Sydney to Canberra on 14 February 2006;
 - iii. \$270.04 for a Qantas flight from Canberra to Melbourne on 15 February 2006;
 - iv. \$311.15 for a Qantas flight from Melbourne to Sydney on 16 February 2006;
 - v. \$673.85 to Wotif.
686. Mr Thomson's Diners Club statement dated 20 February 2006 also discloses that between 15 and 16 February 2006 he incurred the following charges:
- a. on Wednesday 15 February 2006:
 - i. \$190.00 at Bistro 1 Little Collins Street;
 - ii. \$302.39 at Crowne Plaza Canberra.
 - b. on Thursday 16 February 2006:
 - i. \$56.62 at Mobil Killara;

- ii. \$179.00 at Valet Parking Sydney Airport;
 - iii. \$50.73 to Cabcorp Australia Melbourne;
 - iv. \$253.05 at Westin Melbourne.
687. Mr Thomson's CBA Mastercard statement dated 24 February 2006 ([HSUNO.014.0056](#)) discloses that on 14 February 2006 he withdrew \$500 cash from an ATM at the Sydney Qantas Domestic Terminal Mascot.
688. Mr Thomson's Diners Club statement dated 20 March 2006 ([HSUNO.015.0026](#)) discloses that he incurred the following expenses:
- a. on 14 February 2006 \$17.71 taxi fare for 'Airport to Reid';
 - b. on 15 February 2006 \$18.09 taxi fare for 'Hotel to Pialligo'.
689. As at 8 November 2011 the Wotif website identified that the room rates at the Crowne Plaza Canberra for 10 November 2011, range between \$310 and \$360 per night ([FWA.012.0004](#)).

Analysis

690. On the basis of this evidence, it appears that Mr Thomson:
- a. on 9 February 2006:
 - i. used his Diners Club card to pay Qantas \$422.81 for a flight for his wife, Christa Thomson, from Sydney to Melbourne on 14 February 2006, return on 16 February 2006;
 - ii. used his Diners Club card to pay Qantas \$127.60, \$270.04 and \$311.15 for three flights for himself to fly from Sydney to Canberra on 14 February 2006, from Canberra to Melbourne on 15 February 2006 and Melbourne to Sydney on 16 February 2006;
 - iii. used his Diners Club card to pay \$673.85 to Wotif for accommodation on 14 February 2006 for Christa Thomson at the Westin Hotel in Melbourne and for himself and Christa Thomson both at the Westin Hotel in Melbourne on 15 February 2006.
 - b. on Tuesday 14 February 2006
 - i. withdrew \$500 from the ATM at Qantas domestic Terminal at Sydney airport using his CBA Mastercard;
 - ii. parked his car at Valet Parking at Sydney Airport, for which he incurred a \$179 charge on his Diners Club card;
 - iii. flew from Sydney to Canberra, and caught a taxi to Reid;
 - iv. stayed one night at the Crowne Plaza that evening.
 - c. on Wednesday 15 February 2006
 - i. checked out from the Crowne Plaza Canberra and used his Diners Club card to pay \$302.39 for accommodation the previous evening and possibly extras incurred during his stay;
 - ii. caught a taxi from the hotel to Canberra airport;
 - iii. flew to Melbourne where he joined Christa Thomson who had flown in from Sydney the previous day and checked in to the Westin Hotel;
 - iv. used his Diners Club card to pay \$190 at Bistro 1 in Little Collins St;
 - v. stayed with Christa Thomson at the Westin Hotel that evening.

- d. on Thursday 16 February 2006 with Christa Thomson
 - i. upon check out from the Westin Hotel used his Diners Club card to pay \$253.05 for extras incurred during his stay;
 - ii. caught a taxi to Melbourne airport and flew back to Sydney that evening;
 - iii. collected his car from Valet Parking;
 - iv. drove home to the Central Coast, stopping at the Mobil in Killara on the way.

Trip 5 - 21 February 2006 Day trip to Melbourne

Evidence

691. Mr Thomson's Diners Club statement dated 20 March 2006 ([HSUNO.015.0026](#)) discloses that on 18 February 2006 he incurred a charge of \$693.41 for a Qantas flight from Sydney to Melbourne on 21 February 2006.
692. Mr Thomson's Diners Club statement dated 20 March 2006 also discloses that on 20 and 21 February 2006 he incurred the following charges:
 - a. on 20 February 2006, \$56.07 at Seven Eleven 2046 in Melbourne;
 - b. on 21 February 2006:
 - i. \$402.45 at Radisson Hotel Plaza Sydney;
 - ii. \$55 at Valet Parking Sydney airport;
 - iii. \$45.51 taxi fare for 'Airport to City'.
693. Mr Thomson's CBA Mastercard statement dated 24 February 2006 ([HSUNO.014.0056](#)) discloses that on 21 February 2006 he withdrew \$200 cash from an ATM at Qantas Melbourne Tullamarine.
694. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).

Analysis

695. On the basis of this evidence it appears that:
 - a. Mr Thomson flew from Sydney to Melbourne on 21 February 2006 and returned to Sydney on the same day;
 - b. the \$693.41 charge from Qantas on his Diners Club statement dated 20 March 2006 related to this flight;
 - c. withdrew \$200 cash from an ATM at Qantas Melbourne Tullamarine; and
 - d. Mr Thomson used his Diners Club card to pay \$55 for Valet Parking at Sydney Airport during this trip.

Trip 6 - 6 and 7 March 2006 Quay West Suites Melbourne

Evidence

696. Mr Thomson's Diners Club statement dated 20 March 2006 ([HSUNO.015.0026](#)) discloses that he incurred the following expenses:
 - a. on 2 March 2006:
 - i. \$396.41 for a Qantas flight from Sydney to Melbourne on 6 March 2006;
 - ii. \$551.85 to Wotif

- b. on 6 March 2006:
 - i. \$42.23 for Secure Parking Wynyard Lane;
 - ii. \$54.06 taxi fare for 'Airport to Hotel'.
 - c. on 7 March 2006:
 - i. \$42.23 for Secure Parking Wynyard Lane;
 - ii. \$129 at Valet Parking Sydney Airport;
 - iii. \$22.20 taxi fare for 'Princes Hill to Melbourne';
 - iv. \$14.10 taxi fare for 'South Bank to Carlton'.
 - d. on 8 March 2006:
 - i. \$105.35 at Quay West Suites Melbourne;
 - ii. \$43.96 taxi fare for 'office to Melbourne airport';
 - iii. \$59.63 at Mobil Killara.
697. Mr Thomson's CBA Mastercard statement dated 27 March 2006 ([HSUNO.010.0013](#)) discloses that he incurred the following charges:
- a. on 6 March 2006 he withdrew \$500 cash from an ATM at Westpac Bateau Bay;
 - b. on 7 March 2006 he paid \$250 at the Rathdowne Street Food Store, Carlton.
698. Mr Thomson submitted a voucher dated '6/7/8 March 2006' claiming a \$500 expense described as 'ACTU Executive and other related functions' ([HSUNO.010.0010](#)). It appears therefore that Mr Thomson attended a meeting of the ACTU Executive in Melbourne during this period.
699. As at 8 November 2011 the Wotif website identified that the room rates at the Quay West Suites Melbourne, for Friday 11 November 2011 range between \$209 and \$339 per night ([FWA.012.0054](#)).

Analysis

700. On the basis of this evidence it appears that Mr Thomson:
- a. Withdrew \$500 cash from an ATM at Westpac Bateau Bay before flying to Melbourne;
 - b. Used his Diners Club card to pay \$42.23 for secure parking at Wynyard Lane on 6 March 2006
 - c. flew from Sydney to Melbourne on 6 March 2006 and stayed two nights at the Quay West Suites while he attended a meeting of the ACTU executive before returning to Sydney on 8 March 2006;
 - d. the charge of \$396.41 from Qantas on his Diners Club card statement dated 20 March 2006 related to this flight;
 - e. used his Diners Club card to pay Wotif \$551.85 for accommodation at the Quay West Suites, Melbourne, on 6 and 7 March 2006;
 - f. used his Diners Club card to pay \$105.35 at the Quay West Suites for extras incurred during your stay; and
 - g. used his Diners Club card to pay a \$129 for Valet Parking at Sydney Airport during this trip.

Trip 7 - 16 March 2006 Pacific International Suites Melbourne

Evidence

701. Mr Thomson's Diners Club statement dated 20 March 2006 ([HSUNO.015.0026](#)) discloses that he incurred the following charges:
- a. on 9 March 2006:
 - i. \$693.41 for a Qantas flight from Sydney to Melbourne on 16 March 2006;
 - ii. \$253.85 to Wotif;
 - iii. \$498.85 to Wotif.
 - b. on 16 March 2006:
 - i. \$193.45 at Swissotel Sydney;
 - ii. \$92 at Valet Parking at Sydney Airport.
 - c. on 17 March 2006:
 - i. \$94.27 at Pacific International Suites Melbourne;
 - ii. \$116 at Dekk Restaurant and Bar Terrigal.
702. Mr Thomson's CBA Mastercard statement dated 27 March 2006 ([HSUNO.014.0057](#)) discloses that on 16 March 2006 he withdrew \$500 cash from an ATM at the Sydney Qantas Domestic Terminal Mascot. Mr Thomson submitted a voucher in respect of this withdrawal which he dated '16/17 March 2006' and described this expense as being incurred in Melbourne for 'HSU related functions' ([HSUNO.010.0012](#)).
703. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

704. On the basis of this evidence it appears that Mr Thomson:
- a. flew from Sydney to Melbourne on 16 March 2006, stayed one night at the Pacific International Suites and returned to Sydney the following day;
 - b. used his Diners Club card to pay Wotif \$253.85 for accommodation at the Pacific International Suites, Melbourne on 16 March 2006;
 - c. used his Diners Club card to pay Qantas \$693.41 for the flight from Sydney to Melbourne on 16 March 2006 and return the next day;
 - d. used his Diners Club card to pay the Pacific International Suites \$94.27 for extras incurred during his stay on 16 March 2006; and
 - e. used his Diners Club card to pay a \$92 charge for Valet Parking at Sydney airport during this trip.

Trip 8 - 29 March 2006 Quay West Suites Melbourne

Evidence

705. Mr Thomson's Diners Club statement dated 20 April 2006 ([HSUNO.002.0333](#)) discloses that he incurred the following charges:
- a. on 27 March 2006:
 - i. \$232.85 to Wotif;
 - ii. \$536.11 for Qantas flight from Sydney to Melbourne on 29 March 2006.

- b. on 29 March 2006, a \$45.73 taxi fare for 'airport to city';
 - c. on 30 March 2006:
 - i. \$59.45 at the Quay West Suites Melbourne;
 - ii. a \$41.40 taxi fare for 'office to airport';
 - iii. \$142 for Valet Parking at Sydney Airport, verified by a Qantas Valet Parking tax invoice in Mr Thomson's name at 5.20 pm.
706. A Wotif.com tax invoice dated 27 March 2006 was sent to Mr Thomson's email address 'craigt@hsu.net.au' confirming accommodation at the Quay West Suites Melbourne on 29 March 2006 in the amount of \$232.85 ([WIT.WIL.001.0350](#)). The Wotif invoice stated that inclusions were '[a]ll suite accommodation located on the Yarra River and set amongst the restaurants and bars of Southgate, just minutes from the city. Rate includes full breakfast for two in Jarrah Restaurant, valet parking, daily newspaper, use of pool and gym facilities.'
707. A Qantas E-ticket itinerary receipt dated 27 March 2006 was sent to Mr Thomson's email address 'craigt@hsu.net.au' confirming \$536.11 payment for his flight from Sydney to Melbourne on 29 March 2009 ([HSUNO.002.0363](#)). This itinerary states that Mr Thomson departed Sydney on Wednesday 29 March 2006 at 8.00am and arrived back in Sydney on a flight from Melbourne at 5.20pm on Thursday, 30 March 2006.
708. A Quay West Melbourne tax invoice dated 30 March 2006 discloses that \$59.45 was charged to a Diners Club card with the last four digits 2979 ([HSUNO.002.0372](#)). The total included \$19.95 for In House Movies and \$39.50 for mini bar expenses.
709. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.010.0058](#)) discloses that on 30 March 2006 he withdrew:
- a. \$300 cash from an ANZ ATM at Federation Square Melbourne;
 - b. \$200 cash from an ATM at the Duke of Wellington Hotel Melbourne.
710. As at 8 November 2011 the Wotif website identified that the room rates at the Quay West Suites Melbourne, for Friday 11 November 2011 range between \$209 and \$339 per night ([FWA.012.0054](#)).

Analysis

711. On the basis of this evidence it appears that Mr Thomson:
- a. flew from Sydney to Melbourne on 29 March 2006 and stayed one night at the Quay West Suites in Melbourne before returning to Sydney the following day;
 - b. used his Diners Club card to pay Qantas \$536.11 for flight from Sydney to Melbourne on 29 March 2006;
 - c. used his Diners Club card to pay Wotif \$232.85 for accommodation on 29 March 2006 at the Quay West Suites;
 - d. used his Diners Club card to pay \$59.45 at the Quay West Suites for extras incurred during his stay; and
 - e. used his Diners Club card to pay \$142 on Valet Parking, Sydney airport, during this trip.

Trip 9 - 5 April Quay West Suites Melbourne

Evidence

712. Mr Thomson's Diners Club statement dated 20 April 2006 ([HSUNO.002.0333](#)) discloses that he incurred the following charges:
- a. on 27 March 2006:
 - i. \$767.11 for a Qantas flight from Sydney to Melbourne on 3 April 2006 return on unknown date;
 - ii. \$212.85 to Wotif.
 - b. on 4 April 2006:
 - i. \$45.28 at the Caltex Starshop
 - c. on 5 April 2006:
 - i. \$92 for Valet Parking at Sydney airport;
 - ii. \$53.28 to South Eastern Taxi Brokers for taxi fare from 'suburb to suburb'.
 - d. on 6 April 2006:
 - i. \$94.70 at Quay West Suites Melbourne;
 - ii. \$55.50 taxi fare for 'hotel to Melbourne airport'.
713. A Wotif.com tax invoice dated 27 March 2006 was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([HSUNO.002.0371](#)) confirming accommodation at the Quay West Suites Melbourne on 3 April 2006 in the amount of \$212.85. The Wotif invoice stated that inclusions were '[a]ll suite accommodation located on the Yarra River and set amongst the restaurants and bars of Southgate, just minutes from the city. Rate includes full breakfast for two in Jarrah Restaurant, valet parking, daily newspaper, use of pool and gym facilities.'
714. An undated Qantas Valet Parking tax invoice ([HSUNO.002.0347](#)) discloses a car registration 'AWS10F' and relates to flight 0411 departing 7:30AM on 5 April 2006 and flight 0452 arriving 6:20PM on 6 April 2006.
715. A tax invoice from Quay West Melbourne dated 6 April 2006 ([WIT.WIL.001.0348](#)) discloses that \$94.70 was charged to a Diners Club card with the last four digits 2979. The total included payment for room service dinner, STD phone calls, gratuities and mini bar expenses.
716. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.010.0058](#)) discloses that on 4 April 2006 he withdrew \$500 cash from an ATM at Westpac Bateau Bay.
717. As at 8 November 2011 the Wotif website identified that the room rates at the Quay West Suites Melbourne, for Friday 11 November 2011 range between \$209 and \$339 per night ([FWA.012.0054](#)).

Analysis

718. It appears that Mr Thomson initially booked a flight from Sydney to Melbourne on 3 April 2006 but later changed his flights and accommodation so that he arrived in Melbourne on 5 April 2006. This is because:
- a. on 4 April 2006 Mr Thomson withdrew \$500 cash at Bateau Bay on the Central Coast and spent \$45.28 at a Caltex Starshop, and
 - b. the Qantas Valet Parking tax invoice indicates that Mr Thomson delivered his car on 5 April 2006 and was due to collect it on 6 April 2006.

719. On the basis of this evidence it appears that Mr Thomson:
- a. flew from Sydney to Melbourne on 5 April 2006 and stayed at the Quay West Suites that night before returning to Sydney the following day;
 - b. used his Diners Club card to pay Qantas \$767.11 for flight from Sydney to Melbourne on 3 April but subsequently changed this flight to 5 April 2006;
 - c. used his Diners Club card to pay Wotif \$212.85 for accommodation on 3 April 2006 at the Quay West Suites in Melbourne but subsequently changed this for accommodation on 5 April 2006;
 - d. used his Diners Club card to pay \$94.70 at the Quay West Suites for extras incurred during his stay; and
 - e. used his Diners Club card to pay \$92 on Valet Parking, Sydney airport, during this trip.

Trip 10 - 12 April 2006 Brisbane and Melbourne

Evidence

720. Mr Thomson's Diners Club statement dated 20 April 2006 ([HSUNO.002.0333](#)) discloses that he incurred the following charges:
- a. on 7 April 2006:
 - i. \$397.34 for a Qantas flight from Sydney to Brisbane on 12 April 2006;
 - ii. \$239.97 for a Qantas flight from Brisbane to Melbourne on 12 April 2006;
 - iii. \$172.55 for a Qantas flight from Melbourne to Sydney on 13 April 2006; and
 - iv. \$173.85 to Wotif.
 - b. on 12 April 2006:
 - i. \$51.50 taxi fare for 'airport to Upr Mt Gravatt';
 - ii. \$52.50 taxi fare for 'office to Pinkenba';
 - iii. \$45.40 taxi fare for 'airport to suburbs';
 - iv. \$62.48 at BP Express; and
 - v. \$92 for Valet Parking at Sydney Airport.
 - c. on 13 April 2006:
 - i. \$264.95 for a Qantas flight from Melbourne to Sydney on 13 April 2006;
 - ii. \$11.50 at the Pacific International Suites Melbourne; and
 - iii. \$46.07 taxi fare for 'city to airport'.
721. Mr Thomson's Diners Club statement dated 20 May 2006 ([HSUNO.002.0075](#)) discloses that on 11 April 2006 he paid \$11 to Qantas in respect of booking reference YFBEG.
722. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.014.0059](#)) discloses that he:
- a. on 11 April 2006 withdrew \$500 cash from a CBA ATM at Terrigal NSW; and
 - b. on 13 April 2006 withdrew \$300 cash from an ATM at 455 Bourke St, Melbourne.

723. An undated Qantas E-ticket itinerary receipt was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([WIT.WIL.001.0336](#)) confirming \$397.34 payment received for his flight QF528 from Sydney to Brisbane on 12 April 2006.
724. An undated Qantas E -ticket itinerary receipt was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([HSUNO.002.0363](#)) confirming \$239.97 received for flight QF637 from Brisbane to Melbourne on 12 April 2006.
725. An undated Qantas E -ticket itinerary receipt was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([HSUNO.002.0367](#)) confirming \$172.55 payment received for his flight QF438 from Melbourne to Sydney on 13 April 2006.
726. An undated Wotif.com Pty Ltd tax invoice was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([HSUNO.002.0374](#)) confirming \$173.85 payment received for accommodation at the Pacific International Suites Melbourne on 12 April 2006. The Wotif invoice noted that inclusions were 'Studio Suite Melbourne's most spacious standard rooms - King Size Bed, 2 Blocks to Mall, Wireless Broadband now available, easy access to Crown, Telstra Dome, city nightlife, comp use of Gym/Spa/Sauna'.
727. A cabcharge tax invoice dated 12 April 2006 ([HSUNO.002.0350](#)) confirms that \$45.50 was paid at 09:46PM with the pick up cited as 'airport' and the destination 'suburbs'.
728. A BP Express receipt dated 12 April 2006 ([HSUNO.002.0355](#)) indicates the purchase was made at Pymble 0957 at 11:06AM.
729. An undated Qantas Valet Parking tax invoice ([WIT.WIL.001.0359](#)) discloses that car with registration number 'AWS10F' was checked in on 12 April 2006 and expected car collection was 13 April 2006. The parking invoice lists the departure flight 0528 at 01:05PM on 12 April 2006 and returning on flight 1630 on 13 May 2006.
730. The Qantas Valet Parking payment receipt ([WIT.WIL.001.0359](#)) for \$92.00 indicates this charge was processed at 09:27pm on 12 April 2006.
731. An undated Qantas E-ticket itinerary receipt ([WIT.WIL.001.0362](#)) confirms Mr Thomson's flight QF0442 from Melbourne to Sydney on 13 April 2006 purchased at \$264.95.
732. A Pacific International Suites tax invoice dated 13 April 2006 ([HSUNO.002.0331](#)) discloses that \$11.50 was charged to Mr Thomson for two phone calls and one mini bar beverage.
733. A cabcharge tax invoice dated 13 April 2006 ([HSUNO.002.0350](#)) confirms receipt of \$46.07 at 02:31PM and cites the pick up as 'city' and the destination 'airport'.
734. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

735. On the basis of this evidence it appears that Mr Thomson:
- a. on 7 April 2006:
 - i. used his Diners Club card to pay \$809.86 for three flights for Sydney to Brisbane, Brisbane to Melbourne and Melbourne to Sydney on 12 April 2006;
 - ii. used his Diners Club card to pay Wotif \$173.85 for accommodation at Pacific International Suites Melbourne.

- b. on 11 April 2006 used his CBA Mastercard to withdraw \$500 cash at a CBA ATM at Terrigal NSW.
- c. on 12 April 2006:
 - i. used his Diners Club card to pay \$62.48 for petrol at BP Express at 11:06AM;
 - ii. drove to Sydney and left his car at Valet Parking at Sydney airport. The Valet parking invoice indicates that Mr Thomson's flight from Sydney was at 01:05PM. It is likely that the Valet parking charge was processed after Mr Thomson delivered his car to Valet Parking;
 - iii. used his Diners Club card to pay \$51.50 on a taxi from Brisbane airport to Upper Mount Gravatt;
 - iv. used his Diners Club card to pay \$52.50 for a taxi to Pinkenba, a suburb located near Brisbane airport according to google maps; and
 - v. flew from Brisbane airport to Melbourne and caught a taxi from Melbourne airport to suburbs at 09:46PM.
- d. on 13 April 2006:
 - i. checked out of the Pacific International Suites and paid \$11.50 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$46.07 for a taxi from the city to Melbourne airport before boarding a flight to Sydney; and
 - iii. at Sydney airport collected his car from Valet Parking, incurring a \$92 Valet Parking charge on his Diners Club card for this trip.

Trip 11 - 21 April 2006 Grand Hyatt Melbourne

Evidence

736. Mr Thomson's Diners Club statement dated 20 April 2006 ([HSUNO.002.0333](#)) discloses that he incurred the following charges:
- a. on 7 April 2006 \$494.26 for a Qantas flight from Sydney to Melbourne on 21 April 2006; and
 - b. on 20 April 2006 \$202.85 to Wotif.
737. Mr Thomson's Diners Club statement dated 20 May 2006 ([HSUNO.002.0075](#)) discloses that he incurred the following expenses:
- a. on 20 April 2006:
 - i. \$63.81 at Caltex Starshop;
 - ii. \$92 at Valet Parking Sydney airport;
 - iii. \$65.05 to South Eastern Taxi Brokers for 'suburb to suburb'.
 - b. on 21 April 2006:
 - i. \$124.60 at Grand Hyatt on Collins;
 - ii. \$46.18 taxi fare for 'Carlton to Melbourne airport';
 - iii. \$198 at Comme Ci Commee Ca.
 - c. on 28 April 2006 \$235.40 for a Qantas flight from Sydney to Melbourne on 20 April 2006.

738. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.014.0059](#)) discloses that on 20 April 2006 he:
- a. withdrew \$400 cash from an ATM at the Caltex in Forresters Beach; and
 - b. paid \$44 at Hunter Valley RSRCH Marysville.
739. Mr Thomson's Diners Club statement identifies that the ABN of the Caltex Starshop at which he purchased petrol on 20 April 2006 is for the company 'Myola Resources Pty Ltd' ACN 063 548 103. On 10 November 2011 FWA obtained an ASIC historical Company Extract for this company which identified that its principal place of business is 39 Yakaloo Cresnet, Forresters Beach NSW ([PUB.008.0059](#)). Therefore, it appears that Mr Thomson used both his Diners Club card and his CBA Mastercard at the Caltex in Forresters Beach on 20 April 2006 before flying to Melbourne.
740. An undated Wotif tax invoice was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([HSUNO.002.0375](#)) confirming accommodation at the Grand Hyatt Melbourne on 20 April 2006 in the amount of \$202.85. The Wotif invoice stated that inclusions were '[r]ates are per room for two people using either one King bed or two single beds with duvets, black marble bathroom with separate shower & bath, multi line phone & data ports, mini bar & tea/coffee making facilities.'
741. An undated Qantas Valet Parking tax invoice ([HSUNO.021.0328](#)) for \$92 discloses that car with registration number 'AWS10F' was checked in on 20 April 2006 and expected collection date was 21 April 2006. The invoice cites the departure flight as 0463 at 06:30PM on 20 April 2006 and return flight 0444 at 04:50 PM on 21 April 2006.
742. A Grand Hyatt on Collins receipt ([HSUNO.002.0063](#)) indicates that the \$124.60 charge was paid at 8:38am. A Grand Hyatt tax invoice of same date ([HSUNO.002.0069](#)) discloses that the charge was for room service for one dinner and one breakfast, two in house movies, mini bar and telephone calls on 21 April 2006.
743. A Comme Ci Comme Ca tax invoice dated 21 April 2006 ([HSUNO.021.0328](#)) indicates that \$198.00 was paid for two ties made in Italy at 05:20pm.
744. As at 8 November 2011 the Wotif website identified that the room rates at the Grand Hyatt, Melbourne, ranged between \$290 and \$730 per night ([FWA.012.0030](#)).

Analysis

745. On the basis of this evidence it appears that Mr Thomson:
- a. on 7 April 2006 used his Diners Club card to pay Qantas \$494.26 for a flight from Sydney to Melbourne on 21 April 2006 and return later that day;
 - b. on 20 April 2006:
 - i. withdrew \$400 cash at Caltex Forresters Beach using his CBA Mastercard;
 - ii. decided to change his flight so that rather than fly to Melbourne on 21 April 2006 he flew later that day;
 - iii. used his Diners Club card to pay Wotif \$202.85 for accommodation at the Grand Hyatt Melbourne for that evening;
 - iv. drove to Sydney buying petrol at the Caltex Starshop on the way;
 - v. left his car with Valet Parking at Sydney airport, incurring a \$92 charge on his Diners Club card;
 - vi. boarded a flight to Melbourne at approximately 6:30pm;

- vii. caught a taxi from Melbourne airport to Grand Hyatt on Collins where he stayed that evening.
- c. on 21 April 2006:
 - i. checked out of the Grand Hyatt on Collins and used his Diners Club card to pay \$124.60 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$46.18 on a taxi from Carlton to the Melbourne airport and boarded a flight to Sydney;
 - iii. used his Diners Club card to pay \$198 for two ties from Comme Ci Comme Ca; and
 - iv. collected his car from Valet Parking at Sydney airport.
- d. on 28 April 2006 incurred a \$235.40 Qantas charge on his Diners Club card for the change in flight from Sydney to Melbourne on 20 April 2006.

Trip 12 - 25 to 27 April 2006 Langham Hotel

Evidence

746. Mr Thomson's Diners Club statement dated 20 April 2006 ([HSUNO.002.0333](#)) discloses that on 7 April 2006 he incurred the following expenses:
- a. \$473.85 to Wotif; and
 - b. \$561.82 for Qantas return flight from Sydney to Melbourne on 26 April 2006 in the name of Christa Thomson.
747. Mr Thomson's Diners Club statement dated 20 May 2006 ([HSUNO.002.0075](#)) discloses the following charges:
- a. on 25 April 2006 \$45 at Red Rock Leisure Hotels ('Red Rock');
 - b. on 26 April 2006:
 - i. \$190 at The Rathdowne Street Food;
 - ii. \$17.54 taxi fare for 'restaurant to home';
 - iii. \$11.66 taxi fare for 'Melbourne to Carlton'.
 - c. on 27 April 2006:
 - i. \$166 for Valet Parking Sydney Airport;
 - ii. \$12.88 taxi fare for 'suburbs to suburbs'; and
 - iii. \$11 to Qantas.
 - d. on 28 April 2006:
 - i. \$731.15 at Langham Hotel Melbourne; and
 - ii. \$51.62 taxi fare for 'office to airport'.
 - e. on 2 May 2006:
 - i. \$38.50 from Qantas for flight from Sydney to Melbourne on 25 April 2006, return on unknown date, for Christa Thomson; and
 - ii. \$38.50 from Qantas for flight from Sydney to Melbourne on 25 April 2006, return on unknown date, for Craig Thomson.
 - f. on 7 May 2006 \$38.50 from Qantas for a one way flight from Melbourne to Sydney on 28 April 2006.

748. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.010.0058](#)) discloses that on 26 April 2006 he withdrew \$500 cash from an ATM at Sydney Qantas Airport Mascot.
749. An ASIC search undertaken on 14 November 2011 identifies that the ABN for Red Rock, as identified by Mr Thomson's Diners Club statement, is for a registered business whose address is 'South Melbourne VIC 3205' ([PUB.008.0160](#)).
750. A cabcharge tax invoice dated 28 April 2006 ([HSUNO.021.0328](#)) discloses that at 10:48 AM \$51.62 was charged to Diners Club card with the numbers 36 4365 979 for a taxi from 'office to airport'.
751. An undated Wotif.com Pty Ltd tax invoice was sent to Mr Thomson's email address 'craigt@hsu.net.au' ([WIT.WIL.001.0344](#)) confirming accommodation at the Langham Hotel from 26 April 2006 to 27 April 2006 in the amount of \$473.85. The Wotif invoice stated that inclusions were 'A stylishly appointed room with a King or Twin beds. Free morning newspaper. Rooms are superb blend of elegance and comfort and feature a luxurious bathroom with separate bath and shower.'
752. A Qantas E-ticket itinerary receipt and tax invoice dated 7 April 2006 ([HSUNO.002.0369](#)) discloses that \$280.91 was received for a flight for Christa Thomson from Sydney to Melbourne on 26 April 2006. The invoice cites the departure flight QF0423 at 10:00AM on 26 April 2006 and returning on flight QF0424 at 11:50AM on 28 April 2006.
753. A Qantas E-ticket itinerary receipt and tax invoice dated 7 April 2006 ([HSUNO.002.0370](#)) discloses that \$280.91 was received for a flight for Mr Thomson from Sydney to Melbourne on 26 April 2006. The invoice cites the departure flight QF0423 at 10:00AM on 26 April 2006 and returning on flight QF0424 at 11:50AM on 28 April 2006.
754. A tax invoice dated 27 April 2006 from The Rathdowne Street Food Store ([HSUNO.021.0328](#)) discloses a \$174.50 charge. Given that Mr Thomson's Diners Club statement discloses a payment of \$190 to Rathdowne Street Food Store on 26 April 2006, it is likely that the additional amount of \$15.50 charged to the Diners Club card was for a gratuity.
755. A cabcharge tax invoice dated 26 April 2006 ([HSUNO.021.0328](#)) discloses that at 06:42PM \$17.54 was charged to Diners Club card with the numbers 36 4365 979 for 'restaurant to home'.
756. A Qantas Valet parking receipt dated 27 April 2006 ([HSUNO.021.0328](#)) discloses that \$166 was charged to Diners Club card 36 4365 5548 2979.
757. An undated Qantas Valet Parking tax invoice ([HSUNO.021.0328](#)) for \$166 discloses car with registration number 'AWS10F' was checked in on 25 April 2006 and the expected collection date was 28 April 2006. The invoice cites the departure flight as 0441 at 02:30pm on 25 April 2006 and returning flight as 0424 at 11:50am 28 April 2006.
758. A cabcharge tax invoice dated 26 April 2006 ([HSUNO.021.0328](#)) discloses that at 12.00AM \$46.18 was charged to Diners Club card with the numbers 36 4365 979 for 'suburbs to suburbs'. It is likely that this cabcharge was incurred on 27 April 2006 because the fare was paid at midnight on 26 April 2006.
759. A Langham Hotel Melbourne tax invoice from dated 28 April 2006 ([HSUNO.002.0067](#)) discloses that \$731.15 was charged to Mr Thomson. This payment included \$245.00 for an additional night of accommodation on 25 April 2006 and other extras including dinner.

760. As at 8 November 2011 the Wotif website identified that the room rates at the Langham Hotel, Melbourne, ranged between \$277 and \$695 per night ([FWA.012.0038](#)).

761. Mr Thomson was asked about this transaction at interview:

MR NASSIOS: On 26 and 28 April 2006 you and your wife flew from Sydney to Melbourne on return airfares. You stayed two night, 26 and 27 April, at Langhams Hotel at \$235 a night.

Mr THOMSON: Yes.

MR NASSIOS: Can you recall what that trip may have been for?

MR THOMSON: No. The only reason I can remember the Western Australian one was because it was more unusual and it was early on so I remember that one.

Analysis

762. On the basis of this evidence it appears that::

- a. on 7 April 2006 Mr Thomson:
 - i. used his Diners Club card to pay Qantas \$561.82 for two flights for Christa Thomson and himself from Sydney to Melbourne on 26 April 2006 and return on 28 April 2006. This is verified by the Qantas E-tickets which disclose that \$561.82 was received for the same flight for Mr Thomson and that each flight cost \$280.91;
 - ii. used his Diners Club card to pay Wotif \$473.85 for accommodation at the Langham Hotel on 26 April 2006 and 27 April 2006; and
 - iii. at some point before 26 April 2006, changed one of the flights so that either Mr Thomson or Christa Thomson could fly to Melbourne a day earlier on 25 April 2006, at a cost of \$38.50 per flight which Mr Thomson charged to his Diners Club card.
- b. on 25 April 2006 either Mr Thomson or Christa Thomson:
 - i. flew to Melbourne;
 - ii. spent \$45 at Red Rock in South Melbourne using Mr Thomson's Diners Club card; and
 - iii. stayed the night.
- c. on 26 April 2006 either Mr Thomson or Christa Thomson:
 - i. withdrew \$500 cash at the Sydney Qantas Airport Mascot using Mr Thomson's CBA Mastercard before boarding a flight to Melbourne;
 - ii. flew to Melbourne; and
 - iii. checked into the Langham Hotel.
- d. also on 26 April 2006 Mr Thomson:
 - i. used his Diners Club card to pay \$190 at The Rathdowne Street Food Store; and
 - ii. used his Diners Club card to pay \$17.54 for a taxi from the restaurant to 'home' at 06:42pm.

- e. on 27 April 2006 Mr Thomson:
 - i. incurred a \$166 charge from Valet Parking Sydney airport. It is likely that this Valet Parking charge was processed the day after Mr Thomson delivered his car to Valet Parking on 26 April 2006; and
 - ii. caught a taxi from suburbs to suburbs in Melbourne.
 - f. on 28 April 2006 Mr Thomson:
 - i. checked out of the Langham Hotel and used his Diners Club card to pay \$731.15, inclusive of \$245 for an additional night of accommodation on 25 April 2006 and extras incurred during his stay;
 - ii. used his Diners Club card to pay \$51.62 for a taxi from the city to the Melbourne airport at 10:48am; and
 - iii. flew to Sydney, collected his car from Valet Parking and returned home.
763. Although the evidence indicates that Mr Thomson caught a taxi to the airport after his scheduled departure time it is possible that he changed his original flight time to depart Melbourne later that day.

Trip 13 - 14 to 17 May 2006 Pacific International Suites Melbourne

Evidence

764. A National Executive meeting occurred in Melbourne from 15 May 2006 to 16 May 2006 ([HSUNO.018.0241](#)).
765. Mr Thomson's Diners Club statement dated 20 May 2006 ([HSUNO.002.0075](#)) discloses that he incurred the following charges:
- a. on 10 May 2006:
 - i. \$596.87 for a Qantas flight from Sydney to Melbourne on 14 May 2006, return on unknown date; and
 - ii. \$753.85 to Wotif.
 - b. on 14 May 2006
 - i. \$87.01 at Mobil West Gosford NSW for 39.51 litres of petrol and extras; and
 - ii. \$48.17 taxi fare for 'airport to hotel'.
 - c. on 15 May 2006 \$430 at Langton's Restaurant;
 - d. on 16 May 2006 \$166 at Valet Parking, Sydney Airport;
 - e. on 17 May 2006:
 - i. \$85.07 at Pacific International Suites Melbourne;
 - ii. \$46.62 to Network Taxis for 'city to airport'; and
 - iii. \$36.62 at the Mobil in Killara.
766. Mr Thomson's CBA Mastercard statement dated 26 May 2006 ([HSUNO.002.0241](#)) discloses that on 15 May 2006 he withdrew \$500 from an ANZ ATM at Qantas terminal at the Melbourne airport.
767. An undated Wotif.com Pty Ltd tax invoice was sent to Mr Thomson's email address 'craig@hsu.net.au' ([WIT.WIL.001.0344](#)) confirming receipt of \$753.85 for accommodation at the Pacific International Suites Melbourne from 14 May 2006 to 16 May 2006. The Wotif invoice cites the inclusions as 'EXEC 1 BR - Substantial Suites with separate bedroom featuring king bed, view over Little Bourke St, plush

- marble and granite ensuite with separate bath and shower, free copy of the Age daily, comp use of gym/spa/sauna. Free Foxsports.'
768. A tax invoice from Mobil West Gosford dated 14 May 2006 (HSUNO.021.0328) discloses that \$87.01 was charged to a Diners Club card with the numbers 36 4365 979 at 02:41pm.
769. A cabcharge tax invoice dated 14 May 2006 ([HSUNO.021.0328](#)) discloses that at 08:26pm \$48.17 was charged to Diners Club card with the numbers 36 4365 979 for 'restaurant to home'.
770. A Langton's Restaurant tax invoice and receipt dated 15 May 2006 ([HSUNO.021.0328](#)) discloses that \$430 was charged to C Thomson on Diners Club card 36 4365 5548 2979. The receipt indicates that amount charged was \$402.75. Therefore, it is likely that the additional \$27.25 charged to the Diners Club card was for a gratuity. The receipt was signed by Mr Thomson.
771. The tax invoice discloses that the total bill was actually \$805.50 with the words 'half card half cash' written at the bottom. It appears that Mr Thomson paid \$402.75 of this bill using his Diners Club card and the remaining \$402.75 was paid in cash.
772. A Qantas valet parking receipt dated 16 May 2006 ([HSUNO.021.0328](#)) discloses that \$166.00 was charged to Diners Club card 36 4365 5548 2979. An undated Qantas Valet Parking tax invoice ([HSUNO.021.0328](#)) for \$166 discloses car with registration number 'AWS10F' was checked in on 14 May 2006 and expected collection was on 17 May 2006. The invoice lists the departure flight 0459 at 06:00pm on 14 May 2006 and returning on flight 0438 at 03:20pm on 17 May 2006.
773. A Pacific International Suites Melbourne tax invoice dated 17 May 2006 ([HSUNO.002.0068](#)) discloses that \$85.07 was charged for extras including food and beverage, telephone calls and mini bar expenses.
774. A taxi receipt dated 17 May 2006 ([HSUNO.021.0328](#)) discloses that the base amount was \$42.50 for 'city to airport'. Given that Mr Thomson's Diners Club statement discloses a payment of \$46.62 to Network Taxis on 17 May 2006, it is likely that the additional \$4.22 charged to the Diners Club card was a gratuity. This is further supported by the note on the receipt that a '10% service fee applies to all cards on statement'.
775. A Mobil Killara receipt dated 17 May 2006 ([HSUNO.021.0328](#)) discloses that \$36.62 was charged to Diners Club card 36 4365 5548 2979 at 04:35pm.
776. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

777. On the basis of this evidence it appears that Mr Thomson:
- a. on 10 May 2006:
 - i. used his Diners Club card to pay Qantas \$596.87 for a return flight from Sydney to Melbourne on 14 May 2006; and
 - ii. used his Diners Club card to pay Wotif \$753.85 for accommodation at the Pacific International Suites Melbourne from 14 May 2006 to 16 May 2006.
 - b. on 14 May 2006:
 - i. used his Diners Club card to pay \$87.01 on petrol and other expenses at Mobil West Gosford at 02:41pm, drove Sydney and left his car at Valet Parking, Sydney airport;

- ii. flew to Melbourne, and withdrew \$500 cash using his CBA Mastercard from Melbourne airport;
 - iii. used his Diners Club card to pay \$48.17 on a taxi from Melbourne airport to the hotel at 08:26pm; and
 - iv. checked into the Pacific International Suites Melbourne.
- c. on 15 May 2006 used his Diners Club card to pay \$430 for half the cost of a meal at Langton's Restaurant, with either Mr Thomson or some other person paying the rest of the cost in cash;
- d. on 16 May 2006 incurred a \$166 charge from Valet Parking Sydney airport. It is likely that this Valet parking charge was processed the day after Mr Thomson delivered his car to Valet Parking on 14 May 2006;
- e. on 17 May 2006:
 - i. checked out of the Pacific International Suites Melbourne and used his Diners Club card to pay \$85.07 for extras including food and beverage, telephone calls and mini bar expenses;
 - ii. used his Diners Club card to pay \$46.62 on a taxi from city to Melbourne airport before boarding a flight to Sydney; and
 - iii. collected his car from Valet Parking at Sydney airport and drove home to the Central Coast, filling up with petrol at Mobil Killara on the way.

Trip 14 - 6 to 9 June 2006 Pacific International Suites Melbourne

Evidence

778. Mr Thomson's Diners Club statement dated 20 June 2006 ([HSUNO.001.0457](#)) discloses that he incurred the following charges:
- a. on 5 June 2006:
 - i. \$729.97 for Qantas flight from Sydney to Melbourne on 6 June 2006, return on unknown date; and
 - ii. \$393.85 to Wotif.
 - b. on 6 June 2006:
 - i. \$42.75 at WC Penfold Stationary Store;
 - ii. \$23.69 for Secure Parking Wynyard Lane; and
 - iii. \$52.84 taxi fare for 'airport to suburbs'.
 - c. on 8 June 2006 \$179.00 at Valet Parking Sydney Airport.
 - d. on 9 June 2006:
 - i. \$265.56 at Pacific International Suites Melbourne;
 - ii. \$37 at Valet Parking Sydney Airport;
 - iii. \$67.35 at Caltex Starsop. A receipt from Caltex Star Mart Forresters Beach dated 9 June 2006 ([WIT.WIL.001.0322](#)) discloses that \$67.35 was charged to Diners Club card with the numbers 36 4365 979 at 06:15pm; and
 - iv. \$125 at Dekk Restaurant and Bar. A Dekk Restaurant and Bar tax invoice dated 9 June 2006 ([HSUNO.021.0108](#)) indicates that the base amount was \$116. Therefore, it is likely that the \$9 extra charged to the Diners Club card was for a gratuity.

779. Mr Thomson's CBA Mastercard statement dated 27 June 2006 ([HSUNO.001.0280](#)) discloses that he incurred the following charges:
- a. on 6 June 2006:
 - i. withdrew \$500 from an ANZ ATM at Erina Caltex Erina;
 - ii. paid \$50 Australia Post Sydney GPO; and
 - iii. paid \$45.60 at Mobil Killara.
 - b. on 8 June 2006 withdrew \$500.00 from an ATM at 7-11 Melbourne 1132.
780. A Qantas E-ticket receipt and tax invoice ([HSUNO.002.0185](#)) confirms receipt of \$729.97 for flight QF0453 at 05:00pm on 6 June 2006 and return flight QF0494 at 09:00pm on 8 June 2006.
781. A Wotif.com Pty Ltd tax invoice dated 6 June 2006 ([HSUNO.002.0181](#)) was sent to Mr Thomson's email address 'craigt@hsu.net.au' confirming \$202.85 received for accommodation at Pacific International Suites Melbourne from 6 June 2006. The invoice cites the payment for 'Rates are for two people. Maximum occupancy is 3 adults. Bedding 1 king bed. Roomy suites that provide added comfort and service not found in other 'standard' hotels rooms.'
782. A Secure Parking Wynyard tax invoice dated 6 June 2006 ([HSUNO.021.0108](#)) discloses that \$23.69 was paid at 03:31pm.
783. An undated Qantas Valet Parking tax invoice ([HSUNO.021.0108](#)) for \$179.00 discloses that a car with registration number 'AWS10F' was checked in on 6 June 2006 and that the expected collection date was 8 June 2006. The invoice cites the departure flight 0453 at 05:00pm on 6 June 2006 and return flight 0494 at 10:20pm on 8 June 2006. The invoice also discloses that Mr Thomson paid for 3 days beginning 6 June 2006. Mr Thomson was charged \$55 for the first day and \$74 for an extra two days.
784. A Pacific International Suites Melbourne tax invoice dated 9 June 2006 ([HSUNO.002.0179](#)) discloses that \$265.56 was charged in total, including a charge of \$173 for an additional night of accommodation on 8 June 2006, and other extras such as food and beverage, telephone calls, movie charge, and mini bar expenses which had been incurred between 6 and 9 June 2006.
785. A Qantas Valet Parking tax invoice dated 9 June 2006 ([HSUNO.021.0108](#)) discloses that \$37.00 was charged to Diners Club card 36 4365 5548 2979 for an extra day valet parking. The invoice also cites the return flight as 0414 at 09:20am on 9 June 2006.
786. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

787. On the basis of this evidence it appears that Mr Thomson:
- a. on 5 June 2006:
 - i. used his Diners Club card to pay Qantas \$729.97 for a return flight from Sydney to Melbourne on 6 June 2006; and
 - ii. used his Diners Club card to pay Wotif \$393.85 for accommodation at the Pacific International Suites Melbourne on 6 June 2006 to 7 June 2006.

- b. on 6 June 2006:
 - i. withdrew \$500 cash at Caltex Erina using your CBA Mastercard;
 - ii. used his Diners Club card to pay \$45.60 at Mobil Killara for petrol; and
 - iii. used his Diners Club card to pay \$52.84 on a taxi from Melbourne airport to suburbs.
- c. on 8 June 2006 incurred a \$179 charge from Valet Parking Sydney airport on his Diners Club card. It is likely that this Valet parking charge was processed two days after Mr Thomson delivered his car to Valet Parking on 6 May 2006.
- d. on 9 June 2006:
 - i. checked out of the Pacific International Suites Melbourne and used his Diners Club card to pay \$265.56, inclusive of \$173 for an additional night of accommodation on 8 June 2006 with the remainder being for extras such as food and beverage, telephone calls, movie charge and mini bar expenses;
 - ii. collected his car from Valet Parking at Sydney airport and incurred an additional \$37 charge for the additional day in Melbourne on 8 June 2006 on his Diners Club card;
 - iii. drove home to the Central Coast, filling up with petrol at Caltex Starshop at 8:30pm; and
 - iv. spent \$125 at Dekk Restaurant and Bar in Terrigal.

Trip 15 - 10 to 12 July 2006 Stamford Plaza Melbourne

Evidence

788. Mr Thomson's Diners Club statement dated 20 July 2006 ([HSUNO.015.0077](#)) discloses that he incurred the following charges:
- a. on 3 July 2006:
 - i. \$524.26 for Qantas flight from Sydney to Melbourne on 10 July 2006, return on unknown date; and
 - ii. \$443.85 to Wotif.
 - b. on 10 July 2006 \$48.84 taxi fare for 'Melbourne Airport to Carlton'.
 - c. on 11 July 2006 \$129 at Valet Parking Sydney airport
 - d. on 12 July 2006:
 - i. \$275.30 at Stamford Plaza Melbourne;
 - ii. \$44.40 taxi fare for 'city to airport'; and
 - iii. \$150 at Dekk Restaurant and Bar in Terrigal
789. Mr Thomson's CBA Mastercard statement dated 26 July 2006 ([HSUNO.001.0282](#)) discloses that on 10 July 2006 he withdrew \$500 from an ATM at 161 Brisbane Street, Dubbo NSW.
790. As at 14 November 2011 the Wotif website identified that the room rates at the Stamford Plaza, Melbourne, ranged between \$338 and \$780 per night ([FWA.012.0038](#)).

Analysis

791. On the basis of this evidence it appears that Mr Thomson:
- a. on 3 July 2006:
 - i. used his Diners Club card to pay Qantas \$524.26 for a return flight from Sydney to Melbourne on 10 July 2006; and
 - ii. used his Diners Club card to pay Wotif \$443.85 for accommodation at the Stamford Plaza Hotel Melbourne on 10 and 11 June 2006.
 - b. on 10 July 2006:
 - i. withdrew \$500 cash in Dubbo using his CBA Mastercard;
 - ii. drove to Sydney airport and left his car with Valet Parking;
 - iii. flew from Sydney to Melbourne, caught a taxi from Melbourne airport to Carlton; and
 - iv. used his Diners Club card to pay \$48.84 for a taxi from Melbourne airport to Carlton.
 - c. on 11 July 2006 incurred a \$129 charge from Valet Parking Sydney airport on his Diners Club card. It is likely that this Valet parking charge was processed the day after Mr Thomson delivered his car to Valet Parking on 10 May 2006.
 - d. on 12 July 2006:
 - i. checked out of the Stamford Plaza Melbourne and used his Diners Club card to pay \$275.30 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$44.40 on a taxi from city to the Melbourne airport and flew home to Sydney;
 - iii. collected his car from Valet Parking at Sydney airport;
 - iv. drove home to the Central Coast; and
 - v. used his Diners Club card to pay \$150 at the Dekk restaurant and Bar in Terrigal.

Trip 16 - 26 and 27 July 2006 Pacific International Suites Melbourne

Evidence

792. Mr Thomson's Diners Club statement dated 20 August 2006 ([HSUNO.001.0467](#)) discloses that he incurred the following expenses:
- a. on 19 July 2006:
 - i. \$326.38 for Qantas flight from Sydney to Melbourne on 26 July 2006, return on unknown date; and
 - ii. \$176.85 to Wotif.
 - b. on 26 July 2006:
 - i. \$92 at Valet Parking Sydney airport; and
 - ii. \$17.98 for a taxi fare described as 'Fitzroy to Melbourne'.
 - c. on 27 July 2006:
 - i. \$60.50 at Pacific International Suites Melbourne;
 - ii. \$43.51 taxi fare for 'Carlton to Melbourne Airport';
 - iii. \$64.94 at Mobil Killara NSW; and

- iv. \$74 for Secure Parking 1 NSW.
793. Mr Thomson's Diners Club statement dated 25 August 2006 ([HSUNO.014.0067](#)) discloses that on 27 July 2006 he:
- a. withdrew \$400 cash from an ATM at 7-11 Melbourne 1130; and
 - b. spent \$215 at Murmur bar Melbourne.
794. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

795. On the basis of this evidence it appears that Mr Thomson:
- a. on 19 July 2006:
 - i. used his Diners Club card to pay Qantas \$326.38 for a return flight from Sydney to Melbourne on 26 July 2006; and
 - ii. used his Diners Club card to pay Wotif \$176.85 for accommodation at the Pacific International Suites, Melbourne on 26 July 2006.
 - b. on 26 July 2006:
 - i. left his car at Valet Parking Sydney airport before boarding his flight to Melbourne;
 - ii. used his Diners Club card to pay \$17.98 on a taxi from Fitzroy to the city; and
 - iii. incurred a \$92 Valet Parking Sydney airport charge on his Diners Club card.
 - c. on 27 July 2006:
 - i. withdrew \$400 cash from an ATM at 7-11 Melbourne using his CBA Mastercard;
 - ii. used his Diners Club card to pay \$215 at the Murmur Bar Melbourne;
 - iii. checked out from the Pacific International Suites Melbourne and used his Diners Club card to pay \$60.50 for extras incurred during his stay;
 - iv. used his Diners Club card to pay \$43.51 on a taxi from Carlton to Melbourne Airport to fly back to Sydney;
 - v. collected his car from Valet Parking at Sydney airport; and
 - vi. drove home, filling up petrol at Mobil Killara NSW on the way.

Trip 17 - 6 and 7 August 2006 Pacific International Suites Melbourne

Evidence

796. A National Executive meeting occurred in Melbourne from 7 August 2006 to 8 August 2006 ([HSUNO.018.0220](#)).
797. Mr Thomson's Diners Club statement dated 20 August 2006 ([HSUNO.015.0089](#)) discloses that he incurred the following charges:
- a. on 4 August 2006:
 - i. \$331.43 for Qantas flight from Sydney to Melbourne on 6 August 2006, return on unknown date; and
 - ii. \$461.85 to Wotif.

- b. on 6 August 2006 \$89.14 at Caltex Starshop;
 - c. on 7 August 2006 \$13.32 at Cabcorp Australia Melbourne;
 - d. on 8 August 2006:
 - i. \$8.21 taxi fare for 'city to home';
 - ii. \$44.56 at Pacific International Apartments;
 - iii. \$13 at Pacific International Apartments;
 - iv. \$51.28 taxi fare for 'city to airport';
 - v. \$179 at Valet Parking Sydney Airport; and
 - vi. \$61.95 at Mobil Killara.
798. Mr Thomson's CBA Mastercard statement dated 25 August 2006 ([HSUNO.001.0284](#)) discloses that on 7 August 2006 someone used his CBA Mastercard to withdraw \$500 cash from a STG ATM at 182 St George St Sydney.
799. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

800. On the basis of this evidence it appears that Mr Thomson:
- a. on 4 August 2006:
 - i. used his Diners Club card to pay Qantas \$331.43 for a return flight from Sydney to Melbourne on 6 August 2006; and
 - ii. used his Diners Club card to pay Wotif \$461.85 for accommodation at the Pacific International Suites on 6 and 7 August 2006.
 - b. on 6 August 2006:
 - i. used his Diners Club card to pay \$89.14 at Caltex Starshop and drove to Sydney airport; and
 - ii. left his car at Valet Parking before boarding a flight to Melbourne.
 - c. on 8 August 2006:
 - i. checked out of the Pacific International Suites Melbourne and used his Diners Club card to pay \$44.56 and \$13 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$51.28 on a taxi from the city to Melbourne airport;
 - iii. incurred a \$179 charge from Valet Parking Sydney airport on his Diners Club card; and
 - iv. collected his car from Valet Parking at Sydney airport and subsequently drove home, filling up petrol at Mobil Killara on the way.
801. It is likely that on 7 August 2006 someone used Mr Thomson's CBA Mastercard to withdraw \$500 cash from a CBA ATM in Bateau Bay on the Central Coast of NSW. As Mr Thomson was in Melbourne on this day it appears that somebody else had Mr Thomson's CBA Mastercard on this day. This matter is considered at paragraphs 425 to 446 of this chapter.

Trip 18 - 27 and 28 August 2006 Grand Hyatt Melbourne

Evidence

802. Mr Thomson's Diners Club statement dated 20 August 2006 ([HSUNO.001.0467](#)) discloses that on 13 August 2006 Mr Thomson:
- a. spent \$483.85 on Wotif for accommodation; and
 - b. spent \$548.82 for a Qantas flight for Christa Thomson from Sydney to Melbourne on 27 August 2006 and return on unknown date.
803. Mr Thomson's CBA Mastercard statement dated 25 August 2006 ([HSUNO.001.0284](#)) discloses that on Monday 28 August 2006 he withdrew \$500 cash from an ATM in Eastern Beach.
804. Mr Thomson's Diners Club statement dated 20 September 2006 ([HSUNO.015.0100](#)) discloses that he incurred the following charges
- a. on Sunday 27 September 2006:
 - i. \$69.62 at the Coles Express, Kariong; and
 - ii. \$56.72 taxi fare for 'airport to home'.
 - b. on Monday 28 August 2006:
 - i. \$27.75 taxi fare for 'city to suburb';
 - ii. \$11.54 taxi fare for 'Restaurant to Princes Hill'; and
 - iii. \$315 at the Rathdowne Street Food Store.
 - c. on Tuesday 29 August 2006:
 - i. \$384 at the Grand Hyatt on Collins;
 - ii. \$184 at Valet Parking, Sydney airport; and
 - iii. \$46.65 at the Coles Express 1553 Killarney Va [sic].
805. As at 8 November 2011 the Wotif website identified that the room rates at the Grand Hyatt on Collins Street, Melbourne, ranged between \$290 and \$730 per night ([FWA.012.0030](#)).

Analysis

806. On the basis of this evidence it appears that Mr Thomson:
- a. on Sunday 13 August 2006:
 - i. used his Diners Club card to pay \$483.85 for accommodation at the Grand Hyatt on Collins for 27 and 28 August 2006; and
 - ii. used his Diners Club card to pay \$548.82 for a flight for Christa Thomson from Sydney to Melbourne on Sunday 27 August 2006 and return on Tuesday 29 August 2006.
 - b. on Sunday 27 August 2006, travelling with Christa Thomson:
 - i. drove from the Central Coast to Sydney airport, stopping at the Coles Express on the way;
 - ii. left his car at Valet Parking, Sydney airport before boarding a flight to Melbourne;
 - iii. used his Diners Club card to pay \$56.72 for a taxi from Melbourne airport to the city; and

- iv. stayed at the Grand Hyatt on Collins that evening and the following evening.
 - c. on Monday 28 August 2006:
 - i. withdrew \$500 from a CBA ATM at Eastern Bch (sic) using his CBA Mastercard;
 - ii. used his Diners Club card to pay \$27.75, \$11.54 and \$20.20 on three taxis throughout the day; and
 - iii. used his Diners Club card to pay \$315 at the Rathdowne Street Food Store.
 - d. on Tuesday 29 August 2006, travelling with Christa Thomson:
 - i. checked out of the Grand Hyatt on Collins and used his Diners Club card to pay \$384 for extras and/or accommodation incurred during his stay;
 - ii. returned to Melbourne airport to fly back to Sydney;
 - iii. collected his car from Valet Parking at Sydney airport, incurring \$184 for Valet Parking using your Diners Club card; and
 - iv. drove back to the Central Coast, stopping on the way home at the Coles Express in Killarney Vale to fill up with petrol.
807. There appears to be no specific booking for Mr Thomson's flight Sydney to Melbourne return. However, it is likely that Mr Thomson did fly with his wife, Christa Thomson, from Melbourne to Sydney on 27 August 2006 and return on 29 August 2006. This is because of the multiple charges incurred on both of Mr Thomson's credit cards during this period and the \$184 Valet Parking Sydney airport charge.
808. Additionally, the \$548.82 Qantas booking on 13 August 2006 for Christa Thomson's Sydney to Melbourne return flight appears to exceed the standard cost of a Sydney to Melbourne return flight booked one week in advance. Therefore, it is plausible that this charge related to both Mr Thomson's and Christa Thomson's flights Sydney to Melbourne, return.

Trip 19 - 26 September 2006 Pacific International Suites Melbourne

Evidence

809. Mr Thomson's Diners Club statement dated 20 October 2006 ([HSUNO.015.0113](#)) discloses that he incurred the following expenses:
- a. on 25 September 2006:
 - i. \$792.13 for Qantas return flight from Sydney to Melbourne on 26 September 2006; and
 - ii. \$195 to Qantas Holidays Domestic on 26 September 2006
 - b. on 26 September 2006:
 - i. \$23.69 for Secure Parking Wynyard Lane; and
 - ii. \$48.84 Network Taxis for 'airport to city'.
 - c. on 27 September 2006:
 - i. \$53.40 at Pacific International Suites Melbourne;
 - ii. \$71 at Pacific International Suites Melbourne;
 - iii. \$142 at Valet Parking Sydney Airport; and
 - iv. \$41.85 taxi fare for 'city to airport'.

810. Mr Thomson's CBA Mastercard statement dated 26 October 2006 ([HSUNO.014.0073](#)) discloses that on 27 September 2006 he withdrew \$500 cash from a CBA ATM at Titles Office Victoria.
811. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

812. On the basis of this evidence it appears that Mr Thomson:
- a. on 25 September 2006:
 - i. used his Diners Club card to pay Qantas \$792.13 for a return flight from Sydney to Melbourne on 26 September 2006; and
 - ii. used his Diners Club card to pay Qantas Domestic Holidays \$195 for accommodation at the Pacific International Suites Melbourne.
 - b. on 26 September:
 - i. used his Diners Club card to pay \$23.69 for Secure Parking Wynyard Lane;
 - ii. left his car at Valet Parking at the Sydney airport, before boarding a flight to Melbourne; and
 - iii. caught a taxi from Melbourne airport to the city.
 - c. on 27 September 2006:
 - i. withdrew \$500 cash using his CBA Mastercard at Titles Office Victoria;
 - ii. used his Diners Club card to pay \$53.40 and \$71 upon check out at the Pacific International Suites Melbourne for extras incurred during his stay; and
 - iii. used his Diners Club card to pay \$41.85 on a taxi from Melbourne city to Melbourne airport.
 - d. on 28 September 2006:
 - i. incurred a \$142 charge from Valet Parking Sydney airport on his Diners Club card. It is likely that the Valet parking charge was processed two days after Mr Thomson delivered his car to Valet Parking; and
 - ii. collected his car from Valet Parking at Sydney airport and drove home.

Trip 20 - 2 to 4 October 2006 Crown Promenade Melbourne

Evidence

813. Mr Thomson's Diners Club statement dated 20 October 2006 ([HSUNO.015.0113](#)) discloses that he incurred the following charges:
- a. on 28 September 2006:
 - i. \$274.41 for a Qantas return flight from Sydney to Melbourne on 2 October 2006; and
 - ii. \$652.15 to Wotif.
 - b. on 2 October 2006 \$72.17 at Coles Express 1553 Killarney Valley.
 - c. on 3 October 2006:
 - i. \$16.65 at Network Taxis for 'suburbs to hotel'; and

- ii. \$26 at Fairfax Newspaper Subs.
 - d. on 4 October 2006:
 - i. \$500 Bosari Ristorante Carlton;
 - ii. \$166 at Valet Parking Sydney Airport; and
 - iii. \$50.95 at Cabcorp Australia Melbourne for 'airport to city'.
 - e. on 5 October 2006:
 - i. \$151.98 at Crown Promenade;
 - ii. \$16.43 taxi fare for 'city to hotel'; and
 - iii. \$54.17 taxi fare for 'city to airport'.
 - f. on 6 October 2006 \$172.15 was reimbursed to his Diners Club card from Pacific International Suites Melbourne.
- 814. Mr Thomson's CBA Mastercard statement dated 26 October 2006 ([HSUNO.014.0073](#)) discloses that on 2 October 2006 he withdrew \$500 cash from an ATM at Sydney Qantas Terminal Mascot.
- 815. As at 7 November 2011 the Wotif website identified that the room rates at the Crown Promenade Hotel, Melbourne, range between \$275 and \$329 per night ([FWA.012.0013](#)).

Analysis

- 816. On the basis of this evidence it appears that Mr Thomson:
 - a. on 28 September 2006:
 - i. used his Diners Club card to pay Qantas \$274.41 for a return flight from Sydney to Melbourne on 2 October 2006; and
 - ii. used his Diners Club card to pay Wotif \$652.15 for accommodation.
 - b. on 2 October 2006:
 - i. used his Diners Club card to pay \$72.17 at Coles Express;
 - ii. left his car at Valet Parking at Sydney Airport; and
 - iii. withdrew \$500 cash at Sydney airport using his CBA Mastercard before boarding a flight to Melbourne.
 - c. on 3 October 2006 Mr Thomson used his Diners Club card to pay \$16.65 for a taxi from a Melbourne suburb back to his hotel.
 - d. on 4 October 2006:
 - i. used his Diners Club card to pay \$500 at the Bosari Ristorante in Carlton;
 - ii. incurred a \$166 charge from Valet Parking Sydney airport on his Diners Club card. Given that Mr Thomson would have left his car at Valet Parking before boarding his flight to Melbourne, and his Diners Club card statement discloses a payment to Valet Parking on 4 October 2006, it is likely that the Valet parking charge was processed two days after Mr Thomson delivered his car to Valet Parking on 2 October 2006; and
 - iii. used his Diners Club card to pay \$50.95 on a taxi fare described as 'airport to city'.

- e. on 5 October 2006:
 - i. checked out of the Crown Promenade and used his Diners Club card to pay \$151.98 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$16.43 for a taxi from 'city to hotel' and \$54.17 for a taxi from Melbourne city to Melbourne airport'
 - iii. boarded a flight to Sydney; and
 - iv. collected his car from Valet Parking at Sydney airport and drove home.
817. On 6 October 2006 Mr Thomson was reimbursed \$172.15 from Pacific International Suites Melbourne for an earlier transaction. It is not clear what this reimbursement was for.

Trip 21 - 18 October 2006 Pacific International Suites Melbourne

Evidence

818. Mr Thomson's Diners Club statement dated 20 October 2006 ([HSUNO.015.0113](#)) discloses that he incurred the following charges:
- a. on 17 October 2006:
 - i. \$824.41 for a Qantas return flight from Sydney to Melbourne on 18 October 2006; and
 - ii. \$172.15 to Wotif.
 - b. on 18 October 2006:
 - i. \$51.63 at Caltex Starshop; and
 - ii. \$92 at Valet Parking Sydney Airport.
 - c. on 19 October 2006:
 - i. \$31.35 at Pacific International Suites Melbourne; and
 - ii. \$52.73 at Mobil Killara.
819. Mr Thomson's Diners Club card dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that on 19 October 2006 he incurred the following additional expenses:
- a. \$12.65 taxi fare for 'suburbs to hotel';
 - b. \$24.53 taxi fare for 'city to suburbs';
 - c. \$18.54 taxi fare for 'Seddon to Carlton'; and
 - d. \$49.06 taxi fare for 'Carlton to Melbourne airport'.
820. Mr Thomson's CBA Mastercard statement dated 26 October 2006 ([HSUNO.014.0073](#)) discloses that on 18 October 2006 he withdrew \$500 cash from an ANZ ATM at Forresters Beach.
821. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

822. On the basis of this evidence it appears that Mr Thomson:
- a. on 17 October 2006:
 - i. used his Diners Club card to pay Qantas \$824.41 for a return flight from Sydney to Melbourne on 18 October 2006; and

- ii. used his Diners Club card to pay Wotif \$172.15 for accommodation at the Pacific International Suites on 18 October 2006.
- b. on 18 October 2006:
 - i. withdrew \$400 cash at the Caltex Forresters Beach using his CBA Mastercard and bought petrol at Caltex Starshop;
 - ii. drove to Sydney, left his car at Valet Parking at the Sydney airport; and
 - iii. boarded a flight to Melbourne and caught a taxi.
- c. on 19 October 2006:
 - i. checked out of the Pacific International Suites Melbourne and used his Diners Club card to pay \$31.35 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$49.06 for a taxi from the city to Melbourne airport; and
 - iii. boarded a flight to Sydney, collected his car from Valet Parking at Sydney airport, drove home, filling up at Mobil Killara on the way.

Trip 22 - 23 and 24 October 2006 Crown Promenade

Evidence

823. On 23 October 2006 the HSU held a Special National Executive meeting in Melbourne ([HSUNO.018.0200](#)).
824. Mr Thomson's Diners Club statement dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that he incurred the following expenses:
- a. on 23 October 2006 \$92 Valet Parking at Sydney airport;
 - b. on 24 October 2006 \$30.30 at Crown Entertainment Complex;
 - c. on 25 October 2006:
 - i. \$32.50 at Crown Entertainment Complex;
 - ii. \$66 at Crown Entertainment Complex;
 - iii. \$570.74 at Crown Promenade; and
 - iv. \$37 at Valet Parking at Sydney airport
825. Mr Thomson's CBA Mastercard statement dated 26 October 2006 ([HSUNO.014.0073](#)) discloses that on 23 October 2006 he withdrew \$500 cash from a CBA ATM at Bateau Bay.
826. As at 7 November 2011 the Wotif website identified that the room rates at the Crown Promenade Hotel, Melbourne, range between \$275 and \$329 per night ([FWA.012.0013](#)).

Analysis

827. On the basis of this evidence it appears that Mr Thomson:
- a. on 23 October 2006:
 - i. withdrew \$500 cash at Bateau Bay NSW using his CBA Mastercard;
 - ii. left his car at Valet Parking, at the Sydney airport, before boarding a flight to Melbourne, incurring a \$92 charge on his Diners Club card; and
 - iii. flew to Melbourne for Special National Executive meeting that was held at 106 Victoria Street Carlton.

- b. on 24 October 2006 incurred a \$37 charge by Valet Parking at Sydney airport on his Diners Club card. It is likely that the Valet parking charge was processed the day after Mr Thomson left the car at Valet Parking on 23 October 2006.
- c. on 25 October 2006:
 - i. used his Diners Club card to pay \$98.50 at Crown Entertainment Complex'
 - ii. checked out of the Crown Promenade and used his Diners Club card to pay \$570.74 for accommodation for the two previous nights; and
 - iii. flew back to Sydney and collected his car from Valet Parking at Sydney airport.

Trip 23 - 2 November 2006 Canberra and Melbourne

Evidence

828. Mr Thomson's Diners Club statement dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that he incurred the following charges:
- a. on 26 October 2006 \$540.39 for Qantas return flight from Sydney to Canberra on 2 November 2006;
 - b. on 31 October 2006 \$220.00 to Qantas Domestic Holidays for accommodation on 2 November 2006;
 - c. on 2 November 2006:
 - i. \$240 at The Rathdowne Street Food;
 - ii. \$100 at Valet Parking Sydney Airport;
 - iii. \$26.97 taxi fare for 'airport to Capital Hill';
 - iv. \$16.93 taxi fare 'office to Pialligo'; and
 - v. \$18.76 taxi fare 'Princess Hill to Southbank'.
 - d. on 3 November 2006:
 - i. \$41.45 at Crown Promenade;
 - ii. \$66.93 at Mobil Killara;
 - iii. \$53.17 at Taxi Billing Australia for 'suburbs to airport'; and
 - iv. \$243.34 at Dick Smith Bateau Bay.
 - e. on 8 November 2006 \$503.71 for Qantas return flight from Sydney-Canberra-Melbourne on 2 November 2006.
829. Mr Thomson's CBA Mastercard statement dated 24 November 2006 ([HSUNO.014.0074](#)) discloses that on 2 November 2006 he withdrew \$500 cash from an ATM at 183 Cranbourne Road, Frankston near Melbourne.
830. As at 7 November 2011 the Wotif website identified that the room rates at the Crown Promenade Hotel, Melbourne, range between \$275 and \$329 per night ([FWA.012.0013](#)).

Analysis

831. On the basis of this evidence it appears that Mr Thomson:
- a. on 26 October 2006 used his Diners Club card to pay Qantas \$540.39 for a return flight from Sydney to Canberra on 2 November 2006.
 - b. on 31 October 2006 used his Diners Club card to pay Qantas Domestic Holidays \$220 for accommodation at the Crown Promenade on 2 November 2006.

- c. on 2 November 2006:
 - i. left his car at Valet Parking at Sydney airport before flying to Canberra, incurring a \$100 charge for the Valet Parking on his Diners Club card;
 - ii. used his Diners Club card to pay \$26.97 on a taxi from Canberra airport to Capital Hill and later that same day spent \$16.93 for another taxi back to Pialligo;
 - iii. flew to Melbourne, and withdrew \$500 cash at 183 Cranbourne Road Frankston using his CBA Mastercard; and
 - iv. used his Diners Club card to pay \$240 at The Rathdowne Street Food Store and stayed at the Crown Promenade that evening.
- d. on 3 November 2006:
 - i. checked out of the Crown Promenade and used his Diners Club card to pay \$41.45 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$53.17 for a taxi from a Melbourne suburb to Melbourne airport;
 - iii. flew home to Sydney; and
 - iv. collected his car from Valet Parking at Sydney airport and drove home, filling up at Mobil Killara.

Trip 24 - 13 November 2006 Royce on St Kilda Rd

Evidence

832. Mr Thomson's Diners Club statement dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that he incurred the following charges:
- a. on 12 November 2006:
 - i. \$824.41 for Qantas flight Sydney to Melbourne flight on 13 November 2006, return on unknown date; and
 - ii. \$202.15 to Wotif for accommodation.
 - b. on 13 November 2006:
 - i. \$52.53 at Secure Parking Wynyard Lane; and
 - ii. \$100 at Valet Parking Sydney airport.
 - c. on 14 November 2006:
 - i. \$139.59 at Royce on St Kilda Road;
 - ii. \$65.30 at Caltex Star Mart Mascot;
 - iii. \$16.21 at Taxilink for 'suburbs to suburbs'; and
 - iv. \$72.15 at Network Taxis for 'airport to suburbs'.
833. Mr Thomson's Diners Club card dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that on 14 November he also paid \$43.85 for taxi fare for 'office to airport'.
834. Mr Thomson's CBA Mastercard statement dated 24 November 2006 ([HSUNO.014.0074](#)) discloses that on 13 November 2006 he withdrew \$500 from a CBA ATM at Bay Village.
835. As at 7 November 2011 the Wotif website identified that the room rates at the Royce on St Kilda Road Hotel, Melbourne for 10 November 2006 ranged between \$189 and \$279 per night ([FWA.012.0063](#)).

Analysis

836. On the basis of this evidence it appears that Mr Thomson:
- a. on Sunday 12 November 2006:
 - i. used his Diners Club card to pay \$824.41 for a return flight from Sydney to Melbourne on 13 November 2006; and
 - ii. used his Diners Club card to pay \$202.15 for accommodation at the Royce on St Kilda Road Melbourne on 13 November 2006.
 - b. on Monday 13 November 2006:
 - i. withdrew \$500 cash from an ATM at Bay Village NSW using his CBA Mastercard;
 - ii. left his car at Valet Parking Sydney airport before flying to Melbourne, incurring a \$100 charge for the Valet Parking on his Diners Club card; and
 - iii. used his Diners Club card to pay \$72.15 for a taxi from Melbourne airport to 'suburbs'.
 - c. on 14 November 2006:
 - i. checked out of the Royce on St Kilda Road and used his Diners Club card to pay \$139.59 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$43.85 on a taxi from a Melbourne suburb to Melbourne airport; and
 - iii. flew to Sydney, collected his car from Valet Parking at Sydney airport and drove home and purchased petrol at the Caltex Star Mart at Mascot on the way.

Trip 25 - 4 December 2006 Melbourne

Evidence

837. Mr Thomson's Diners Club statement dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that he incurred the following expenses:
- a. on 28 November 2006:
 - i. \$254.41 for a Qantas return flight from Sydney to Melbourne on 4 December 2006; and
 - ii. \$275 at Qantas Holidays Domestic for accommodation on 4 December 2006.
 - b. on 4 December 2006:
 - i. \$960 at 'European/The Melb Supper'; and
 - ii. \$54.06 taxi fare for 'Melbourne airport to Melbourne'.
 - c. on 5 December 2006:
 - i. \$100 at 'European/The Melb Supper'; and
 - ii. \$142 at Valet Parking Sydney airport.
838. Mr Thomson's CBA Mastercard statement dated 27 December 2006 ([HSUNO.014.0081](#)) discloses that on 4 December 2006 he withdrew \$500 cash from a STG ATM at St George 76 Paciwyong NSW.

Analysis

839. On the basis of this evidence it appears that Mr Thomson:
- a. on 28 November 2006:
 - i. used his Diners Club card to pay \$254.41 for a flight from Sydney to Melbourne on 4 December 2006, return on unknown date; and
 - ii. used his Diners Club card to pay \$275 for accommodation for 4 December 2006.
 - b. on 4 December 2006:
 - i. withdrew \$500 cash from an ATM at Pacific Highway, Wyong NSW using his CBA Mastercard;
 - ii. left his car at Valet Parking at Sydney Airport, incurring a \$142 charge for the parking on his Diners Club card;
 - iii. flew to Melbourne;
 - iv. used his Diners Club card to pay \$54.06 for a taxi fare from Melbourne airport to the city; and
 - v. used his Diners Club card to pay \$1,060 at The European and Melbourne Supper Club on 4 and 5 December 2006.
840. There is no evidence as to when or how Mr Thomson left Melbourne and returned to Sydney. However, the Qantas Domestic Holidays charge for accommodation on 4 December 2006 and the charge of \$142 for Valet Parking at Sydney Airport indicate that Mr Thomson stayed in Melbourne on 4 December 2006.

Trip 26 - 14 December 2006 Pacific International Suites Melbourne

Evidence

841. Mr Thomson's Diners Club statement dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that he incurred the following charges:
- a. on 12 December 2006:
 - i. \$824.41 for a Qantas return flight from Sydney to Melbourne on 14 December 2006; and
 - ii. \$182.15 to Wotif.
 - b. on 14 December 2006:
 - i. \$125 at Portland Hotel; and
 - ii. \$23.69 at Secure Parking Wynyard Lane.
 - c. on 15 December 2006:
 - i. \$30.90 at Pacific International Suites Melbourne; and
 - ii. \$150 at Valet Parking Sydney airport.
842. Mr Thomson's Diners Club statement dated 20 January 2007 ([HSUNO.015.0152](#)) discloses that he incurred the following additional charges:
- a. on 14 December 2006 \$48.06 taxi fare for 'Melbourne airport to Melbourne'; and
 - b. on 15 December 2006:
 - i. \$15.76 taxi fare for 'city to suburbs'; and
 - ii. \$51.84 taxi fare for 'suburbs to airport'.

Analysis

843. On the basis of this evidence it appears that Mr Thomson:
- a. on 12 December 2006:
 - i. used his Diners Club card to pay \$824.41 for a return flight to Melbourne on 14 December 2006 return the following day; and
 - ii. used his Diners Club card to pay \$182.15 for accommodation at the Pacific International Suites in Melbourne on 14 December 2006.
 - b. on 14 December 2006:
 - i. left his car at Valet Parking at Sydney Airport, incurring \$150 charge on his Diners Club card;
 - ii. boarded a flight to Melbourne, and used his Diners Club card to pay \$48.06 on a taxi from the Melbourne Airport to the city; and
 - iii. stayed at the Pacific International Suites in Melbourne that evening.
 - c. on 15 December 2006:
 - i. checked out of the Pacific International Suites in Melbourne and used his Diners Club card to pay \$30.90 for extras incurred during his stay; and
 - ii. used his Diners Club card to pay \$51.84 on a taxi to Melbourne airport.

Trip 27 - 11 January 2007 Hobart and Melbourne

Evidence

844. Mr Thomson's Diners Club statement dated 20 January 2007 ([HSUNO.015.0152](#)) discloses that he incurred the following charges:
- a. on 3 January 2007:
 - i. \$151 for a Jetstar flight Sydney to Hobart, scheduled to travel 11 January 2007;
 - ii. \$199.40 for a Qantas flight Hobart to Melbourne, scheduled to travel 11 January 2007; and
 - iii. \$174.39 for a Qantas flight Melbourne to Sydney, scheduled to travel 12 January 2007.
 - b. on 4 January 2007:
 - i. \$283.39 for a Qantas flight Sydney to Melbourne for Christa Thomson, scheduled to travel on 11 January 2007, return on unknown date;
 - ii. \$225 to Qantas Domestic Holidays for accommodation for 10 January 2007; and
 - iii. \$154 to Qantas Holidays Domestic for accommodation for accommodation on 11 January 2007.
845. The Diners Club statement also discloses that Mr Thomson incurred the following charges:
- a. on 6 January 2007 \$34.11 for 20.50 litres at the Mobil, East Gosford.
 - b. on 9 January 2007:
 - i. \$26.88 at the Caltex Starshop;
 - ii. \$12.70 at the Caltex Starshop; and

- iii. \$52.53 at Secure Parking, Wynyard Lane.
 - c. on 11 January 2007:
 - i. \$37.41 taxi fare for 'city to Seven Mile bch';
 - ii. \$11.10 taxi fare for 'City to Suburbs';
 - iii. \$55.61 taxi fare for 'airport to city';
 - iv. \$280 at the Kent Hotel; and
 - v. \$186.45 at the Swissotel Sydney.
 - d. on 12 January 2007:
 - i. \$58.28 taxi fare for 'city to airport';
 - ii. \$75 at Valet Parking Sydney airport; and
 - iii. \$54.69 at the Mobil Killara.
846. Mr Thomson's CBA Mastercard statement dated 24 January 2007 ([HSUNO.014.0085](#)) discloses that he incurred the following transactions:
- a. on 8 January 2007 he withdrew \$400 at The Entrance Hotel, The Entrance;
 - b. on 10 January 2007 he withdrew \$500 from the Westpac Plaza Sydney; and
 - c. on 12 January 2007 he incurred a charge of \$90 at La Notte Rest [sic] , Carlton.
847. As at 7 November 2011 the Wotif website identified that the room rates at the Swissotel Sydney, range between \$269 and \$1,499 per night ([FWA.012.0082](#)).

Analysis

848. On the basis of this evidence it appears that Mr Thomson:
- a. on 3 January 2007:
 - i. used his Diners Club card to pay \$350.40 on flights from Sydney to Hobart and Hobart to Melbourne on 11 January 2007; and
 - ii. used his Diners Club card to pay \$174.39 on a flight from Melbourne to Sydney.
 - b. on 4 January 2006:
 - i. used his Diners Club card to pay \$225 on a flight from Melbourne to Sydney on 12 January 2007 and return on unknown date;
 - ii. used his Diners Club card to pay \$283.39 on a flight for Christa Thomson from Sydney to Melbourne on 11 January 2007 and return on an unknown date; and
 - iii. used his Diners Club card to pay \$225 for accommodation at the Swissotel in Sydney for 10 January 2007, and \$154 accommodation for an unknown hotel in Melbourne for 11 January 2007.
 - c. on 10 January 2007:
 - i. withdrew \$500 from an ATM at the Westpac Central Plaza Sydney using his CBA Mastercard; and
 - ii. stayed at the Swissotel in Sydney that evening.
 - d. on 11 January 2007:
 - i. left his car at Valet Parking in Sydney, incurring a \$75 charge on his Diners Club card;

- ii. boarded a flight to Hobart, and later that day flew to Melbourne, caught a taxi from the Melbourne airport to an unknown hotel in the city; and
 - iii. was joined by Christa Thomson who flew directly from Sydney to Melbourne, and stayed at that unknown hotel that evening with her.
- e. on 12 January 2006, with Christa Thomson:
- i. used his Diners Club card to pay \$58.28 on a taxi to Melbourne airport before boarding a flight to Sydney; and
 - ii. collected his car from Valet parking, drove home to the Central Coast, stopping at the Mobil in Killara for petrol on the way home.

Trip 28 - 6 and 7 February 2007 Canberra and Melbourne

Evidence

849. Mr Thomson's Diners Club statement dated 20 February 2007 ([HSUNO.015.0162](#)) discloses that on 4 February 2007 he booked and paid \$780.65 for two flights, namely, Sydney to Melbourne and Melbourne to Canberra, scheduled to travel on 7 February 2007.
850. This Diners Club statement also discloses that Mr Thomson incurred the following charges:
- a. on 6 February 2007 a \$49.51 taxi fare for 'Airport to Hotel'.
 - b. on 7 February 2007:
 - i. \$142 at Valet Parking, Sydney airport;
 - ii. \$323.37 at Pacific International Suites, Melbourne;
 - iii. \$46.07 taxi fare for 'city to airport';
 - iv. \$20.98 taxi fare for 'airport to Parkes'; and
 - v. \$22.31 taxi fare for 'suburbs to O'Connor'.
 - c. on 8 February 2007:
 - i. \$598.85 at the Hyatt Hotel Canberra;
 - ii. \$18.54 taxi fare for 'Office to Pialligo'; and
 - iii. \$47.78 taxi fare for BP Connect, Carlingford.
851. Mr Thomson's CBA Mastercard statement dated 26 February 2007 discloses the following transactions:
- a. on 6 February 2007:
 - i. \$500 cash withdrawal from an ATM at the Sydney Qantas Domestic Terminal Mascot; and
 - ii. \$52.50 at the Olnix International Restaurant, The Entrance.
852. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).
853. As at 8 November 2011 the Wotif website identified that the room rates at the Hyatt Hotel Canberra, Melbourne for 10 November 2011 ranged between \$410 and \$600 per night ([FWA.012.0036](#)).

Analysis

854. On the basis of this evidence it appears that Mr Thomson:
- a. on 4 February 2007 booked and used his Diners Club card to pay \$780.65 for flights from Sydney to Melbourne and from Melbourne to Canberra, both on 7 February 2007.
 - b. on 6 February 2007:
 - i. used his Diners Club card to pay \$52.50 at the Olnix International Restaurant, on the Central Coast;
 - ii. drove to Sydney and left his car at Valet parking at Sydney airport, incurring a \$142 charge on his Diners Club card;
 - iii. withdrew \$500 cash at the airport using his CBA Mastercard before boarding a flight to Melbourne; and
 - iv. used his Diners Club card to pay \$49.51 on a taxi from Melbourne Airport to the Pacific International Suites where he stayed that evening.
 - c. on 7 February 2007:
 - i. checked out of the Pacific International Suites and used his Diners Club card to pay \$323.37, possibly for the previous night's accommodation and extras incurred during his stay;
 - ii. used his Diners Club card to pay \$46.07 for a taxi from the city to the Melbourne airport;
 - iii. flew to Canberra, and used his Diners Club card to pay \$20.98 for a taxi from the airport to Parkes; and
 - iv. stayed at the Hyatt Hotel Canberra that evening.
 - d. on 8 February 2007:
 - i. checked out of the Hyatt Hotel Canberra and used his Diners Club card to pay \$598.85 for the previous night's accommodation and extras incurred during his stay;
 - ii. used his Diners Club card to pay \$18.54 for a taxi to Canberra airport and flew home to Sydney; and
 - iii. collected his car from Valet Parking at Sydney airport and subsequently drove home, filling up petrol at the BP Connect in Carlingford.
855. Evidently Mr Thomson's flight from Sydney to Melbourne was originally booked for departure on 7 February 2007. However, it is likely that this flight was subsequently changed so that he flew to Melbourne the day before on 6 February 2007. This is likely because of Mr Thomson's:
- a. cash withdrawal on the CBA Mastercard at the Sydney airport on 6 February 2007; and
 - b. payment to the Pacific International Suites expense on the Diners Club card on 7 February 2007.
856. According to this assessment of Mr Thomson's movements on these dates, the Sydney Valet Parking charge on 7 February 2007 occurred when Mr Thomson was in Melbourne. It is likely that the Valet parking charge was processed the day after Mr Thomson delivered his car to Valet Parking.

Trip 29 - 14 and 15 February 2007 Canberra and Melbourne

Evidence

857. Mr Thomson's Diners Club statement dated 20 February 2007 ([HSUNO.015.0162](#)) discloses that Mr Thomson:
- a. on 9 February 2007 booked and paid Wotif \$166.15.
 - b. on 10 February 2007 booked and paid for the following flights:
 - i. \$394.38 for Qantas flight Sydney to Canberra on 12 February 2007, return on unknown date; and
 - ii. \$1,038.78 for a Qantas flight for Christa Thomson, Sydney to Melbourne on 14 February 2007 and return on unknown date.
858. Mr Thomson's Diners Club statement dated 20 February 2007 ([HSUNO.015.0162](#)) also discloses that he incurred the following charges between 14 February 2007 and 16 February 2007:
- a. on 14 February 2007 \$52.53 at Secure Parking, Wynyard Lane.
 - b. on 15 February 2007:
 - i. \$142 at Valet Parking, Sydney airport;
 - ii. \$11.66 taxi fare for 'Southbank to Carlton';
 - iii. \$1,200 at the Hotel Lincoln in Carlton; and
 - iv. \$600 at the Meat and Wine Company, Melbourne.
 - c. on 16 February 2007:
 - i. \$880 at the Grand Hyatt on Collins;
 - ii. \$63.38 taxi fare for 'city to airport';
 - iii. \$144.90 at Nike; and
 - iv. \$45.71 at the Caltex Starshop.
859. Mr Thomson's Diners Club statement dated 20 March 2007 ([HSUNO.015.0174](#)) discloses that he incurred the following *additional* taxi charges on 14 February 2007 and 15 February 2007:
- a. on 14 February 2007 \$59.72 Taxilink for 'airport to city'; and
 - b. on 15 February 2007 \$11.10 Alex Taxis & Broker charge for 'city to Sthbank (Vic)'.
860. Mr Thomson's CBA Mastercard dated 26 February 2007 ([HSUNO.001.0267](#)) discloses that on 16 February 2007 he withdrew \$500 cash at an ATM at the Westpac Wales Corner, Melbourne.
861. When interviewed by the FWA, Mr Thomson was asked about the \$1,200 Hotel Lincoln and \$600 Meat and Wine Company expenditure. The exchange (at Thomson PN 1805-1818) details Mr Thomson's answers as follows:
- MR NASSIOS: 14 February 2007, on a return airfare from Sydney to Melbourne, the cost of the airfare was \$1,038.78. Do you recall the purpose of that particular trip?
- MR THOMSON: No.
- MR NASSIOS: Now, it may be totally unrelated that 14 February is Valentines Day but the following day \$1,200 was charged to your Diner's Club at the Hotel Lincoln in Carlton.

- MR THOMSON: What date was it?
- MS CARRUTHERS: Do you want me to tell you what day of the week it was?
- MR THOMSON: No, it's all right. The Hotel Lincoln is a pub.
- MS CARRUTHERS: Yes.
- MR THOMSON: Around the corner from the union office in Victoria was. I'm thinking there was obviously a variety of things that were there but I'm thinking that that date is - and given that location, I think there was a farewell for Struan Robertson, that may - and you would know, from your records, probably better than me, as to when he left or resigned but I think that may have - I'm trying to fit something there but that may be around that time.
- MR NASSIOS: There was also \$600 on that same day charged to your Diner's Card at the Meet and Wine Company in Southbank.
- MR THOMSON: Yes.
- MR NASSIOS: The next day \$880 from the Grand Hyatt on Collins Street.
- MR THOMSON: Yes. We were there for a variety of days and I'm not sure what all of those were for. The Hotel Lincoln - I'm speculating because of where it is and the kind of um - - -
- MR NASSIOS: Now, are you able to in any way explain how that is appropriate expenditure for the national office?
- MR THOMSON: Well, when you have someone who has worked there for a while - clearly there were a lot of people who - both from industry - wanted to see him off. So if that's what it is and I'm not sure that that is what it is, but if that's what it is I don't think that's inappropriate.

862. As at 8 November 2011 the Wotif website identified that the room rates at the Grand Hyatt on Collins Street, Melbourne, ranged between \$290 and \$730 per night ([FWA.012.0030](#)).

Analysis

863. On the basis of this evidence it appears that Mr Thomson:
- a. on 10 February 2007 booked and used his Diners Club card to pay for two flights as follows:
 - i. \$394.38 for a flight from Sydney to Canberra on 12 February 2007 and return on unknown date; and
 - ii. \$1,038.78 for a flight for Christa Thomson from Sydney to Melbourne on 14 February 2007 and return on unknown date.
 - b. On 12 February 2007 flew from Sydney to Canberra.
 - c. on 14 February 2007:
 - i. left his car at Valet Parking at Sydney Airport, incurring a charge of \$142 on his Diners Club card. Given that Mr Thomson would have left his car at Valet Parking before boarding his flight to Melbourne and that his Diners Club card statement discloses a payment to Valet Parking on 15 February 2007, it is likely that the Valet Parking charge was processed a day after Mr Thomson delivered his car to Valet Parking at Sydney airport on 14 February 2007; and
 - ii. flew with Christa Thomson from Sydney to Melbourne.

- d. on 15 February 2007:
 - i. paid \$11.66 for a taxi from Southbank to the Hotel Lincoln in Carlton using his Diners Club card;
 - ii. attended the Hotel Lincoln for Struan Robertson's farewell function, for which he charged \$1,200 to his Diners Club card; and
 - iii. dined at the Meat and Wine Company and used his Diners Club card to pay \$600 for this meal.
 - e. on 16 February 2007:
 - i. withdrew \$500 in cash at an ATM at the Westpac Wales Corner, Melbourne using his CBA Mastercard;
 - ii. checked out of the Hyatt on Collins and used his Diners Club card to pay \$880 for the previous two nights' accommodation and/or extras incurred during his stay;
 - iii. used his Diners Club card to pay \$63.38 on a taxi from the Hyatt Hotel to Melbourne airport;
 - iv. boarded a flight to Sydney; and
 - v. collected his car from Valet Parking at the Sydney airport, and drove home to the Central Coast, filling up with petrol at the Caltex Starshop on the way.
864. There appears to be no specific booking for Mr Thomson's flight from Sydney to Melbourne return. However, it is likely that Mr Thomson flew with Christa Thomson from Melbourne to Sydney on 14 February 2007 and returned on 16 February 2007. This is because of the multiple charges incurred on both Mr Thomson's credit cards between 14 and 16 February 2007.
865. Additionally, the \$1,038.78 Qantas booking on 10 February 2007 for Christa Thomson's Sydney to Melbourne return flight appears to be double the standard cost of a Sydney to Melbourne return flight. Therefore it is plausible that this charge related to both Mr Thomson's and Christa Thomson's flights Sydney to Melbourne, return.

Trip 30 - 27 February 2007 Melbourne

Evidence

866. Mr Thomson's Diners Club statement dated 20 March 2007 ([HSUNO.015.0174](#)) discloses that he incurred the following charges:
- a. on 26 February 2007 \$814.40 for Qantas flight Sydney to Melbourne on 28 February 2007 and return on unknown date.
 - b. on 27 February 2007:
 - i. \$215 on Qantas Holidays Domestic for accommodation on 27 February 2007;
 - ii. \$43.26 at Secure Parking, Wynyard Lane;
 - iii. \$100 at Valet Parking, Sydney Airport; and
 - iv. \$55.50 Alexis Taxis & Broker taxi fare for 'airport to city(Vic)'.
 - c. on 28 February 2007:
 - i. \$48.95 taxi fare for 'Carlton to Melbourne Arpt [sic]'; and
 - ii. \$42.03 at the Mobil Killara.

867. Mr Thomson's CBA Mastercard dated 26 February 2007 discloses that on 26 February 2007 he withdrew \$300 cash from the St George ATM, Bateau Bay (HSUNO.001.0267).
868. Mr Thomson's CBA Mastercard dated 27 March 2007 ([HSUNO.014.0088](#)) discloses that on 27 February 2007 he withdrew \$500 cash from an ATM at 'Shop 1, 26 Honey Po, Huntfield'.

Analysis

869. On the basis of this evidence it appears that Mr Thomson:
- a. on 26 February 2007:
 - i. used his Diners Club card to pay \$814.40 for a flight Sydney to Melbourne on 28 February 2007 return; and
 - ii. withdrew \$300 from an ATM in Bateau Bay using his CBA Mastercard.
 - b. on 27 February 2007:
 - i. used his Diners Club card to pay \$215 on Qantas Holidays Domestic for accommodation at an unknown hotel in Melbourne on 27 February 2007;
 - ii. either changed his flight so that he flew to Melbourne on 27 February 2007, or the original flight was for travel to Melbourne on that date, not 28 February 2007 as it appears in the Diners Club statement;
 - iii. drove from the Central Coast to Sydney airport;
 - iv. parked his car to Valet parking, incurring a \$100 charge on his Diners Club card; and
 - v. flew to Melbourne, and used his Diners Club card to pay \$55.50 for a taxi from the Melbourne airport to an unknown hotel where he stayed that night.
 - c. on 28 February 2007:
 - i. used his Diners Club card to pay \$48.95 on a taxi from Carlton to the Melbourne airport;
 - ii. flew home to Sydney, collected his car from Valet parking at the Sydney airport; and
 - iii. drove home to the Central Coast, stopping to purchase \$42.03 in petrol at the Mobil in Killara on the way.
870. The CBA Mastercard statement dated 26 February 2006 discloses that Mr Thomson or someone using your CBA Mastercard, withdrew cash from an ATM in Huntfield, Adelaide on 27 February 2007. There is no other evidence indicating that Mr Thomson was in Adelaide on that date. To the contrary, the charges incurred on Mr Thomson's Diners Club card on that date and the next day suggest that he drove to Sydney on 27 February, flew to Melbourne, stayed overnight at accommodation and returned to Sydney the following day. The question of whether someone else used Mr Thomson's CBA Mastercard to withdraw cash in Huntfield on 27 February 2007 is considered at paragraphs 425 to 446 of this chapter.
871. It is possible that either:
- a. another person had possession of Mr Thomson's CBA Mastercard on 27 February 2007 and withdrew cash in Adelaide; or
 - b. Mr Thomson flew from Sydney to Adelaide on 26 February 2007, and subsequently from Adelaide to Melbourne on 27 February 2007.

Trip 31 - 11 April 2007 Pacific International Suites

Evidence

872. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that on 3 April 2007 he made the following bookings:
- a. \$144 for accommodation on 10 April 2007 through Qantas Domestic Holidays; and
 - b. \$379.38 for Qantas flight Sydney to Melbourne on 10 April 2007, return date unknown.
873. The Diners Club statement further discloses that on 10 and 11 April 2007 Mr Thomson incurred the following charges:
- a. on 10 April 2007:
 - i. \$52.53 at Secure Parking, Wynyard Lane;
 - ii. \$100 at Valet Parking, Sydney airport; and
 - iii. \$55.39 taxi fare for 'airport to city'.
 - b. on 11 April 2007:
 - i. \$45.90 at the Pacific International Suites, Melbourne; and
 - ii. \$51.17 taxi fare for 'hotel to airport'.
874. Mr Thomson's CBA Mastercard statement dated 26 April 2007 discloses that on 11 April 2007 he withdrew \$500 cash from a CBA ATM in Melbourne.

Analysis

875. On the basis of the evidence it appears that Mr Thomson:
- a. on 3 April 2007:
 - i. used his Diners Club card to pay \$379.38 on a return flight from Sydney to Melbourne on 10 April 2007; and
 - ii. used his Diners Club card to pay Qantas Domestic Holidays \$144 for accommodation at Pacific International Suites on 10 April 2007.
 - b. on 10 April 2007:
 - i. parked his car at Valet Parking at the Sydney airport thereby incurring a charge of \$100 on your Diners Club card;
 - ii. flew to Melbourne; and
 - iii. used his Diners Club card to pay \$55.39 for a taxi to the Pacific International Suites where he stayed that evening.
 - c. on 11 April 2007:
 - i. withdrew \$500 cash in Melbourne using his CBA Mastercard;
 - ii. checked out of the Pacific International Suites and used his Diners Club card to pay \$45.90 on extras incurred during his stay; and
 - iii. used his Diners Club card to pay \$51.17 for a taxi to the airport and flew back to Sydney.

Trip 32 - 15 April 2007 Grand Hyatt Melbourne

Evidence

876. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that on 15 April 2007 he made the following bookings:
- a. \$814.40 for a Qantas flight Sydney to Melbourne for that same day, return on unknown date; and
 - b. \$260 for accommodation that evening through Qantas Holidays Domestic.
877. The Diners Club statement also discloses that Mr Thomson incurred the following charges:
- a. on 15 April 2007:
 - i. \$53.18 at the Caltex Starshop; and
 - ii. \$100 at Valet Parking, Sydney airport
 - b. on 16 April 2007:
 - i. \$73 at the Grand Hyatt on Collins; and
 - ii. \$44.40 'Your Taxi Trip' taxi fare for 'suburbs to airport'.
878. Mr Thomson's CBA Mastercard statement dated 26 April 2007 discloses the following charges:
- a. on 15 April 2007 \$611.10 at the Telstra Shop, Erina; and
 - b. on 16 April 2007 \$500 cash withdrawal from 1 Wade Court, Girrawheen.
879. The address 1 Wade Court, Girrawheen is located approximately 10km from the city of Perth. Google maps indicate located at 3 Wade Court, Girrawheen, is a shopping centre (PUB.008.0129). The website [www.localbuzz.com.au](#) indicates that located at 1 Wade Court is the Anglicare Daisy House ([PUB.008.0130](#)).
880. As at 8 November 2011 the Wotif website identified that the room rates at the Grand Hyatt on Collins Street, Melbourne, ranged between \$290 and \$730 per night ([FWA.012.0030](#)).

Analysis

881. On the basis of this evidence it appears that Mr Thomson:
- a. on 15 April 2007:
 - i. decided to travel to Melbourne later that day so booked and used his Diners Club card to pay \$814.40 for a return flight to Melbourne and \$260 for accommodation at the Grand Hyatt on Collins for that evening;
 - ii. left his car at Valet Parking, Sydney airport where he incurred a charge on his Diners Club card of \$100; and
 - iii. flew to Melbourne and stayed at the Grand Hyatt on Collins.
 - b. on 16 April 2007:
 - i. checked out of the Grand Hyatt on Collins and used his Diners Club card to pay \$73 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$44.40 for a taxi to Melbourne airport before boarding a flight to Sydney; and
 - iii. collected his car from Valet parking at Sydney airport and drove home.

882. The cash withdrawal on 16 April 2007 in Girrawheen which appears on Mr Thomson's CBA Mastercard statement dated 26 April 2007 may suggest that Mr Thomson was in Western Australia on that date. However, there is no other evidence indicating this. To the contrary, Mr Thomson appears to have checked out of the Grand Hyatt on Collins in Melbourne and returned to Sydney on 16 April 2007.
883. It is possible that Mr Thomson flew from Melbourne to Perth on 16 April 2007 and returned to Sydney late on that day or the next day. Alternatively, someone else may have had and used Mr Thomson's CBA Mastercard in Western Australia on 16 April 2007. In the absence of any other evidence, the most plausible explanation is that someone else had Mr Thomson's CBA Mastercard on that date. The question of whether someone else used Mr Thomson's CBA Mastercard to withdraw cash in Girrawheen on 16 April 2007 is considered at paragraphs 425 to 446 of this chapter

Trip 33 - 2 May 2007 Pacific International Suites Melbourne

Evidence

884. Mr Thomson's Diners Club statement dated 20 May 2006 ([HSUNO.015.0198](#)) discloses that on 30 April 2007 he booked and paid Qantas \$324.39 for a flight Sydney to Melbourne on 2 May 2007, return on unknown date.
885. The Diners Club statement further discloses that Mr Thomson incurred the following charges on 2 and 3 May 2007:
- a. on 2 May 2007:
 - i. \$45.84 taxi fare for 'office to office';
 - ii. \$14.99 taxi fare for 'city to suburbs';
 - iii. \$9.77 taxi fare for 'Melbourne to Carlton'; and
 - iv. \$175.90 Bosari Restorante in Carlton.
 - b. on 3 May 2007:
 - i. \$242.40 at the Pacific International Suites, Melbourne;
 - ii. \$55.50 taxi fare for 'suburbs to airport'; and
 - iii. \$150 at Valet Parking, Sydney airport.
886. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

887. On the basis of this evidence it appears that Mr Thomson:
- a. on 30 April 2007 spent \$324.39 on a Qantas flight from Sydney to Melbourne on 2 May 2007.
 - b. on 2 May 2007:
 - i. delivered his car to Valet Parking at Sydney Airport where he incurred a charge of \$150 on his Diners Club card. Given that Mr Thomson would have left his car at Valet Parking before boarding his flight to Melbourne and that his Diners Club statement discloses a payment to Valet Parking on 3 May 2007, it is likely that this payment was processed a day after Mr Thomson delivered his car to Valet Parking on 2 May 2007;
 - ii. flew to Melbourne, and used his Diners Club card to pay for three taxi fares totalling \$70.60;

- iii. checked into the Pacific International Suites where he stayed that night; and
 - iv. used his Diners Club card to pay \$175.90 at Bosari Restorante in Carlton.
- c. on 3 May 2007:
- i. checked out from Pacific International Suites and used his Diners Club card to pay \$243.40 for accommodation the previous evening and extras incurred during his stay;
 - ii. used his Diners Club card to pay \$55.50 on a taxi to Melbourne airport; and
 - iii. flew to Sydney and collected his car from Valet Parking, Sydney airport, before driving home.

Trip 34 - 23 May 2007 Pacific International Suites Melbourne

Evidence

888. Mr Thomson's Diners Club statement dated 20 June 2007 ([HSUNO.015.0212](#)) discloses that on 22 May 2007 he booked and paid \$744.39 for Qantas flight from Sydney to Melbourne on 23 May 2007 and return on unknown date.
889. The Diners Club statement further discloses that Mr Thomson incurred the following charges on 23 and 24 May 2007:
- a. on 23 May 2007:
 - i. \$45.45 at the Caltex Wamberal;
 - ii. \$19.57 at Secure Parking, Wynyard Lane;
 - iii. \$100 at Valet Parking, Sydney airport; and
 - iv. \$50.84 taxi fare for 'airport to hotel'.
 - b. on 24 May 2007:
 - i. \$292.83 at Pacific International Suites, Melbourne;
 - ii. \$18.09 taxi fare for 'city to city'; and
 - iii. \$47.73 Taxilink taxi for 'suburbs to airport'.
890. There was a meeting of the National Aged Care Alliance in Melbourne on 23 May 2007 ([HSUNO.006.0384](#)).
891. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

892. On the basis of this evidence it appears that Mr Thomson:
- a. on 22 May 2007 booked and used his Diners Club card to pay \$744.39 for a flight to Melbourne on 23 May 2007 and return on 24 May 2007.
 - b. on 23 May 2007:
 - i. drove from the Central Coast to Sydney, stopping at the Caltex in Wamberal on the way where he used his Diners Club card to pay \$45.45 on petrol;
 - ii. left his car at the Valet Parking at the Sydney airport where he incurred a \$100 charge on his Diners Club card;

- iii. flew to Melbourne;
 - iv. possibly attended the meeting of the National Aged Care Alliance held in Melbourne on that day; and
 - v. used his Diners Club card to pay \$50.84 on a taxi from Melbourne airport to Pacific International Suites.
- c. on 24 May 2007:
- i. checked out of the Pacific International Suites and used his Diners Club card to pay \$292.83 for his accommodation the previous evening and extras incurred during his stay;
 - ii. used his Diners Club card to pay \$47.73 on a taxi to the Melbourne airport before boarding a flight to Sydney; and
 - iii. collected his car from Valet Parking and then drove home.

Trip 35 - 21 and 22 August 2007 Westin Hotel Melbourne

Evidence

893. Mr Thomson's Diners Club statement dated 20 August 2007 discloses the following charges on 2 August 2007:
- a. \$696.78 for a Qantas flight for Christa Thomson Sydney to Melbourne on 21 August 2007 and return on unknown date; and
 - b. \$615 for Qantas Holidays Domestic for accommodation on 21 August 2007.
894. Mr Thomson's CBA Mastercard statement dated 28 August 2007 discloses that he incurred the following charges:
- a. on 21 August 2007:
 - i. \$53.15 at United Ourimbah, Ourimbah; and
 - ii. \$500 cash withdrawal from the ANZ ATM at Qantas Melbourne airport.
 - b. on 23 August 2007 a cash withdrawal of \$500 at the Crown Casino, Southbank.
895. Mr Thomson's Diners Club statement dated 20 September 2007 discloses that he incurred the following charges between 21 August 2007 and 24 August 2007:
- a. on 21 August 2007:
 - i. \$56.61 taxi fare for 'airport to city';
 - ii. \$24.53 taxi fare for 'city to Seddon'; and
 - iii. \$22.64 taxi fare for 'Seddon to Melbourne'.
 - b. on 22 August 2007, \$12.21 taxi fare for 'Melbourne to Melbourne'.
 - c. on 23 August 2007:
 - i. \$192 at Valet Parking, Sydney airport;
 - ii. \$300 at the Crown Entertainment Complex;
 - iii. \$120.65 at the Westin Melbourne; and
 - iv. \$58.83 taxi fare for 'city to airport'.
 - d. on 24 August 2007, \$65.11 at the Caltex Starshop.
896. As at 7 November 2011 the Wotif website identified that the room rates at the Westin, Melbourne for 10 November 2011 ranged between \$295 and \$555 per night ([FWA.012.0092](#)).

897. The National Office paid \$1,650 for 10 tickets to the ACTU Dinner to farewell Greg Combet which was held in Melbourne on 21 August 2007 ([HSUNO.010.0152](#))

Analysis

898. On the basis of this evidence it appears that Mr Thomson:
- a. on 2 August 2007 booked and used his Diners Club card to pay:
 - i. \$696.78 for Christa Thomson's flight Sydney to Melbourne on 21 August 2007, return on unknown date; and
 - ii. \$615 to Qantas Domestic Holidays for accommodation at the Westin on 21 and 22 August 2007.
 - b. on 21 August 2007, travelling with Ms Thomson:
 - i. drove from the Central Coast to Sydney airport, stopping at the United in Ourimbah on the way;
 - ii. left his car at the Valet Parking, Sydney airport incurring a \$192 charge on his Diners Club card. Given that Mr Thomson would have left his car at Valet Parking before boarding his flight to Melbourne and that his Diners Club statement discloses a payment to Valet Parking on 23 August 2007, it is likely that the Valet Parking charge was processed two days after Mr Thomson delivered his car to Valet Parking on 21 August 2007;
 - iii. flew to Melbourne;
 - iv. withdrew \$500 cash from the ATM at Melbourne airport using his CBA Mastercard;
 - v. used his Diners Club card to pay \$56.61 on a taxi from the Melbourne airport to the city;
 - vi. used his Diners Club card to pay \$47.17 in total for taxis to and from Seddon (a suburb of Melbourne); and
 - vii. attended the ACTU Dinner to farewell Greg Combet at the Plaza Ballroom.
 - c. on 21 and 22 August 2007 stayed at the Westin Hotel.
 - d. on the evening of 22 August 2007:
 - i. used his Diners Club card to pay \$300 at the Crown Entertainment Complex; and
 - ii. also withdrew \$500 cash at the Crown Entertainment Complex using his CBA Mastercard.
 - e. on 23 August 2007:
 - i. checked out from the Westin Hotel and used his Diners Club card to pay \$120.65 for extras incurred during his stay;
 - ii. used his Diners Club card to pay \$58.83 on a taxi to Melbourne airport;
 - iii. flew to Sydney; and
 - iv. collected his car from Valet Parking at Sydney airport before driving home.
899. There appears to be no booking for Mr Thomson's return flight to Melbourne for this trip. However in some instances when identical flights are booked for Mr Thomson and Christa Thomson simultaneously, this appears as only one charge on the Diners Club statement.

900. Additionally, the multiple transactions which are recorded during this period as being incurred in Melbourne on both of Mr Thomson's credit cards suggest that Mr Thomson flew to Melbourne on 21 August 2007 and returned on 23 August 2007.
901. Therefore, it is likely that the \$696.78 Qantas charge on 2 August 2007 related to flights for both Mr Thomson and Christa Thomson to fly from Sydney to Melbourne on 21 August 2007 and return on 23 August 2007.

Trip 36 - 8 October 2007 Pacific International Suites Melbourne

Evidence

902. Mr Thomson's Diners Club statement dated 20 October 2007 ([HSUNO.001.0208](#)) discloses that on 26 September 2007 he made the following bookings:
- a. \$278.40 for Qantas flight from Sydney to Melbourne on 8 October 2007 and return on unknown date; and
 - b. \$164 for Qantas Holidays Domestic for accommodation on 8 October 2007.
903. This Diners Club statement further discloses that Mr Thomson incurred the following charges:
- a. on 8 October 2007:
 - i. \$51.06 taxi fare for 'airport to city'; and
 - ii. \$16.40 at Daily Grind.
 - b. on 9 October 2007:
 - i. \$84.35 at the Pacific International Suites, Melbourne;
 - ii. \$49.80 for 'Taxitronics'; and
 - iii. \$150 at the Valet Parking, Sydney airport.
904. Mr Thomson's CBA Mastercard statement dated 25 October 2007 (HSUNO.001.0127) discloses he incurred the following charges:
- a. on 8 October 2007 he withdrew \$500 at the CBA ATM Terrigal; and
 - b. on 9 October 2007 he withdrew \$500 from the CBA ATM Eastern Branch, Vic.
905. Taxitronics is a taxi company based in Spencer Street, Melbourne ([PUB.008.0132](#)).
906. The Daily Grind charge on 8 October 2008 includes ABN 910 983 666 55 ([PUB.008.0093](#)). An ASIC search undertaken on 10 November 2011 identifies this ABN as relating to the company 'Bracciotti Enterprises Pty Ltd' (ACN 098 366 655) and indicates that:
- a. the former name for which was 'Daily Grind Food Store Pty Ltd'; and
 - b. the registered office was Melbourne VIC 3004.
907. The website www.truelocal.com.au identifies two cafés in Melbourne partly entitled 'Daily Grind'. Namely, 'Chris's Daily Grind Café' at 172 William St, Melbourne VIC 3000 and 'Daily Grind Foodstore' located at 356 Clarendon St, South Melbourne, VIC 3205 ([PUB.008.0127](#)).
908. As at 14 November 2011 the Wotif website identified that for the rooms available at the Mantra on Little Bourke, previously Pacific International Suites, ranged between \$229 and \$429 ([PUB.008.0141](#)).

Analysis

909. On the basis of this evidence it appears that Mr Thomson:
- a. on 26 September 2007 booked and used his Diners Club card to pay:
 - i. \$278.40 for a Qantas flight from Sydney to Melbourne on 8 October 2007 to return the next day; and
 - ii. \$164 for accommodation at the Pacific International Suites on 8 October 2007.
 - b. on 8 October 2007:
 - i. withdrew \$500 at an ATM on the Central Coast using his CBA Mastercard before driving to Sydney;
 - ii. left his car in Valet Parking at Sydney airport, incurring a \$150 charge on his Diners Club card. Given that Mr Thomson would have left his car at Valet Parking before boarding his flight to Melbourne and that his Diners Club statement discloses a payment to Valet Parking of 9 October 2007, it is likely that the Valet Parking charge was processed a day after Mr Thomson delivered his car to Valet Parking on 8 October 2007;
 - iii. flew to Melbourne;
 - iv. used his Diners Club card to pay \$51.06 on a taxi from Melbourne airport to the city;
 - v. used his Diners Club card to pay \$16.60 at one of the Daily Grind Cafés in Melbourne; and
 - vi. stayed at the Pacific International Suites that evening.
 - c. on 9 October 2007:
 - i. withdrew \$500 from a CBA ATM in Melbourne using his CBA Mastercard;
 - ii. checked out from the Pacific International Suites and used his Diners Club card to pay \$84.35 for extras incurred during his stay;
 - iii. used his Diners Club card to pay \$49.80 on a taxi to the Melbourne airport;
 - iv. flew to Sydney; and
 - v. collected his car from Valet Parking, Sydney airport and drove home.

Part B - Was expenditure incurred on any of the 36 trips excessive?

Was the expenditure permitted by the Rules?

910. The National Secretary only has authority to authorise expenditure which is on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. For all expenditure which is not on the general administration of the HSU, the National Secretary must seek prior authority of National Council or National Executive (see paragraphs 14 to 26 of this chapter above on pages 210 and 211).
911. As I have set out at paragraphs 205 to 224 above in this chapter, there is no evidence before FWA that the National Office had any formal policy regarding the circumstances in which employees of the National Office could seek reimbursement

of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business.

912. Further, there is no evidence before FWA which demonstrates that Mr Thomson ever sought the approval of either National Council or National Executive to use National Office funds to pay for:
- a. travel to Melbourne;
 - b. accommodation in Melbourne; or
 - c. travel related meals in Melbourne
- after he moved to the NSW Central Coast.
913. Accordingly it appears that such expenditure was not authorised by either the National Council or the National Executive pursuant to sub-rule 36(b).
914. It is arguable, however, that Mr Thomson's expenditure associated with travelling to Melbourne for HSU business would be expenditure on the general administration of the Union or a purpose reasonably incidental to the general administration of the Union. As a result, such expenditure would have been within Mr Thomson's own power to authorise pursuant to sub-rule 36(b). This is so even though Mr Thomson did not seek the approval of either National Council or National Executive to move to NSW.

Was the expenditure excessive?

915. Even though I am of the view that it is arguable that the Rules permitted Mr Thomson to incur expenditure associated with travel to Melbourne in 2006 and 2007 without the prior authority of National Council or National Executive, I have also considered whether such expenditure was nevertheless excessive.
916. In order to determine whether this expenditure was excessive, it is necessary to consider Mr Thomson's entitlements in relation to accommodation and other travel related expenses.

What was Mr Thomson entitled to in relation to accommodation and other travel related expenses?

917. The minutes of the National Council meeting held on 23 July 2002 ([HSUNO.023.0195](#)) record the passage of the following motion:

National Council resolves that the following salary and entitlements shall apply to the position of the National Secretary to take effect from 1 July 2002:

Salary:\$130,000 per annum

Superannuation:SGC plus 10% (no change)

Car: Fully maintain and fuelled, late model vehicle provided including for personal use, or at the election of the incumbent, a car allowance taken as salary at an equivalent amount determined annually by the National Auditor provided that such allowance shall not be included for the purposes of determining superannuation entitlements. (no change)

Other: Any relevant conditions or entitlements as apply to allied health professionals in the Victorian Public Hospital System (no change).

918. During the period in which Mr Thomson was National Secretary the relevant award applicable to allied health professionals in the Victorian Public Health System was the *Health and Allied Services - Public Sector - Victorian Consolidated Award 1996 (the Victorian Award)*.

919. As at 7 May 2008 subclauses 39.1 and 39.2 of the Victorian Award relevantly provided (underlining added):

39.1 When an employee is involved in travelling on duty, if the employer cannot provide the appropriate transport, all reasonably incurred expenses in respect to fares, meals and accommodation will be met by the employer on production of receipted account(s) or other evidence acceptable to the employer.

39.2 Provided further that the employee shall not be entitled to reimbursement for those expenses which exceed the mode of transport, meals or the standard of accommodation agreed for the purpose with the employer.

920. The Victorian Award does not specify what level of expenditure is reasonable. However some guidance as to what expenditure on meals may be reasonable can be found in the 2007 Ruling, which sets out the amounts that the Commissioner of Taxation considers are reasonable amounts for employees to claim for the 2007-08 income year in relation to claims made for (amongst other things) overseas and domestic travel allowance expenses.

921. The 2007 Ruling sets out different tables of reasonably claimable amounts for employees of different income levels. During September to December 2007 Mr Thomson's annual salary was \$154,536.07 (see Mr Thomson's weekly payroll advices at [HSUNO.017.0029](#)). The table most relevant to Mr Thomson is accordingly Table 2, which applies to employees with an annual salary of between \$87,201 and \$155,000.

922. Table two provides as follows:

Table 2: Employee's annual salary - \$87,201-\$155,000

Place	Accomm \$	Food and drink \$ B'fast 21.95 Lunch 31.10 Dinner 43.55	Incidentals \$22.05	Total \$
Adelaide	155	96.60	22.05	273.65
Brisbane	179	96.60	22.05	297.65
Canberra	145	96.60	22.05	263.63
Darwin	157	96.60	22.05	275.65
Hobart	128	96.60	22.05	246.65
Melbourne	169	96.60	22.05	287.65
Perth	177	96.60	22.05	295.65

Place	Accomm \$	Food and drink \$ B'fast 21.95 Lunch 31.10 Dinner 43.55	Incidentals \$22.05	Total \$
Sydney	200	96.60	22.05	318.65

923. It is important to note that:
- a. these rates are set by the ATO as guidelines for taxation purposes. Moreover they are subject to a 'substantiation' exception. While they may inform consideration of what level of expenditure might be 'reasonable' for the purpose of the Victorian Award, (and accordingly for the purpose of determining Mr Thomson's employment entitlements) they do not operate to determine what is reasonable for those purposes;
 - b. these rates are the rates set by the ATO for the 2007-2008 year. Corresponding rates for earlier years are likely to be marginally lower;
 - c. expenditure on hotels, dining and/or entertainment related to travel will not be expenditure on the general administration or a purpose reasonably incidental thereto unless the travel was undertaken for a purpose referable to the business of the HSU.
924. Even if Mr Thomson's expenditure on travel from Sydney to Melbourne and on accommodation and travel related meals in Melbourne after he moved to Sydney was expenditure for the general administration of the Union or a purpose reasonably incidental to the general administration of the Union, I consider that such expenditure would still be excessive where the total expenditure related to accommodation and travel related expenditure on a particular trip demonstrably exceeds the amounts provided by the 2007 Ruling, having regard to all of the available evidence.
925. I consider that expenditure on accommodation by Mr Thomson in Melbourne during 2006 and 2007 was excessive (even if it was for the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU) if the total expenditure related to the accommodation demonstrably exceeds the amounts provided by the 2007 Ruling, having regard to all of the available evidence. A reasonable person in Mr Thomson's position as National Secretary would have ensured that any monies of the National Office which he expended in relation to his own accommodation were reasonable in all the circumstances.
926. In the discussion that follows the costs identified as being for accommodation and extras in respect of each trip is drawn from the table at Annexure C.

Analysis of each of the 36 trips in order to determine whether expenditure was excessive

Methodology in applying the 2007 Ruling

927. The 2007 Ruling provides separate figures which constitute a 'reasonable amount' for accommodation (which varies according to location) and a fixed daily amount for breakfast, lunch, dinner and incidentals.
928. With respect to incidentals (for which \$22.05 per day is allowed), clause 9 of the 2007 Ruling provides that 'the reasonable amount applies in full to each day of travel covered by the allowance, without the need to apportion for any part-day travel on the first and last day'. An allowance of \$22.05 is therefore allocated for each day of travel, even where that day is only a part day (such as the first and last day of travel).
929. Clause 8 provides that the reasonable amount for meals depends on the period and time of travel. Rates only apply to meals (that is, breakfast, lunch, dinner) that fall within the time of day from the commencement of travel to the end of travel covered by the allowance.
930. Where there is information before FWA regarding the actual times that Mr Thomson travelled (such as from a travel itinerary or valet parking receipt) that information is used to determine the meals to which Mr Thomson would have been entitled according to the times at which he travelled.
931. In the majority of cases, however, there is no information regarding the time of day on which Mr Thomson departed on his first day of travel or returned on his last day of travel. In such cases, I have adopted the most generous approach and have provided a meal allowance for breakfast, lunch and dinner on both the first and last day of travel.
932. Where it is unclear which of two accommodation charges was actually incurred during Mr Thomson's trip to Melbourne, I have adopted the most generous approach and have assumed that the lesser of the two charges was incurred by Mr Thomson.
933. Applying these criteria by way of example, if Mr Thomson stayed in Melbourne for one night and there is no information before FWA regarding his times of travel, I have determined that the 'reasonable amount' to which Mr Thomson would have been entitled under Table 2 of the 2007 Ruling was:

One night's accommodation in Melbourne	\$169.00
Breakfast on both days (at \$21.95 per day)	\$43.90
Lunch on both days (at \$31.10 per day)	\$62.20
Dinner on both days (at \$43.55 per day)	\$87.10
Incidentals for both days (at \$22.05 per day)	\$44.10
TOTAL:	\$406.30

Other points regarding methodology

934. While Mr Thomson made cash withdrawals on each of the trips, there is no evidence before FWA regarding the purposes for which such cash was expended. In the absence of any such evidence, any cash that has been withdrawn by Mr Thomson has not been considered by FWA as 'expenditure' by Mr Thomson on meals or accommodation. However, at paragraphs 1098 to 1110 below I do consider the fact that Mr Thomson frequently withdrew cash while travelling interstate when having regard to Mr Thomson's submission to me that it was not uncommon for him to attend lunches and dinners with out union official and HSU members while travelling interstate.

Trip 1 Radisson Hotel on Flagstaff 8 January 2006

935. Mr Thomson incurred charges for accommodation and extras totalling \$328.65 in respect of his stay at the Radisson Hotel on Flagstaff on 8 January 2006. There were no other relevant charges incurred during this trip.
936. There is no information before FWA regarding Mr Thomson's time of travel.
937. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
938. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 1 was excessive.

Trip 2 Langham Hotel Melbourne on 18 January 2006

939. Mr Thomson incurred charges for accommodation and extras totalling \$340.70 in respect of his stay at the Langham Hotel Melbourne on 18 January 2006. In addition, Item 315 of Annexure D indicates that Mr Thomson charged \$106.40 to his Diners Club card at the Blue Train Café while in Melbourne on 18 January 2006.
940. The total amount spent by Mr Thomson on accommodation and meals during Trip 2 was \$447.60.
941. There is no information before FWA regarding Mr Thomson's time of travel.
942. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
943. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 2 was excessive.

Trip 3 Langham Hotel on Flagstaff 24 January 2006

944. On the information that is before FWA, it is not known whether the accommodation charge that related to Mr Thomson's stay at the Langham Hotel was the Wotif charge of \$184.85 on 24 January 2006 (HSUNO.015.0003) or the Wotif charge of \$363.85 on 20 January 2006 (HSUNO.015.0003). As discussed in paragraph 932 above, we have used the lesser figure of \$184.85.

945. Mr Thomson incurred charges for accommodation and extras totalling \$334.40 in respect of his stay at the Langham Hotel on 8 January 2006. There were no other relevant charges incurred during this trip.
946. There is no information before FWA regarding Mr Thomson's time of travel.
947. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
948. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 3 was excessive.

Trip 4 Canberra and Melbourne 14 and 15 February 2006

949. Mr Thomson incurred charges of \$1,229.29 for accommodation (which included extras of \$328.65) in respect of his stay at the Crown Plaza Canberra and the Westin Melbourne on 14 and 15 February 2006 as follows:
- a. \$302.39 in respect of his accommodation at the Crown Plaza Canberra on 14 February 2006;
 - b. \$673.85 in respect of his accommodation at the Westin Melbourne on 15 February 2006 (though it appears that the booking also covered the night of 14 February, and Mrs Thomson appears to have stayed at the Westin on that night); and
 - c. \$253.05 for extras incurred during Mr and Mrs Thomson's stay at the Westin on 14 and 15 February 2006.
950. Item 327 of Annexure D indicates that Mr Thomson used his Diners Club card to pay \$190 at Bistro 1, Little Collins Street, Melbourne on 15 February 2006.
951. The total spent by Mr Thomson on accommodation and meals during Trip 4 was \$1,419.29.
952. There is no information before FWA regarding Mr Thomson's times of travel.
953. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for:
- a. one night's accommodation in Canberra (\$145);
 - b. one night's accommodation in Melbourne (\$169); and
 - c. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$669.95.
954. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 4 was excessive.

Trip 5 Day trip to Melbourne on 21 February 2006

955. Mr Thomson does not appear to have incurred any accommodation costs in relation to this trip.

Trip 6 Quay West Suites Melbourne 6 and 7 March 2006

956. Mr Thomson incurred charges for accommodation and extras totalling \$657.20 in respect of his stay at the Quay West Suites Melbourne on 6 and 7 March 2006. Item 330 of Annexure D indicates that on 7 March 2006 he used his Diners Club card to pay \$250 at the Rathdowne St Food Store.
957. The total spent by Mr Thomson on accommodation and meals during Trip 6 was \$907.20.
958. There is no information before FWA regarding Mr Thomson's times of travel.
959. The amount provided by the 2007 Ruling for:
- a. two nights' accommodation in Melbourne (\$338); and
 - b. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$693.95.
960. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 6 was excessive.

Trip 7 Pacific International Suites 16 March 2006

961. Mr Thomson incurred charges for accommodation and extras totalling \$348.12 in respect of his stay at the Pacific International Suites on 16 March 2006. There were no other relevant charges incurred during this trip.
962. There is no information before FWA regarding Mr Thomson's time of travel.
963. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
964. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 7 was excessive.

Trip 8 Quay West Suites Melbourne on 29 March 2006

965. Mr Thomson incurred charges for accommodation and extras totalling \$292.30 in respect of his stay at the Quay West Suites on 29 March 2006. There were no other relevant charges incurred during this trip.
966. Mr Thomson's Qantas E-ticket itinerary (HSUNO.002.0363) indicates that he departed Sydney on a flight at 8.00am on 29 March 2006 and landed back in Sydney on a flight from Melbourne the following day at 5.20pm. On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:
- a. one night's accommodation in Melbourne (\$169);
 - b. all three meals plus incidentals on the first day (\$118.85); and
 - c. breakfast, lunch and incidentals on the second day (\$75.10),
- which totals \$362.75.

967. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 8 was excessive.

Trip 9 Quay West Suites Melbourne on 5 April 2006

968. Mr Thomson incurred charges for accommodation and extras totalling \$307.55 in respect of his stay at the Quay Suites on 5 April 2006. There were no other relevant charges incurred during this trip.

969. Mr Thomson's Qantas Valet Parking tax invoice (HSUNO.002.0347) indicates that he departed Sydney on a flight at 7.30am on 5 April 2006 and flew back into Sydney on a flight from Melbourne the following day at 6.20pm. On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:

- a. one night's accommodation in Melbourne (\$169); and
- b. all three meals plus incidentals on both the first and second day (\$237.70, being two days at \$118.85 per day)

which totals \$406.30.

970. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 9 was excessive.

Trip 10 Brisbane and Melbourne 12 April 2006

971. Mr Thomson incurred charges for accommodation and extras totalling \$185.35 in respect of his trip to Brisbane and Melbourne on 12 April 2006. There were no other relevant charges incurred during this trip.

972. Mr Thomson's Qantas E-ticket itinerary (WIT.WIL.001.0336) indicates that he departed Sydney on a flight to Brisbane at 1.05pm on 12 April 2006. Having then flown the same day from Sydney to Melbourne, Mr Thomson flew back to Sydney the following day, landing at 3.20pm (HSUNO.002.0367). On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:

- a. one night's accommodation in Melbourne (\$169);
- b. lunch, dinner and incidentals on the first day (\$96.70); and
- c. breakfast, lunch and incidentals on the second day (\$75.10),

which totals \$340.80.

973. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 10 was excessive.

Trip 11 Grand Hyatt on Collins Melbourne on 21 April 2006

974. Mr Thomson incurred charges for accommodation and extras totalling \$327.45 in respect of his stay at the Grand Hyatt on Collins on 21 April 2006. There were no other relevant charges incurred during this trip.

975. Mr Thomson's Valet Parking tax invoice (HSUNO.021.0328) indicates that he departed Sydney on a flight to Melbourne at 6.30pm on 20 April 2006 and returned the following day on a flight which landed back in Sydney at 4.50pm. On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:
- a. one night's accommodation in Melbourne (\$169);
 - b. dinner and incidentals on the first day (\$65.60); and
 - c. breakfast, lunch and incidentals on the second day (\$75.10),
- which totals \$309.70.
976. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 11 was excessive.

Trip 12 Langham Hotel Melbourne 26 and 27 April 2006

977. Mr Thomson incurred charges for accommodation and extras totalling \$1,205 in respect of his stay at the Langham Hotel Melbourne on 26 and 27 April 2006. Item 347 of Annexure D indicates that on 26 April 2006 Mr Thomson used his Diners Club card to pay \$190 at the Rathdowne St Food Store.
978. The total spent by Mr Thomson on accommodation and meals during Trip 12 was \$1,395.
979. Mr Thomson's Qantas E-ticket itinerary (HSUNO.002.0370) indicates that he departed Sydney at 10.00am on 26 April 2006 and arrived back in Sydney from Melbourne on 28 April 2006 on a flight which landed at 11.50am. On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:
- a. two nights' accommodation in Melbourne (\$338);
 - b. lunch, dinner and incidentals on the first day (\$96.70);
 - c. three meals and incidentals on the second day (\$118.65); and
 - d. breakfast, lunch and incidentals on the third day (\$75.10),
- which totals \$628.45.
980. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 12 was excessive.

Trip 13 Pacific International Suites Melbourne 14 to 16 May 2006

981. Mr Thomson incurred charges for accommodation and extras totalling \$838.92 in respect of his stay at the Pacific International Suites in Melbourne between 14 and 16 May 2006. Item 353 of Annexure D indicates that on 15 May 2006 Mr Thomson used his Diners Club card to pay \$430 at Langton's Restaurant in Melbourne.
982. The total spent by Mr Thomson on accommodation and meals during Trip 13 was \$1,268.92.
983. Mr Thomson's Valet Parking tax invoice (HSUNO.021.0328) indicates that he departed Sydney on a flight to Melbourne at 6.00pm on 14 May 2006 and returned three days later on 17 May 2006 on a flight which landed in Sydney at 3.20pm. On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:

- a. three nights' accommodation in Melbourne (\$507);
 - b. dinner and incidentals on the first day (\$65.60);
 - c. three meals and incidentals for the second and third days (\$237.70); and
 - d. breakfast, lunch and incidentals on the fourth day (\$75.10),
- which totals \$885.

984. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 13 was excessive.

Trip 14 Pacific International Suites Melbourne 6 to 8 June 2006

985. Mr Thomson incurred charges for accommodation and extras totalling \$659.41 in respect of his stay at the Pacific International Suites in Melbourne between 6 and 8 June 2006. There were no other relevant charges incurred during this trip.

986. A Qantas E-ticket receipt (HSUNO.002.0185) indicates that Mr Thomson flew out of Sydney at 5.00pm on 6 June 2006 and was scheduled to arrive back in Sydney on a flight from Melbourne at 9.00pm on 8 June 2006. It appears, however, that Mr Thomson also stayed in Melbourne on the night of 8 June 2006 (see the Pacific International Suites tax invoice (HSUNO.002.0179) which includes an additional charge of \$173 for accommodation on 8 June 2006). The Valet Parking tax invoice (HSUNO.021.0108) indicates that Mr Thomson arrived back in Sydney at 9.20am on 9 June 2006. On this basis (as set out at paragraphs 927 to 933 above), he would be entitled to:

- a. three nights' accommodation in Melbourne (\$507);
 - b. dinner and incidentals on the first day (\$65.60);
 - c. three meals and incidentals for the second and third days (\$237.70); and
 - d. breakfast and incidentals on the fourth day (\$44),
- which totals \$853.90.

987. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 14 was excessive.

Trip 15 Stamford Plaza Melbourne on 10 and 11 July 2006

988. Mr Thomson incurred charges for accommodation and extras totalling \$719.15 in respect of his stay at the Stamford Plaza Melbourne on 10 and 11 July 2006. There were no other relevant charges incurred during this trip.

989. There is no information before FWA regarding Mr Thomson's time of travel.

990. The amount provided by the 2007 Ruling for:

- a. two nights' accommodation in Melbourne (\$338); and
 - b. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$693.95.

991. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 15 was excessive.

Trip 16 Pacific International Suites Melbourne 26 July 2006

992. Mr Thomson incurred charges for accommodation and extras totalling \$237.35 in respect of his stay at the Pacific International Suites Melbourne on 26 July 2006. Item 374 of Annexure D indicates that Mr Thomson spent \$215 on his CBA Mastercard at Murrumbidgee Bar on 27 July 2006.
993. The total spent by Mr Thomson on accommodation and meals during Trip 16 was \$452.35.
994. There is no information before FWA regarding Mr Thomson's time of travel.
995. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
996. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 16 was excessive.

Trip 17 Pacific International Suites Melbourne 6 and 7 August 2006

997. Mr Thomson incurred charges for accommodation and extras totalling \$519.41 in respect of his stay at the Pacific International Suites Melbourne on 6 and 7 August 2006. There were no other relevant charges incurred during this trip.
998. There is no information before FWA regarding Mr Thomson's time of travel.
999. The amount provided by the 2007 Ruling for:
- a. two nights' accommodation in Melbourne (\$338); and
 - b. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$693.95.
1000. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 17 was excessive.

Trip 18 27 and 28 August 2006 Grand Hyatt on Collins

1001. Mr Thomson incurred charges for accommodation and extras totalling \$867.82 in respect of his and Mrs Thomson's stay at the Hyatt on Collins on 27 and 28 August 2007.
1002. There is no information before FWA regarding Mr Thomson's time of travel.
1003. The amount provided by the 2007 Ruling for:
- a. two nights' accommodation in Melbourne (\$338); and
 - b. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$693.95.
1004. I consider that the expenditure incurred by Mr Thomson on meals and accommodation during Trip 18 was excessive.

Trip 19 Pacific International Suites Melbourne 26 September 2006

1005. Mr Thomson incurred charges for accommodation and extras totalling \$319.40 in respect of his stay at the Pacific International Suites Melbourne on 26 September 2006. There were no other relevant charges incurred during this trip.
1006. There is no information before FWA regarding Mr Thomson's time of travel.
1007. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1008. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 19 was excessive.

Trip 20 Crown Promenade Melbourne 2 to 4 October 2006

1009. Mr Thomson incurred charges for accommodation and extras totalling \$804.13 in respect of his stay at the Crown Promenade Melbourne on 2 to 4 October 2006. Item 393 of Annexure D indicates that on 4 October 2006 Mr Thomson used his Diners Club card to pay \$500 at Borsari Ristorante in Carlton, Melbourne.
1010. The total spent by Mr Thomson on accommodation and meals during Trip 20 was \$1,304.13.
1011. There is no information before FWA regarding Mr Thomson's time of travel.
1012. The amount provided by the 2007 Ruling for:
- a. three nights' accommodation in Melbourne (\$507); and
 - b. breakfast, lunch, dinner and incidentals for four days of travel (\$474.60);
- is \$981.60.
1013. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 20 was excessive.

Trip 21 Pacific International Suites 18 October 2006

1014. Mr Thomson incurred charges for accommodation and extras totalling \$203.50 in respect of his stay at the Pacific International Suites Melbourne on 18 October 2006. There were no other relevant charges incurred during this trip.
1015. There is no information before FWA regarding Mr Thomson's time of travel.
1016. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1017. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 21 was excessive.

Trip 22 Crown Promenade Melbourne on 23 and 24 October 2006

1018. Mr Thomson incurred charges for accommodation and extras totalling \$570.74 in respect of his stay at the Crown Promenade Melbourne 6 and 7 August 2006. Items 401, 402 and 403 of Annexure D indicate that on 24 and 25 October 2006

Mr Thomson spent \$128.80 in three separate transactions at the Crown Entertainment Complex in Melbourne.

1019. The total spent by Mr Thomson on accommodation and meals during Trip 22 was \$699.54.
1020. There is no information before FWA regarding Mr Thomson's time of travel.
1021. The amount provided by the 2007 Ruling for:
- a. two nights' accommodation in Melbourne (\$338); and
 - b. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$693.95.
1022. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 22 was excessive.

Trip 23 Canberra and Melbourne 2 November 2006

1023. Mr Thomson incurred charges for accommodation and extras totalling \$261.45 in respect of his stay in Melbourne on 2 November 2006. Item 404 of Annexure D indicates that on 2 November 2006 Mr Thomson used his Diners Club card to pay \$240 at the Rathdowne Street Food Store.
1024. The total spent by Mr Thomson on accommodation and meals during Trip 23 was \$501.45.
1025. There is no information before FWA regarding Mr Thomson's time of travel.
1026. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1027. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 23 was excessive.

Trip 24 Royce on St Kilda Road 13 November 2006

1028. Mr Thomson incurred charges for accommodation and extras totalling \$341.74 in respect of his stay at the Royce on St Kilda Road on 13 November 2006. There were no other relevant charges incurred during this trip.
1029. There is no information before FWA regarding Mr Thomson's time of travel.
1030. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1031. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 24 was excessive.

Trip 25 Melbourne 4 December 2006

1032. Mr Thomson incurred charges for accommodation and extras totalling \$275 in respect of his stay in Melbourne on 4 December 2006. Items 414 and 415 of

Annexure D indicate that Mr Thomson used his Diners Club card to pay \$1,060 to 'European/The Melb Supper' on 4 and 5 December 2006.

1033. The total spent by Mr Thomson on accommodation and meals during Trip 25 was \$1,335.
1034. There is no information before FWA regarding Mr Thomson's time of travel.
1035. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1036. I consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 25 was excessive.

Trip 26 Pacific International Suites Melbourne 14 December 2006

1037. Mr Thomson incurred charges for accommodation and extras totalling \$213.05 in respect of his stay at the Pacific International Suites in Melbourne on 14 December 2006. Item 417 of Annexure D indicates that Mr Thomson used his Diners Club card to pay \$125 at the Portland Hotel in Melbourne on 14 December 2006.
1038. The total spent by Mr Thomson on accommodation and meals during Trip 26 was \$338.05.
1039. There is no information before FWA regarding Mr Thomson's time of travel.
1040. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1041. I do not consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 26 was excessive.

Trip 27 Hobart and Melbourne 11 January 2007

1042. Mr Thomson incurred charges for accommodation and extras totalling \$154 in respect of his and Mrs Thomson's stay in Melbourne on 11 January 2007. Item 427 of Annexure D indicates that Mr Thomson used his Diners Club card to pay \$90 to La Notte Restaurant, Carlton on 12 January 2007.
1043. The total spent by Mr Thomson on accommodation and meals during Trip 27 was \$244.
1044. There is no information before FWA regarding Mr Thomson's time of travel.
1045. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals, is \$406.30.
1046. I do not consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 27 was excessive.

Trip 28 Melbourne and Canberra on 6 and 7 February 2007

1047. Mr Thomson incurred charges for accommodation and extras totalling \$922.22 in respect of his stay at the Pacific International Suites in Melbourne on 6 February 2007 and at the Hyatt Hotel in Canberra on 7 February 2007. There were no other relevant charges incurred during this trip.
1048. There is no information before FWA regarding Mr Thomson's time of travel.
1049. The amount provided by the 2007 Ruling for:
- a. one night's accommodation in Melbourne (\$169);
 - b. one night's accommodation in Canberra (\$145);
 - c. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day)
- is \$669.95.
1050. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 28 was excessive.

Trip 29 Canberra and Melbourne on 14 and 15 February 2007

1051. Mr Thomson incurred charges for accommodation and extras totalling \$880 in respect of his stay at the Grand Hyatt on Collins Melbourne on 14 and 15 February 2007. Item 435 of Annexure D indicates that on 16 February 2007 Mr Thomson used his Diners Club card to spend \$600 at the Meat and Wine Co (Melb) Pty Ltd).
1052. The total spent by Mr Thomson on accommodation and meals during Trip 29 was \$1,480.
1053. Item 434 of Annexure D also indicates that on 15 February 2007 Mr Thomson used his Diners Club card to spend \$1,200 at the Hotel Lincoln in Melbourne. Mr Thomson has stated that this expenditure was incurred for a farewell function for Struan Robertson, which is the subject of a separate finding (see Findings 113 to 116 - Expenditure using Mr Thomson's credit cards on dining and entertainment while he was travelling interstate on page 609). Accordingly, in determining Mr Thomson's reasonable allowance for this trip, I have not included dinner on the evening of 15 February 2007.
1054. There is no information before FWA regarding Mr Thomson's time of travel.
1055. The amount provided by the 2007 Ruling for:
- a. two nights' accommodation in Melbourne (\$338);
 - b. Breakfast, lunch, dinner and incidentals on both 14 and 16 February 2007(\$237.30); and
 - c. Breakfast, lunch and incidentals on 15 February 2007 (\$75.10)
- is \$650.40.
1056. I consider that the expenditure incurred by Mr Thomson for meals and accommodation during Trip 29 was excessive.

Trip 30 Melbourne on 27 February 2007

1057. Mr Thomson incurred charges for accommodation and extras totalling \$215 in respect of his stay in Melbourne on 27 February 2007. There were no other relevant charges incurred during this trip.
1058. There is no information before FWA regarding Mr Thomson's time of travel.
1059. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1060. I do not consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 30 was excessive.

Trip 31 Pacific International Studios Melbourne 11 April 2007

1061. Mr Thomson incurred charges for accommodation and extras totalling \$189.90 in respect of his stay in Melbourne on 11 April 2007. There were no other relevant charges incurred during this trip.
1062. There is no information before FWA regarding Mr Thomson's time of travel.
1063. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1064. I do not consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 31 was excessive.

Trip 32 Grand Hyatt on Collins Melbourne 15 April 2007

1065. Mr Thomson incurred charges for accommodation and extras totalling \$333 in respect of his stay at the Grand Hyatt on Collins Melbourne on 15 April 2007. There were no other relevant charges incurred during this trip.
1066. There is no information before FWA regarding Mr Thomson's time of travel.
1067. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1068. I do not consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 32 was excessive.

Trip 33 Pacific International Suites Melbourne 2 May 2007

1069. Mr Thomson incurred charges for accommodation and extras totalling \$243.40 in respect of his stay at the Pacific International Suites Melbourne on 2 May 2007. Item 463 of Annexure D indicates that Mr Thomson used his Diners Club card to pay \$175.90 at Borsari Ristorante in Carlton on 2 February 2007.
1070. The total spent by Mr Thomson on accommodation and meals during Trip 33 was \$419.30.
1071. There is no information before FWA regarding Mr Thomson's time of travel.

1072. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.

1073. I consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 33 was excessive.

Trip 34 Pacific International Suites Melbourne 23 May 2007

1074. Mr Thomson incurred charges for accommodation and extras totalling \$292.83 in respect of his stay at the Pacific International Suites in Melbourne on 23 May 2007. There were no other relevant charges incurred during this trip.

1075. There is no information before FWA regarding Mr Thomson's time of travel.

1076. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.

1077. I do not consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 34 was excessive.

Trip 35 Westin on 21 and 22 August 2007

1078. Mr Thomson incurred charges for accommodation and extras totalling \$735.65 in respect of his stay at the Westin on 21 and 22 August 2007. Item 484 of Annexure D indicates that on 23 August 2007 Mr Thomson used his Diners Club card to spend \$300 at the Crown Entertainment Complex in Melbourne.

1079. The total spent by Mr Thomson on accommodation and meals during Trip 35 was \$1,035.65.

1080. There is no information before FWA regarding Mr Thomson's time of travel.

1081. The amount provided by the 2007 Ruling for:

- a. two nights' accommodation in Melbourne (\$338); and
 - b. breakfast, lunch, dinner and incidentals for the first, second and third days of travel (\$355.95, being three days at \$118.65 per day);
- is \$693.95.

1082. I consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 35 was excessive.

Trip 36 Pacific International Suites Melbourne 8 October 2007

1083. Mr Thomson incurred charges for accommodation and extras totalling \$248.35 in respect of his stay at the Pacific International Suites in Melbourne on 8 October 2007. Item 490 of Annexure D indicates that Mr Thomson used his Diners Club card to pay \$16.40 at Daily Grind in Melbourne on 8 October 2007.

1084. The total spent by Mr Thomson on accommodation and meals during Trip 36 was \$264.75.

1085. There is no information before FWA regarding Mr Thomson's time of travel.

1086. On the basis of the methodology discussed at paragraphs 927 to 933 above, the amount provided by the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$406.30.
1087. I do not consider that the expenditure incurred by Mr Thomson in respect of meals and accommodation during Trip 36 was excessive.

Mr Thomson's submissions

1088. With respect to findings 64 to 66, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule.
 - b. It is of concern that I have undertaken flawed analysis in respect of these allegations. Many of my conclusions in respect of findings 64 to 66 are factually incorrect. The expenses incurred by Mr Thomson in respect of travel to, and accommodation in, Melbourne during 2006 and 2007 were in accordance with the budget that had been allocated for travel and accommodation for National Office staff on HSU business. Further, I have failed to take into account the fluctuation of accommodation and travel costs throughout the year. Given the amount of time that has elapsed since the events in question, Mr Thomson is unable to recall the precise details of the meals and accommodation, however it was not uncommon for Mr Thomson to attend lunches and dinners with other union officials and HSU members and on occasion use his credit card to pay for the meals.
 - c. Further, I have relied on Taxation Ruling TD2007/21. It is of concern that I have relied on this particular ruling in assessing the "reasonableness" of Mr Thomson's expenditure. During 2006 and 2007, the National Secretary received a salary package, including salary-sacrificed superannuation. Further Mr Thomson, as National Secretary, was in receipt of a defined benefit scheme that operated in New South Wales. I have erroneously interpreted the Salary Table and read Mr Thomson's salary with Table 2 "Employee's annual salary - \$87,201- \$155,000" because his salary was \$500 below the maximum level. However, had I taken into account his salary package, Mr Thomson would be within Table 3 "Employee's annual salary - \$155,001 and above".

Conclusions

1089. Mr Thomson has submitted that the expenditure which he incurred in respect of travel to Melbourne in 2006 and 2007 was 'in accordance with the budget'. For the reasons set out at paragraphs 154 to 156 of this chapter, I am not persuaded by this argument.
1090. In any event, this submission is not relevant to my consideration as I have already determined that the Rules permitted Mr Thomson to authorise expenditure on his own travel to Melbourne in 2006 and 2007 as such expenditure was part of the

general administration of the Union. Mr Thomson did not also require this expenditure to be authorised by National Council or National Executive.

1091. The question is not whether the expenditure was authorised but whether it was excessive. In this regard, Mr Thomson has submitted that my use of Table 2 of the 2007 Ruling in determining whether the expenditure was excessive was erroneous since his expenditure should have been assessed having regard to Table 3 of the 2007 Ruling, which is applicable to salaries in excess of \$155,001 per annum. Mr Thomson submits that, had I taken into account his salary package which included employer superannuation contributions, his salary would have been in excess of \$155,001.
1092. While it does not define 'salary' for the purposes of Tables 2 and 3, in my view it is clear that the 2007 Ruling should not be construed as including employer superannuation contributions. Employer superannuation contributions are not paid to an employee, but rather to a superannuation fund. An employee only becomes entitled to superannuation payments in accordance with the rules of the fund.
1093. The 2007 Ruling is an income tax ruling. It goes without saying that income tax is not payable on employer superannuation contributions. The 2007 Ruling could have (but did not) use an alternative expression such as 'overall salary package' or 'total remuneration'. Having chosen to provide for expenses on the basis of an employee's 'annual salary', it should be construed (in the absence of any statement to the contrary) within the meaning of the term 'salary' in relevant taxation legislation. Those definitions make it clear that employer superannuation contributions are not salary for the purposes of the *Tax Administration Act 1953*, the *Fringe Benefits Tax Assessment Act 1986* or the *Superannuation Guarantee (Administration) Act 1992*.¹³⁶
1094. I am therefore not persuaded that the appropriate table in the 2007 Ruling is Table 3.
1095. I note, as a matter of interest, that even if I had used Table 3 of the 2007 Ruling in order to determine whether Mr Thomson's expenditure on travel to Melbourne in 2006 and 2007 was excessive, expenditure incurred by Mr Thomson during a number of the 36 trips would still have been in excess of the rates specified in Table 3. For example:
- a. during trip 1, Mr Thomson spent \$328.65 on one night's accommodation in Melbourne, breakfast, an evening meal and lunches on two days. Applying the methodology set out at paragraphs 927 to 933 above, the amount provided by Table 3 of the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$543.90.¹³⁷ Accordingly, had I used Table 3, the amount spent by Mr Thomson on trip 1 would not have been excessive;

¹³⁶ See Item 12-35 of Schedule 1 to the *Tax Administration Act 1953*, section 136 of the *Fringe Benefits Tax Assessment Act 1986* and section 19 of the *Superannuation Guarantee (Administration) Act 1992*.

¹³⁷ Table 3 provides that the following are 'reasonable amounts for daily travel allowance expenses, according to salary and destinations, for the 2007-08 income year' - accommodation in Melbourne - \$265; breakfast - \$25; lunch - \$36; dinner - \$56.40; and incidentals - \$22.05.

- b. during trip 2, Mr Thomson spent \$340.70 at the Langham Hotel for one night's accommodation. He also spent \$106.40 at the Blue Train Cafe. These figures total \$447.10. Applying the methodology set out at paragraphs 927 to 933 above, the amount provided by Table 3 of the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$543.90.¹³⁸ Accordingly, had I used Table 3, the amount spent by Mr Thomson on trip 2 would not have been excessive;
 - c. during trip 3, Mr Thomson spent a total of \$334.40 in respect of his stay at the Langham Hotel in Melbourne. Applying the methodology set out at paragraphs 927 to 933 above, the amount provided by Table 3 of the 2007 Ruling for one night's accommodation in Melbourne, including three meals and incidentals on both days of travel, is \$543.90. Accordingly, had I used Table 3, the amount spent by Mr Thomson on trip 3 would not have been excessive; and
 - d. during trip 4, Mr Thomson spent a total of \$1,229.29 for a trip which included one night in Canberra at the Crown Plaza and one night in Melbourne at the Westin Melbourne. Applying the methodology set out at paragraphs 927 to 933 above, the amount provided by Table 3 of the 2007 Ruling for one night's accommodation in Canberra,¹³⁹ one night's accommodation in Melbourne, and three meals and incidentals on all three days of travel, is \$878.35. Accordingly, had I used Table 3, the amount spent by Mr Thomson on trip 4 would still have been excessive.
1096. For the reasons set out at paragraphs 1092 and 1093 above, I have used Table 2 in determining whether expenditure by Mr Thomson on the 36 trips to Melbourne in 2006 and 2007 was excessive.
1097. Mr Thomson submits that it was not uncommon for him to attend lunches and dinners with other union officials and HSU members and on occasion use his credit card to pay for the meals.
1098. At paragraphs 935 to 988 above I have identified 17 separate trips to Melbourne in 2006 and 2007 (identified as trips 2, 4, 6, 11-13, 16, 18, 20, 22-23, 25, 28-29, 33 and 35) where his expenditure appears to be excessive (**the 17 occasions**). On three of those 17 occasions (trips 11, 15 and 18) Mr Thomson has not incurred any expenditure at a restaurant while travelling. On a further five occasions (trips 4, 12, 28, 29 and 35) Mr Thomson has incurred expenditure at restaurants while travelling, however the total amount which he has spent at restaurants is less than the amount by which I consider his expenditure on travel and meals during that trip to be excessive. Mr Thomson's claim does not therefore affect my assessment of his expenditure on those seven trips as excessive. However it is necessary to consider Mr Thomson's claim insofar as it relates to the nine remaining trips that appear to be excessive (trips 2, 6, 13, 16, 20, 22, 23, 25 and 33).

¹³⁸ Table 3 provides that the following are 'reasonable amounts for daily travel allowance expenses, according to salary and destinations, for the 2007-08 income year' - accommodation in Melbourne - \$265; breakfast - \$25; lunch - \$36; dinner - \$56.40; and incidentals - \$22.05.

¹³⁹ Table 3 provides for \$195 as a 'reasonable amount' for one night's accommodation in Canberra. The amount provided for meals and incidentals is the same for all locations.

1099. It is clear from the size of some of the payments to restaurants which Mr Thomson incurred while travelling interstate that he must often have dined in company. Mr Thomson has not sought to identify any particular individuals he claims to have dined with while travelling to Melbourne in 2006 and 2007, or any particular occasion on which he dined with such persons. Nor has he sought to explain why it would have been appropriate in any particular situation for him to use HSU funds to pay for such dining expenses. I am unable to accept as a general proposition that any time Mr Thomson dined with a union official or HSU member he was entitled to charge that expense to the HSU on the basis that such expenditure was on the general administration of the Union.

1100. Mr Thomson's claim that he would on occasion use his credit card to pay for meals with other union officials and HSU members sits somewhat uneasily with what he told me at interview (Thomson PN1231-1234):

MR NASSIOS: I have to ask, in terms of a restaurant, why would you not have used your credit card to pay your bill?

MR THOMSON: **It was just sometimes more convenient for who and where you were meeting and who you were meeting with to pay in cash.**

MR NASSIOS: I'm not sure quite what you mean by "more convenient".

MR THOMSON: **If I was travelling down to Melbourne, you could take the money out at the start, you would be there for a couple of days, you'd spend the money, you'd give the receipts back and it would be done, rather than take the card out five or six times on a trip while you were away.** (emphasis added)

1101. It is true that Mr Thomson's answer did not exclude the possibility that he would sometimes pay for meals with other persons by credit card.

1102. However a review of Mr Thomson's pattern of cash withdrawals discloses that he did indeed almost invariably withdraw cash when he travelled to Melbourne during 2006 and 2007. Mr Thomson withdrew cash using his CBA Mastercard while travelling on 16 of the 17 occasions¹⁴⁰ as follows:

Trip No	Date of withdrawal	Cash withdrawal	Casebook Ref
2	17 January 2006	\$500.00	HSUNO.014.0054
4	14 February 2006	\$500.00	HSUNO.014.0056
6	6 March 2006	\$500.00	HSUNO.010.0013
11	20 April 2006	\$400.00	HSUNO.014.0059
12	26 April 2006	\$500.00	HSUNO.010.0058
13	15 May 2006	\$500.00	HSUNO.002.0241

¹⁴⁰ While there is no evidence before FWA that Mr Thomson withdrew cash on his CBA Mastercard during trip 33, this is due to the fact that FWA has not been provided with Mr Thomson's CBA Mastercard statement which would evidence any such cash withdrawal(s).

Trip No	Date of withdrawal	Cash withdrawal	Casebook Ref
15	10 July 2006	\$500.00	HSUNO.001.0282
16	27 July 2006	\$400.00	HSUNO.014.0067
18	28 August 2006	\$500.00	HSUNO.001.0069
20	2 October 2006	\$500.00	HSUNO.014.0073
22	23 October 2006	\$500.00	HSUNO.014.0073
23	2 November 2006	\$500.00	HSUNO.014.0074
25	4 December 2006	\$500.00	HSUNO.014.0081
28	6 February 2007	\$500.00	HSUNO.001.0267
29	16 February 2007	\$500.00	HSUNO.001.0267
33		0.00	
35	21 August 2007	\$500.00	HSUNO.001.0094
	Total:	\$7800.00	

Full details of these withdrawals are at Annexure A.

1103. Each of these withdrawals was for a significant amount. On all but two of these occasions, the amount of cash withdrawn by Mr Thomson was equal to or larger than any amount spent by Mr Thomson at a restaurant on his credit card while travelling.¹⁴¹ Except in two instances, which are discussed at paragraphs 1106 and 1107 below there is no direct evidence of why Mr Thomson withdrew cash in relation to these trips. However, when asked at interview whether there was a particular reason why he thought it was important that he be able to withdraw cash, Mr Thomson gave the following answer (Thomson PN1203):

There were a number of situations where it was more convenient to have cash to pay and reconcile it later, **particularly with some people that you were having dinner or meeting with**. It was a better thing. There were also some groups - and, you know, this is an example but it's not atypical - obviously - but at one of our conferences the Aboriginal group who did the welcome to country - you could only pay cash. There was no other way of doing it. Now, I don't put that up as being typical but that's how it kind of went, and we sort of, I mean, got into the - maybe "habit" is not the right word, but there was no issue as to - it didn't matter how the expenditure took place. (emphasis added)

1104. I do not accept that the example of a particular transaction which could only be paid in cash would have been a common one which justified Mr Thomson withdrawing cash as a matter of course when travelling interstate. Apart from that example, the only reason Mr Thomson identified for withdrawing cash was to use when having a dinner or meeting with people. This suggests it is likely that the cash withdrawn by

¹⁴¹ Mr Thomson spent \$1,060 at The European/Supper Club while in Melbourne during trip 25, and \$600 at the Meat and Wine Company while in Melbourne during trip 29.

- Mr Thomson on all but one of the 17 occasions was withdrawn for the purpose of paying for meals with persons whom Mr Thomson planned to meet during his trip.
1105. Further support for this view can be found in the Memoranda which Mr Thomson submitted in relation to his withdrawal of \$500 in cash on each of trips 6 and 13.¹⁴²
1106. On 6 March 2006 Mr Thomson withdrew \$500 in cash from a Westpac ATM at Bataeu Bay NSW before travelling that day to Melbourne. A Memorandum signed by Mr Thomson in respect of that withdrawal (HSUNO.010.0010) states that the money was withdrawn in connection with a function in Melbourne which he described as 'ACTU Executive and Other related functions.' Mr Thomson's memorandum only identified one person as being present at this function, namely himself. During this trip Mr Thomson stayed two nights in Melbourne, and on the second night (7 March 2006) he used his Diners Club card to pay \$250 at the Rathdown Street Food Store.
1107. On 15 May 2006 Mr Thomson withdrew \$500 in cash from an ATM at the Qantas terminal at Melbourne Airport. A Memorandum signed by Mr Thomson in respect of that withdrawal (HSUNO.002.0244) states that the money was withdrawn in connection with a function in Melbourne which he described as 'National Executive'. Mr Thomson's memorandum stated that '20 delegates' were present at this function. During this trip Mr Thomson stayed in Melbourne for three nights. On 15 May 2006 he used his Diners Club card to pay \$430 for half of a restaurant bill at Langton's restaurant in Melbourne. There was a National Executive meeting in Melbourne on 15 and 16 May 2006 (HSUNO.018.0241). It is possible that Mr Thomson paid for half of a meal at Langton's restaurant on 15 May 2006 which was enjoyed by members of the National Executive using his Diners Club Card. It is also possible that Mr Thomson paid for some, or all, of the other half of this bill by using the cash which he had withdrawn at Melbourne Airport earlier that day. However even if this is what happened this does not mean it was within Mr Thomson's authority to expend funds on the general administration of the union for him to have done so.
1108. There are no documents which substantiate the purpose of any of the other cash withdrawals made by Mr Thomson while travelling to Melbourne during 2006 and 2007 on each of the 17 occasions. However in my view, given the evidence of Mr Thomson which is set out at paragraphs 1100 and 1103 above and the fact that the two memoranda discussed at paragraphs 1106 and 1107 above identify that Mr Thomson withdrew cash to pay for expenses associated with meeting other persons while travelling, it is overwhelmingly likely that each of the 17 cash withdrawals, totalling \$8,300, which are set out in the table at paragraph 1102 above was used to pay for meals enjoyed by Mr Thomson while dining with others during his travel to Melbourne.
1109. Finally I note that the budgets and financial reports which were periodically approved by the Finance Committee or the National Executive did not make any specific provision for the expenditure of National Office funds on hospitality. Budgets which were submitted to Finance Committee meetings did include provision for what was described as 'Meeting, Travel and General Exp' (see for example HSUNO.018.0190). However the National Office's annual financial statements merely itemised

¹⁴² See paragraphs 320 and 321 above of this chapter in relation to the Memoranda.

expenditure on 'travelling and accommodation' (see for example HSUNO.020.0102) and did not specifically account for any item of expenditure that could reasonably embrace hospitality expenditure of the type described by Mr Thomson. In those circumstances I do not accept as a general proposition that it was within Mr Thomson's authority to expend monies of the National Office on the general administration of the union or for purposes reasonably incidental thereto for him to spend monies on meals he may have enjoyed with other union officials and members of the HSU while travelling interstate.

1110. I accept that some of the monies spent by Mr Thomson on dining while travelling to Melbourne on each of the 17 occasions would have been spent on meals which Mr Thomson shared with other persons. I also accept that some of those other persons were likely to have been other union officials, some may have been HSU members (or even members of the HSU National Executive). Having regard to the matters discussed at paragraphs 1098 to 1109 above, I reject Mr Thomson's submission that this affects my conclusion that his expenditure on each of those 17 trips was unreasonable for the following reasons:
- a. first, in relation to the eight trips identified at 1098 above, Mr Thomson's expenditure would have been excessive even if his expenditure on dining during each trip had been ignored;
 - b. second, on all but one of the 17 occasions Mr Thomson withdrew a significant amount of cash which was withdrawn, and used, for the purpose of paying for meals he planned to share with other persons while travelling; and
 - c. third, to the extent that Mr Thomson did use HSU credit cards to pay for such meals, I do not accept that it was within his authority under Sub-rule 32(n) to have done so.
1111. Accordingly I consider that, whoever Mr Thomson enjoyed meals with while travelling to Melbourne on each of the 17 occasions, his expenditure was excessive in relation to each of those trips.

Findings 64 to 66 - Incursion of expenditure on Mr Thomson's credit cards on accommodation and travel related expenses in Melbourne during 2006 and 2007

- 64.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending amounts of National Office funds on accommodation and travel related meals in relation to each of the 26 trips to Melbourne which are set out in the table at Annexure C as trips 2, 4, 6, 11-13, 15-16, 18, 20, 22-23, 25, 28-29, 33 and 35 which were excessive in all the circumstances.

- 65.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith and for a proper purpose by spending amounts of National Office funds on accommodation and travel related meals in relation to each of the 26 trips to Melbourne which are set out set out in the table at Annexure C as trips 2, 4, 6, 11-13, 15-16, 18, 20, 22-23, 25, 28-29, 33 and 35 which was excessive in all the circumstances when he could not have believed that such expenditure was in the best interests of the National Office.
- 66.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage for himself by spending, and benefitting from, amounts of National Office funds on accommodation and travel related meals in relation to each of the 26 trips to Melbourne which are set out set out in the table at Annexure C as trips 2, 4, 6, 11-13, 15-16, 18, 20, 22-23, 25, 28-29, 33 and 35 which was excessive in all the circumstances.

Reporting to National Executive and/or National Council

Failing to present the full report for year ended 30 June 2004 to the National Council meeting on 19 October 2004

Evidence

1112. The following matters are relevant to Finding 67 - failing to present the full report to the National Council meeting on 19 October 2004, which is set out below at page 449.

The Alleged Contravention that was put to Mr Thomson in my letter of 12 December 2011

1113. In Schedule 2 (FWA.018.0050) to my letter of 12 December 2011 (FWA.018.0001) I put the following alleged contravention to Mr Thomson:

You contravened subsection 285(1) of the RAO Schedule by failing to exercise your powers and discharge your duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when you failed to present (or cause to be presented) copies of a signed and dated committee of management statement and a signed auditor's report to the National Council meeting on 19 October 2004.

A reasonable person in your position would have presented copies of a signed and dated committee of management statement and a signed auditor's report to the National Council meeting on 19 October 2004.

1114. Financial documents for the year ended 30 June 2004 were lodged with the AIR on 15 June 2005 ([FWA.004.0120](#)). Those documents contained:
- a. an operating report ([FWA.004.0120](#) at 130) that was signed by Mr Thomson on 15 December 2004;
 - b. a committee of management statement ([FWA.004.0120](#) at 132). That statement:
 - i. was signed by Mr Thomson on 15 December 2004;
 - ii. stated that a resolution was passed, as required by the first Reporting Guidelines, by the 'Committee of Management of the Health Services Union of Australia national office' on 19 October 2004, without specifying whether the meeting was of National Council or National Executive; and
 - c. an auditor's report that was signed by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd but which was undated ([FWA.004.0120](#) at 133).
1115. The documents lodged on 15 June 2005 did not, however, contain a Secretary's certificate under section 268 of the RAO Schedule.
1116. An AIR official wrote to Mr Thomson on 24 June 2005 ([FWA.004.0097](#)) asking that a Secretary's certificate be lodged by Friday, 8 July 2005.
1117. Almost eight months later, on 3 March 2006, a Secretary's certificate ([FWA.004.0117](#)) was lodged with the AIR. The certificate:
- a. had been signed and dated by Mr Thomson on 23 February 2006;
 - b. stated that the full report was presented to a meeting of National Council on 19 October 2004;
 - c. Did not contain any information regarding whether the full report (or a concise report) was circulated to members and, if so, the date of circulation.
1118. The letter from the AIR to Mr Thomson dated 24 June 2005 ([FWA.004.0097](#)) also brought the following matters to Mr Thomson's attention:
- a. Documents were not lodged with the AIR within the timeframe set out in the RAO Schedule;
 - b. The auditor's report was undated; and
 - c. It is a standard obligation under the new RAO Schedule for the full report to be presented to a *general meeting of members* and that:

documents may only be presented directly to a Committee of Management meeting where the rules of an organisation contain a provision that allows up to 5% of members to call a general meeting to be held to consider the report - see s266(3). It would appear that the federal rules of the HSUA do not currently contain a provision to this effect.

If the organisation wishes in future financial years to present the documents to a Committee of Management meeting rather than a general meeting of members it will be necessary for the federal rules of the organisation to be altered to fulfil the requirements of s266(3). For example, a federal rule of this kind could be based on the wording of HSU Branch Rule 61(d)...

Mr Thomson's submissions

1119. With respect to finding 67, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule.
 - b. I allege that Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to present or cause to be presented to the National Council meeting on 19 October 2004 copies of:
 - i. a signed and dated committee of management statement; and
 - ii. a signed auditor's report.
 - c. I appear to have no evidence of what was presented to the National Council meeting on 19 October 2004 as I appear to not have minutes of that meeting. Mr Thomson is unable to recall the exact documents that were presented to the National Council meeting more than 7 years ago. I have presented insufficient evidence to suggest that the documents were not presented to the National Council.
 - d. The late lodgement of the signed Secretary's certificate was an oversight of the National Secretary. However, the certificate dated 23 February 2006 and signed by Mr Thomson states that the full report was presented to the National Council meeting on 19 October 2004 and I have not presented any evidence to contradict this.

Conclusions

1120. I put to Mr Thomson in Schedule 2 (FWA.018.0050) to my letter of 12 December 2011 (FWA.018.0001) that he did not present the full report to the meeting on 19 October 2011 because the documents did not include:
- a. A signed and dated committee of management statement; and
 - b. A signed and dated auditor's report.
1121. The evidence before me is that:
- a. National Council passed the resolution required by the first reporting guidelines at its meeting on 19 October 2004 (see paragraph 1114.b.ii above). This meeting would have constituted the first meeting that must be held (see the discussion at paragraphs 26 and 33 of chapter 2); and
 - b. On the same day, namely 19 October 2004 (see paragraph 1117.b above), National Council also held the second meeting at which the full report must be presented (once again, see the discussion at paragraphs 26 and 33 of chapter 2).
1122. I note that, in order to properly comply with the reporting requirements, it would have been necessary for the auditor to both sign and date his auditor's report between

these first and second meetings of National Council on 19 October 2004 (see paragraphs 26 and 27 on page 85 in chapter 2).

1123. While it seems unlikely that there would have been two meetings of National Council on 19 October 2004, Mr Thomson is correct in submitting that I do not have any information before me which would allow me to conclude that two meetings were not, in fact, held on 19 October 2004. While I have minutes of meetings of National Executive in 2004, the Union has not been able to provide me with any minutes of National Council meetings after 2002. For this reason, I do not find that Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to present (or cause to be presented) a signed committee of management statement to the (second) National Council meeting on 19 October 2004.
1124. Nevertheless, I do have before me evidence that the documents that were presented to the (second) National Council meeting on 19 October 2004 could not have been the 'full report'. I have set out at paragraph 19 of chapter 2 the definition of the full report, which includes a signed and dated auditor's report. I have also set out at paragraph 22 of chapter 2 the requirement that the full report be presented to the second meeting.
1125. Since the auditor's report for the year ended 30 June 2004 was undated, the documents that were presented to the (second) meeting of National Council on 19 October 2004 could not have included a dated auditor's report. As a result, the full report cannot have been presented to that meeting.

Finding 67 - failing to present the full report to the National Council meeting on 19 October 2004

- 67** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he failed to present (or cause to be presented) the full report (including a dated auditor's report) to the meeting of National Council on 19 October 2004.

Signing the committee of management statement for year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed

Evidence

1126. The following matters are relevant to Finding 68 - Signing the committee of management statement for year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed, which is set out below at page 453.

Passage of committee of management resolution

1127. Although it does not record the date of the resolution, the committee of management statement ([FWA.004.0101](#) at 110) that was signed by Mr Thomson on 5 September 2005 sets out the terms of a resolution that is said, by that statement, to have been passed by 'the Committee of Management of the Health Services Union of Australia National Office...in relation to the [GPFR] of the reporting unit for the financial year ended 30th June 2005'.
1128. Minutes of National Executive meetings that have been provided by the HSU indicate that the first meeting of National Executive that was held after the end of the 2004/2005 financial year was a meeting in Sydney on 6 September 2005 ([HSUNO.018.0286](#)). However, the committee of management statement ([FWA.004.0101](#) at 110) was signed by Mr Thomson on 5 September 2005, that is, on the day before that National Executive meeting. It is therefore clear that the resolution that is said by the committee of management statement to have been passed by 'the Committee of Management of the Health Services Union of Australia National Office' cannot have been passed by the National Executive.
1129. Moreover, minutes of the National Executive meeting on 13 October 2005 ([HSUNO.018.0281](#)) record passage of the following resolution:

3. Finance report

RESOLUTION

That National Executive declares in relation to the GPFR that in its opinion:

- (a) the financial statements and notes comply with the Australian Accounting Standards;
- (b) the financial statements and notes comply with the reporting guidelines of the Industrial registrar;
- (c) the financial statements and notes give a true and fair view of the financial performance, financial position and cash flow's (sic) of the reporting unit for the financial year to which they relate;
- (d) There are reasonable grounds to believe that the reporting unit will be able to pay its debts as and when they become due and payable;
- (e) during the financial year to which the GBFR (sic) relates and since the end of that year:
 - 1) Meetings of the committee of management were held in accordance with the rules of the organisation including the rules of a branch concerned; and
 - 2) The financial affairs of the reporting unit have been managed in accordance with the rules of the organisation including the rules of a branch concerned; and
 - 3) The financial records of the reporting unit have been managed in accordance with the RAO Schedule and the RAO Regulations; and
 - 4) The financial records of the reporting unit have been kept, as far as practicable, in a consistent manner to each of the other reporting units of the organisation; and

5) the information sought in any request of a member of the reporting unit or a Registrar duly made under section 272 of the RAO Schedule has been furnished to the member of (sic) the registrar; and

6) There has been compliance with any order for the inspection of financial records made by the Commission under section 273 of the RAO Schedule.

Moved Dan HillSeconded: Iris Knight

CARRIED

Mr Thomson's submissions

1130. With respect to finding 68, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies that he has contravened subsection 285(1) of the RAO Schedule. I allege that a reasonable person in the position of National Secretary would not have signed the committee of management statement without the resolution set out in that statement having been passed by either the National Executive or National Council prior to 5 September 2005.
- b. It is of concern that I have formed this conclusion as I have provided insufficient evidence to make this allegation. Further, despite acknowledging that I am not in receipt of all the minutes of the National Council and National Executive meetings I assume that no meeting has taken place.
- c. Further, if Mr Thomson signed the statement without the resolution having been passed, it is denied that he did so knowingly. It is of considerable concern that I consider any failure at all to perform an administrative duty, or to omit an element of the duty, to amount to a breach of subsection 285(1) of the RAO Schedule. This is clearly not the case.

Conclusions

1131. I have considered whether it is possible that the resolution that is said by the committee of management statement to have been passed by 'the Committee of Management of the Health Services Union of Australia National Office' was passed by National Council. While I have not been provided with any minutes of meetings of National Council in 2005, information that is before me suggests that no meeting of National Council was held between 1 July 2005 and 5 September 2005 (being the date upon which the committee of management statement was signed):

- a. Sub-rule 22(a) at that time¹⁴³ provided that National Council must meet once every two years in October of each even year (that is, October 2000, October 2002 et cetera). As a result, under the Rules at the time no National Council meeting was required to be held in 2005;

¹⁴³ Under alterations to the Rules that were certified under section 159 of the RAO Schedule on 30 March 2006, meetings of National Council were required to be held annually in the month of September, October or November.

- b. Sub-rule 22(b) at the time did allow for special meetings of National Council to be held by resolution of National Council or National Executive or by a decision of the National Secretary in conjunction with the National President;
1132. Information that is before FWA strongly suggests that a special meeting of National Council was held in 2005 but not until after 6 September 2005:
- a. Minutes of the National Executive meeting on 6 September 2005 ([HSUNO.018.0286](#)) record that 'The National Secretary outlined the program for the national council/conference **over the next three days**' (my emphasis); and
 - b. It seems likely that reference in the Secretary's certificate ([FWA.004.0100](#)) to a meeting of National Council on 9 September 2006 was a typographical error and that the correct date of presentation of the full report to a meeting of National Council was 9 September 2005.

1133. Given that:

- a. the committee of management statement ([FWA.004.0101](#) at 110), in which Mr Thomson states that the committee of management of the HSU has passed a resolution in relation to the GPFR, was signed by Mr Thomson on 5 September 2005;
- b. the first meeting of National Executive following the end of the 2004/2005 financial year was not held until 6 September 2005 ([HSUNO.018.0286](#));
- c. the first National Council meeting following the end of the 2004/2005 financial year was likely to be held between 7 and 9 September 2005 (see paragraph 1132); and
- d. a resolution in the terms required by paragraph 25 of the second Reporting Guidelines was passed by National Executive on 13 October 2005 ([HSUNO.018.0281](#));

the committee of management resolution that must be passed under paragraph 25 of the second Reporting Guidelines could not have been passed by 5 September 2005. It is likely that the resolution was not, in fact, passed until the National Executive meeting of 13 October 2005 and that, in signing the committee of management statement on 5 September 2005 in which a resolution was set out that had not, in fact, been passed by either the National Executive or National Council, Mr Thomson signed an inaccurate statement.

1134. A reasonable person in Mr Thomson's position would not have signed the committee of management statement for the year ended 30 June 2005 without the resolution set out in that statement having been passed by either the National Executive or National Council prior to 5 September 2005.¹⁴⁴

¹⁴⁴ See also further discussion at paragraphs 43 to 56 of chapter 13.

Finding 68 - Signing the committee of management statement for year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed

- 68.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he signed the committee of management statement for the financial year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed by either the National Executive or National Council on or prior to 5 September 2005.

Failing to present financial reports for year ended 30 June 2006 to the committee of management meeting on 13 September 2006

Evidence

1135. The following matters are relevant to Finding 69 - Failing to present financial reports for year ended 30 June 2006 to the committee of management meeting on 13 September 2006, which is set out below at page 456.
1136. Financial documents for the year ended 30 June 2006 were lodged with the AIR on 28 September 2006 ([FWA.004.0063](#)). Those documents contained:
- a. an unsigned and undated operating report ([FWA.004.0063](#) at 64);
 - b. a committee of management statement ([FWA.004.0063](#) at 74). That statement:
 - i. was signed by Mr Thomson on 27 September 2006; and
 - ii. stated that the committee of management had passed a resolution in relation to the GPFR on 13 September 2006;
 - c. a Secretary's certificate ([FWA.004.0063](#) at 73). That certificate:
 - i. was signed by Mr Thomson on 27 September 2006; and
 - ii. stated that a concise report was circulated to members on 27 September 2006; and
 - iii. stated that the full report was presented to 'a meeting of the committee of management of the reporting unit on the 13 of September 2006'; and
 - d. the first page only of an auditor's report ([FWA.004.0063](#) at 75) which did not have any information regarding the name of the auditor, whether the auditor formed an opinion regarding the GPFR, whether the auditor signed the report and, if so, on what date.
1137. An AIR official wrote to Mr Thomson on 4 October 2006 ([FWA.004.0076](#)) seeking a complete copy of the auditor's report and further information regarding the apparent

circulation of a concise report (given reference to a concise report in the Secretary's certificate). That correspondence also made comments regarding:

- a. Compliance of the operating report with regulation 159(c) of the RAO Regulations;
- b. Donations totalling \$6,114 being disclosed in the accounts. The letter sought lodgement under subsection 237(1) of particulars of any loan, grant or donation should any of the donations made by the reporting unit during the year have exceeded the \$1,000 threshold; and
- c. Presentation of the full report to a meeting of the committee of management, despite the absence of a 5% rule. Advice from the AIR in its letter dated 9 June 2006 ([FWA.004.0094](#)) was extracted and the National Office was again advised that, in the absence of certification of an alteration to the Rules, it would be necessary in future for the full report to be presented to a general meeting of members.

1138. As no response had been received to the letter of 4 October 2006 ([FWA.004.0076](#)), a further letter was sent to Mr Thomson from the AIR on 31 October 2006 ([FWA.004.0080](#)). On 8 December 2006 a letter was received by the AIR under Mr Thomson's signature ([FWA.004.0081](#)) attaching:

- a. the second page of the auditor's report ([FWA.004.0082](#)) which was signed and dated by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd on 26 September 2006; and
- b. a copy of the concise report ([FWA.004.0082](#) at 83) that was circulated to members on 27 September 2006, which also included:
 - i. a copy of the operating report ([FWA.004.0082](#) at 84) which, unlike the unsigned and undated operating report that had been lodged on 28 September 2006 ([FWA.004.0063](#) at 64), had been signed and dated by Mr Thomson on 26 September 2006;
 - ii. a committee of management statement ([FWA.004.0082](#) at 90) - unlike the statement that had been lodged on 28 September 2006 ([FWA.004.0063](#) at 74), this statement did not include the date upon which a resolution was passed and was signed and dated by Mr Thomson on 26 September 2006; and
 - iii. an auditor's report on the concise report ([FWA.004.0082](#) at 91) that was signed and dated by Mr Dick of Dick & Smith (Elsternwick) Pty Ltd on 26 September 2006.

Compliance with Part 3 of Chapter 8 of the RAO Schedule

1139. Piecing together the correspondence between the HSU and the AIR regarding the financial documents for the year ended 30 June 2006, the following sequence of events appears to have occurred:

- a. A resolution was passed by the committee of management on 13 September 2006. This is because:

- i. although a committee of management statement ([FWA.004.0082](#) at 90) that had been signed by Mr Thomson on 26 September 2006 did not include the date upon which the resolution was passed by the committee of management;
 - ii. a second committee of management statement that was signed by Mr Thomson on 27 September 2006 ([FWA.004.0063](#) at 74) states that a resolution was passed by the committee of management on 13 September 2006.
 - b. The full report was also presented to a meeting of the committee of management on 13 September 2006 (see [FWA.004.0063](#) at 73);
 - c. A committee of management statement ([FWA.004.0082](#) at 90) was signed by Mr Thomson on 26 September 2006 (which did not include the date of the resolution);
 - d. Mr Dick signed the auditor's reports on the full report ([FWA.004.0082](#)) and on the concise report ([FWA.004.0082](#) at 91) on 26 September 2006;
 - e. Mr Thomson also signed the operating report on 26 September 2006 ([FWA.004.0063](#) at 64);
 - f. A second committee of management statement (which did include the date of the resolution) was signed by Mr Thomson on 27 September 2006 ([FWA.004.0063](#) at 74);
 - g. A copy of the concise report was circulated to members on 27 September 2006 (see [FWA.004.0063](#) at 73); and
 - h. The full report ([FWA.004.0063](#)) and Secretary's certificate ([FWA.004.0063](#) at 73) were lodged with the AIR on 28 September 2006.
1140. FWA has not been provided with any minutes of any National Executive meeting that may have been held, and to which the full report may have been presented, on 13 September 2006. Minutes of a National Executive meeting on 7 and 8 August 2006 ([HSUNO.018.0220](#)), however, do set out a 'draft plan for conference' on '13th September' to '15th September'. Although FWA has not been provided with any minutes of meetings of National Council between 2003 and 2007, this reference to a meeting of National Council on 13 September 2006 does suggest that the full report for the year ended 30 June 2006 was presented to a meeting of National Council on 13 September 2006.

Mr Thomson's submissions

1141. With respect to finding 69, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies that he has contravened subsection 285(1) of the RAO Schedule. I allege that a reasonable person in the position of National Secretary would have presented to the committee of management meeting on 13 September 2006

copies of a signed and dated committee of management statement and a signed and dated auditor's report.

- b. It is of concern that I have formed this conclusion as I have provided insufficient evidence to make this allegation. Further, the evidence is that the financial documents were lodged with the AIR on 28 September 2006 and includes the Secretary's certificate that states that the full report was presented to "a meeting of the management of the reporting unit" on 13 September 2006.
- c. Mr Thomson is unable to recall the exact details of the meetings in September 2006 and is unable to explain why the auditor's report is dated 26 September 2006.

Conclusions

1142. The documents that were presented to the committee of management meeting on 13 September 2006 could not have been the full report. Significantly, neither the committee of management statement nor the auditor's report can have been presented to that meeting as neither of those documents had been signed as at the date of the meeting.

1143. A reasonable person in Mr Thomson's position as National Secretary would have presented to the committee of management meeting on 13 September 2006 copies of a signed and dated committee of management statement and a signed and dated auditor's report for the year ended 30 June 2006.

Finding 69 - Failing to present financial reports for year ended 30 June 2006 to the committee of management meeting on 13 September 2006

69. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to present (or cause to be presented) to the committee of management meeting on 13 September 2006 copies of a signed and dated committee of management statement and a signed and dated auditor's report for the year ended 30 June 2006.

Failing to prepare financial documents for year ended 30 June 2007 and to present them to a meeting of National Council or National Executive before 14 December 2007

Evidence

1144. The following matters are relevant to Findings 70 and 71 - Failing to prepare financial documents for year ended 30 June 2007 and to present them to a meeting of

National Council or National Executive before 14 December 2007, which are set out below at page 460.

1145. Sub-rule 32(e) requires the National Secretary to 'keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Workplace Relations Act 1996'. This is quite a broad requirement which, in my view, does not just relate to the requirement in subsection 252(1) of the RAO Schedule that a reporting unit keep financial records that record and explain transactions and that will enable a GPFR to be prepared and the accounts to be audited.
1146. Section 6 of the RAO Schedule gives a broad definition of 'financial records' that includes 'a document', 'financial reports' and 'any other record of information' to the extent that they 'relate to finances or financial administration'. In my view the operating report and GPFR would both fall within the definition of 'financial records'. It goes without saying that most of the documents that make up the GPFR (namely the statement of financial performance, statement of financial position, statement of equity and statement of cash flows) contain information relating to the finances of the reporting unit. These documents would clearly fall within the definition of 'financial records'. The committee of management statement, which is part of the GPFR¹⁴⁵, would in my view also fall within the definition of 'financial records' as it contains information about both the finances and financial administration of the reporting unit, such as whether financial statements comply with Australian Accounting Standards and the Reporting Guidelines, whether they give a true and fair view of financial performance, financial position and cash flows of the reporting unit, whether the reporting unit will be able to pay its debts as and when they fall due et cetera. Similarly, the operating report contains information about the finances and financial administration of the reporting unit. It is required to detail any significant changes during the financial year in the reporting unit's financial affairs, any directorships of superannuation entities, the number of members of the reporting unit (which directly affects the reporting unit's income from membership subscriptions) and the number of employees of the reporting unit (which affects wages expenses).
1147. As a result, the records that Mr Thomson, as National Secretary, was required by Sub-rule 32(e) to keep (or cause to be kept) included not only those records that are specified in subsection 252(1) of the RAO Schedule but also other financial records that fall within the definition in section 6 of the RAO Schedule, including the GPFR and operating report. Further, Sub-rule 32(e) requires the National Secretary to keep the records 'pursuant to the provisions of the Workplace Relations Act 1996'. Since the RAO Schedule required both the operating report and committee of management statement to be prepared 'as soon as practicable after the end of [the] financial year', it was incumbent upon Mr Thomson, under Sub-rule 32(e), to prepare both the operating report and the committee of management statement as soon as practicable after the end of the 2006/2007 financial year.
1148. Taking into account matters set out at paragraphs 1152 and 1153 below, in my view there were few (if any) impediments that meant that preparation by Mr Thomson of

¹⁴⁵ Paragraph 253(2)(c) of the RAO Schedule.

an operating report and committee of management statement before 14 December 2007 was not 'practicable'.

1149. There is no evidence before FWA that Mr Thomson prepared an operating report or committee of management statement for the year ended 30 June 2007 before his resignation on 14 December 2007. A letter dated 30 April 2009 from Ms Jackson to the Industrial Registrar (FWA.005.0050) enclosed financial documents of the National Office for the year ended 30 June 2007 (FWA.005.0035). Those documents contained:

- a. an unsigned and undated operating report (FWA.005.0035 at 36);
- b. an unsigned and undated Secretary's certificate (FWA.005.0035 at 46) which did not contain any information regarding provision of documents to members or presentation of the full report to a meeting;
- c. an unsigned and undated committee of management statement (FWA.005.0035 at 46) which did not include the date upon which the committee of management had passed a resolution as required by paragraph 25 of the second Reporting Guidelines; and
- d. an auditor's report that has been signed but not dated (FWA.005.0035 at 48) by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd.

1150. Ms Jackson's letter of 30 April 2009 (FWA.005.0050) stated that:

The Designated Officer's certificate and the Certificate of the Committee of Management have not been signed by the then National Secretary, and I am not able to sign them as I was not the National Secretary at the time. However I have examined the records of the HSU and can confirm that the documents lodged are copies of the documents provided to the National Executive at its meeting on 6 December 2007.

I am unable to state whether the documents were provided to members as I do not know, but have now had them posted to the Union's website.

1151. It is also necessary for me to consider, under section 285, what degree of care and diligence would have been exercised by a reasonable person where that reasonable person was an officer of the National Office in the particular circumstances of the National Office and occupying the position of, and assuming the same responsibilities as, the National Secretary. Mr Thomson was required by section 285 to exercise his powers and discharge his duties with the degree of care and diligence of that reasonable person.

1152. In order to prepare the committee of management statement, it would have been necessary for a resolution under paragraph 25 of the second Reporting Guidelines to have been passed by a meeting of National Council or National Executive. The evidence before me indicates that the first meeting of either National Executive or National Council to occur after the end of the 2006/2007 financial year was a meeting of National Executive on 6 December 2007.

1153. Information before me indicates that all of the National Office's records were still held by the National Office while Mr Thomson was National Secretary so there can be no question that an absence of records hindered preparation of an operating report or

committee of management statement in the second half of 2007. Moreover, Mr Thomson told me in interview that the National Office employed a financial officer whose responsibilities included preparation of reports for filing with the AIR (Thomson PN 159-169). There can be little doubt that, as a candidate for the seat of Dobell in the federal election that was held on 24 November 2007, Mr Thomson was increasingly busy throughout 2007 as a whole. Although he stated in interview that he was on leave for the last six weeks before the federal election on 24 November 2007 (Thomson PN 159-160), other information before me indicates that Mr Thomson was undertaking the duties of National Secretary right up until the date of his resignation on 14 December 2007. Leave records for the National Office that have been viewed by me indicate that no approved leave was taken by Mr Thomson after 2005 ([HSUNO.021.0668](#)). Other evidence also suggests that Mr Thomson was actively undertaking the duties of National Secretary while he states that he was on leave in October and November of 2007:

- a. The annual return of information for 2006 ([FWA.004.0045](#)) was lodged with the AIR under Mr Thomson's signature on 8 November 2007 ([FWA.004.0043](#));
- b. Mr Thomson approved a number of payments to Central Coast Radio totalling \$14,647 on 12 November 2007 ([HSUNO.001.0170](#), [HSUNO.001.0173](#), [HSUNO.001.0176](#), [HSUNO.001.0179](#) and [HSUNO.001.0182](#)). Mr Thomson stated in interview that these were payments for campaign advertisements ([Thomson](#) PN 904); and
- c. Mr Thomson approved a payment to Branded Products on 27 October 2007 ([HSUNO.006.0199](#)).

1154. Even taking his claim regarding leave at its highest and presuming that he was on leave for the six weeks prior to the federal election, Mr Thomson's period of leave was for only six weeks during the 5½ months that he was National Secretary between 1 July 2007 and his resignation on 14 December 2007.

Mr Thomson's submissions

1155. With respect to finding 70, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(e) of the Rules.
 - b. It is of concern that I have presented no evidence to support this allegation.
 - c. Mr Thomson notes that at the HSU National Executive Meeting on 14 December 2007 it was resolved that Financial Statements of the HSU were received and adopted and the recommendation contained in the Committee of Management Certificate be received, accepted and endorsed. Further it was common practice for profit and loss statements to be presented at each National Executive meeting.

1156. With respect to finding 71, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule.
 - b. He notes that he was on annual leave between October and November 2007.

Conclusions

1157. I have found at Findings 76 to 78 - Mr Thomson did not take annual leave during October and November 2007, although I believe he ought properly to have done so.
1158. Having not taken leave, I consider that a reasonable person in the position of National Secretary would have ensured that not one but two meetings were held within a much shorter period than the 5½ months that elapsed before the first meeting on 6 December 2007, with the first meeting passing the resolution required by paragraph 25 of the second Reporting Guidelines and the second meeting approving the full report. That second meeting would have had presented to it comprehensive financial documents that enabled National Council or National Executive to assess the financial performance of the National Office, as well as management by the National Secretary of that performance. Such documents would have included not only a signed and dated committee of management statement but also an auditor's report that had been signed and dated after the committee of management statement.
1159. A reasonable person in Mr Thomson's position as National Secretary would have ensured that an operating report and committee of management statement were prepared and the full report, including a signed and dated auditor's report, was presented to a meeting of National Council or National Executive within the 5½ months following the end of the 2006/2007 financial year.

Findings 70 and 71 - Failing to prepare financial documents for year ended 30 June 2007 and to present them to a meeting of National Council or National Executive before 14 December 2007

- 70.** Mr Thomson contravened Sub-rule 32(e) by failing to keep the records required to be kept pursuant to the provisions of the WR Act when he failed to prepare (or cause to be prepared) an operating report and committee of management statement before 14 December 2007.

- 71.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he failed to prepare an operating report or a committee of management statement and failed to present the full report (including a signed and dated auditor's report) to a meeting of National Council or National Executive in the 5½ months following the end of the 2006/2007 financial year.

Chapter 6 - Expenditure of National Office funds for Mr Thomson's personal benefit

Introduction

1. This chapter concerns Mr Thomson's expenditure of funds of the National Office of the HSU for his personal benefit.
2. Information regarding the legislative scheme and the HSU Rules is set out in chapter 2.
3. The chapter raises issues relating to the following specific areas:
 - a. expenditure on escort services;
 - b. leave issues;
 - c. expenditure on accommodation in Sydney after Mr Thomson moved to the Central Coast;
 - d. expenditure on accommodation on the Central Coast during 2006 and 2007;
 - e. hotel and accommodation expenses incurred by Mr Thomson during September to November 2005;
 - f. expenditure by Mr Thomson on travel by Christa Thomson; and
 - g. expenditure on dining and entertainment.

Escort Services

Purported authorisation of expenditure incurred on Mr Thomson's credit cards for escort services

4. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 72 to 75 - Purported authorisation of expenditure incurred on Mr Thomson's credit cards for escort services, which are set out below at page 505.

Introduction

5. FWA has obtained records which indicate that on six separate occasions credit cards issued to Mr Thomson were used to make purchases from escort agencies. These transactions are discussed at paragraphs 39 to 132 of this chapter.
6. FWA has also obtained records which indicate that on three occasions Mr Thomson charged hotel expenses to a credit card in his name which included the costs of

telephone calls made from his hotel room to an escort agency. These charges are discussed at paragraphs 133 to 174 of this chapter.

7. However before considering each of these transactions individually, paragraphs 8 to 38 of this chapter consider evidence about expenditure on escort services using credit cards at a general level, including in particular Mr Thomson's statements about the use of his credit cards to procure escort services.

General evidence about expenditure of HSU funds on escort services

Overview of Mr Thomson's response to allegations that he used HSU funds to pay for escort services

8. Mr Thomson answered questions about expenditure on his credit cards relating to escort services in his interview with FWA (Thomson PN 1913-1971; Thomson PN 2029-2031). Allegations about the use of Mr Thomson's credit cards to procure escort services have also received ongoing publicity in the media since at least April 2009. During that time, according to such media reports, Mr Thomson has made a number of statements to the media about this issue. Mr Thomson's public statements have generally repeated the points which he made to FWA at interview. However on at least one occasion (which is discussed below) Mr Thomson made a public claim which he did not make when interviewed by FWA.

General statements made by Mr Thomson to FWA

9. When interviewed by FWA Mr Thomson accepted that expenditure of HSU funds on escort agency or adult services would not be legitimate expenditure. He claimed only to have become aware of the issue through the media and documents shown to him in evidence in relation to the Fairfax litigation (Thomson PN 1915 - 1923):

MR NASSIOS: Are you aware of any incidents in which funds of the HSU were expended at an escort agency or any other form of adult services?

MR THOMSON: I am now.

MR NASSIOS: Can you think of any circumstance in which such expenditure, if it did occur, could be legitimate expenditure of the HSU?

MR THOMSON: No.

...

MR THOMSON: I was aware of it once it was in the - I mean, all of these issues that we've gone through over the last few hours, none were raised with me. The first of all of these things that I found out was in the Sydney Morning Herald. In terms of any issues, there was no correspondence from the union about any of them at any time.

MR RAWSON: So you're not saying you have any knowledge of HSU funds being used on escort agencies other than what you've read in the Sydney Morning Herald.

MR THOMSON: And what's since been shown to me and given in evidence, and I have to be a little careful here. Some of the stuff with the union - as I

understand it, there's a - well, as I understand, there's a confidential agreement between Mr Jackson in settlement in relation to some of his issues, whereas I understand from the papers - I'm not privy to it, but he paid back some money. In relation to the allegations with me, I wasn't there. In some instances I wasn't even in the state, and that is part of why there is a settlement between us and the HSU.

10. Mr Thomson claimed that he did not notice the escort agency expenses on his credit card. It was not raised with him and there was no receipt (Thomson PN 1926):

Yes, so some of this is subject to the settlement that's offered but not complete in terms of these things. I wasn't aware and didn't notice those on my credit card. It wasn't raised with me that there was no receipt for it, otherwise I would have made some inquiries as to what it was. I think it's called Keywed Restaurant or something like that. That didn't stand out, you know, to me. I just didn't notice that it was there.

11. Mr Thomson claimed to FWA that he had theories about how the expenses were incurred on his credit card. He said that he believed the transactions were fraudulent (Thomson PN 1939 - 1941).

12. Mr Thomson denied to FWA that there was a culture of escort agency services being provided to HSU officials at HSU expense (Thomson PN 1970 - 1971):

I have no reason to think that there was any culture of that at all and was shocked and surprised about any of these - when these issues were ventilated in the press, both in terms of Jeff Jackson as well, who is not a friend of mine in any sense. So I was surprised in terms of both of those issues, and there's certainly no culture of that, that I was aware of.

13. Mr Thomson told FWA that the expenditure on adult services incurred using his credit card must have been incurred by the same person each time. He also stressed that the place of the businesses were all located in Sydney that (he said) had an association with the use of Victorian credit cards as well. He suggested (because he says he was not in Sydney on the dates that some of the expenditure was incurred) that it would not have been him who incurred the expenditure on any of the occasions. Mr Thomson suggested it involved a visitor to Sydney (Thomson PN 2029 - 2031):

Look, I'll just make one more general comment I suppose in relation to this. On any balance of probability, you would think it was the same person who is using those services - the same time. On balance of probability, if it can't be me on many of those occasions, then it's someone else on those occasions, and on balance of probability, you would suggest it's the same person the whole time. I'd make the other point that I'd made, that they're only in Sydney. They're largely with an organisation - that led you to ask me the last question - that's associated with Victorian credit cards as well. I'm being very careful because of where we're at, but because it's in Sydney, you would suggest it's a visitor to Sydney who visits Sydney more than anywhere else that they visit as well too. So they're not answers to your questions but they're trying to put it in some perspective as to where that is.

...

The final point is that I don't in my view - and this is probably not terrific evidence - believe though in the coincidence that the day that a story is about to break about what's

happening in Victoria, this is given to the Sydney media as well too. I think there's a connection that's there as well for what that's worth, yes.

14. At one point in his answers to FWA Mr Thomson asked to make a 'general' point. Invited to do so, he said (Thomson PN 1969):

They're all in Sydney as well, all of these. I travel much more than just Sydney. It seems unusual that they're all just in Sydney, but that's by way of observation.

15. On 18 May 2011 Mr Thomson sent the following email to FWA ([FWA.021.0007](#)):

PRIVATE and CONFIDENTIAL and NOT FOR PUBLICATION

Dear Mr Nassios,

Further to my discussion with Ms Carruthers regarding the investigation and in particular in relation to the use of the HSU credit card at escort agencies, I make the following points:

- I did not and have not used my HSU credit card for escort services.

Moreover;

- Mr Jeff Jackson, former HSU executive member, settled and repaid the HSU in 2009 an undisclosed amount in a confidential settlement following allegations of using a union credit card at the named escort agencies in Sydney;
- The allegations made by the SMH were presented to the SMH by Ms Kathy Jackson, former wife of Mr Jeff Jackson, and head of the HSU, and referred to use of my credit card on specific dates and times in Sydney. These dates and times are inconsistent with my travel records and eyewitness statements which establish that on these dates I was not in Sydney.
- My action against the HSU was settled on a confidential basis against the HSU which specifically included a claim against Ms Kathy Jackson and others - which reflects the credibility of the claims;
- Fairfax publications has also agreed to a confidential settlement of the defamation action I brought against them.

In relation to the Fairfax settlement I was asked by your agency what issues in addition to the Perth flight information may have influenced the Fairfax decision to reach settlement. I am not in a position because of the confidential nature of the agreement to provide specific reasons as to why Fairfax settled. However in relation to the proposed defamation action and the planned hearing I can indicate the following additional information that would have formed part of my defence:

- Amongst others my (former) wife, Christa, was prepared to provide evidence as to my whereabouts that would prove it was impossible for me to be at the escort agencies on the dates specified; including being with me on the trip to Perth. Other direct evidence was to be adduced that Christa was with me at the precise times the card was being used in locations in Sydney; and

- That I understand that my 'signature' and the signatures on the credit card forms were forged. A handwriting expert was to be called as a witness. The terms of the settlement preclude me from making any further comment.

Regards

Craig Thomson

Public statements made by Mr Thomson

16. On 8 April 2009 an article appeared in The Sydney Morning Herald entitled 'Craig Thomson union card paid for brothels' ([PUB.002.0063](#)). In the course of this article Mr Thomson is quoted as saying:

It was the national office credit card,' he said of the MasterCard. 'There were a number of staff who had access to that card, but statements were looked at each month in detail by the union's finance committee.

17. On 2 August 2011 ABC News published an online article entitled 'MP admits authorising escort payments' ([PUB.005.0007](#)). In the course of this article Mr Thomson is quoted as saying:

The union reached a settlement with another gentleman who paid back \$15,000 in relation to use of credit cards at an escort agency ... I don't know whether he forged my signature or who forged my signature. Our handwriting expert believes there were a number of different signatures.

18. On 1 August 2011 Mr Thomson participated in the radio interview. During the course of the radio interview the following exchange occurred ([PUB.005.0011](#)):

MICHAEL SMITH: Okay, were you the boss of the Health Services Union at the time the Health Services Union credit card was used to procure those services? Were you?

CRAIG THOMSON: Yes, I was.

MICHAEL SMITH: Okay, did you take the matter to police if you believed that credit card was used improperly? Did you go and report it to the police?

CRAIG THOMSON: The Union reached a settlement with another gentleman who paid back fifteen-thousand dollars in relation to use of credit cards at an escort agency.

MICHAEL SMITH: Did he forge your signature?

CRAIG THOMSON: I don't know whether he forged my signature or who forged it. ..

MICHAEL SMITH: Did you take the matter to the police?

CRAIG THOMSON: Our handwriting expert believed that there were a number of different signatures [that were there].

MICHAEL SMITH: Okay, did you take the matter then to the police if you had evidence that somebody had improperly used the Union's credit card?

CRAIG THOMSON: We've referred it to a number of agencies...

MICHAEL SMITH: To the police.

CRAIG THOMSON: ...and in fact the only concluded inquiry that's been done has been by the AEC who said that there was no basis in terms of allegations...

MICHAEL SMITH: Hang on, hang on, hang on, Craig.

CRAIG THOMSON: ...that were there.

MICHAEL SMITH: You were the boss of the Health Services Union, responsible for your members' money. You believe that a credit card issued by the Union was used to procure the services of prostitutes with your driver's license number on the back of the voucher by the way. You formed the belief that somebody must have forged your signature and you didn't go straight to police?

CRAIG THOMSON: Well these are events that occurred - the revelation of these events occurred after I had left...

...

MICHAEL SMITH: But so that's you. You want to defend yourself. You're concerned about you. But the boss of the Union - you've got poor bloody cleaners in hospitals who are paying their union dues that goes to the Union. You're the boss of the Union, You get a credit card issued in your name.

It's used to procure the services of prostitutes amongst other things and you don't even go through the statement and have a look at that entry and say oh, hang on a sec, these hookers in Sydney are coming up a bit regularly. We better get the police in. Why didn't you do that?

CRAIG THOMSON: Well there was an investigation and there was a report that was written in terms...

MICHAEL SMITH: After you left, right?

CRAIG THOMSON: Well it actually commenced when I was there.

MICHAEL SMITH: Did you order it?

CRAIG THOMSON: Yes, I did, I actually ordered a complete review of what was happening, so yeah.

MICHAEL SMITH: Did you go to the police, though, Craig?

CRAIG THOMSON: We - it belonged to the appropriate bodies in terms of that and, you know, there has been a person who has paid back the money.

MICHAEL SMITH: Who was that?

CRAIG THOMSON: Well I'm not at liberty to say again because I'm very careful in relation to defamation action.

MICHAEL SMITH: Hang on a sec...

CRAIG THOMSON: But there has been a private agreement that's been signed with lawyers in terms of those sorts of things,

MICHAEL SMITH: Mate, I can't get that in my head, Craig. Look, I've got the voucher in front of me...

CRAIG THOMSON: Well, [unclear]...

MICHAEL SMITH: Hang on a sec, Craig...

CRAIG THOMSON: ...yeah, but it's fairly simple sort of issue that's there. So, someone has said..

MICHAEL SMITH: Craig, it is to me, It's simple...

CRAIG THOMSON: Yeah, well someone has said that they're responsible for it. They have made an agreement with the Union where they've paid back some money and it's up to the Union as to what they do'.

...

19. On 30 August 2011 FWA wrote to Mr Thomson ([WIT.THO.006.0003](#)). In the course of that letter FWA invited him to respond to a number of questions. The letter stated in part:

Since your interview with FWA, you have participated in an interview with Mr Michael Smith (Mr Smith) on the radio station 2UE program 'Afternoons with Michael Smith' (the radio interview) on 1 August 2011 in which you also referred to funds being reimbursed to the HSU by a third party. A transcript of the radio interview is attached to this letter.

During the course of the radio interview, Mr Smith questioned you about the use of a HSU credit card in your name to incur expenditure on 'prostitution services' at an establishment called 'Sydney Outcalls Agency'. In response to a question about whether you reported this expenditure to the police, you made the following statement (at page 2 of the transcript):

The Union reached a settlement with another gentleman who paid back fifteen-thousand dollars in relation to use of credit cards at an escort agency.

I understand that in mid-2009 the national office of the HSU entered into a Deed of Agreement with members of the Committee of Management of the Victoria No.1 Branch (the Branch) of the HSU, including Mr Jeff Jackson. According to an article 'Chief of strife-torn union promises to pay back \$15,000' that appeared in The Age on 4 July 2009 (a copy of which is attached), Mr Jackson agreed to reimburse \$15,000 to the Branch 'after he was accused in April of dishonestly claiming the money as back pay.' The article further states that 'An audit of the union made public in April found Mr Jackson had received three payments of \$5,000 over and above his normal salary which were recorded as 'back pay', but there was no evidence they had been authorised.'

In light of this information regarding the terms of the Deed of Agreement reached between the HSU and Mr Jackson (amongst others) on 30 June 2009, I invite you to provide me with the following information:

- a) Do you say that the \$15,000 that was reportedly repaid by Mr Jackson to the Branch was reimbursement of monies that had been charged at an escort agency by Mr Jackson to his HSU credit card?
- b) If so, on what basis do you hold this belief?
- c) The names of any persons who you believe have, at any time since 16 August 2002, paid money to the HSU National Office for, or for reasons which include, reimbursement of expenses paid by the HSU National Office to an 'escort agency' (however described), or for 'prostitution services' (however described).

2. 'Complete Review' ordered while you were National Secretary

In response to further questioning from Mr Smith during your radio interview about why you did not report the matter to the police, you later engaged in the following exchange with Mr Smith (at pages 4 and 5 of the transcript):

MR THOMSON: *Well there was an investigation and there was a report that was written in terms ...*

MR SMITH: *After you left, right?*

MR THOMSON: *...Well it actually commenced when I was there.*

MR SMITH: *Did you order it?*

MR THOMSON: *Yes, I did. I actually ordered a complete review of what was happening, so yeah.*

I invite you to provide me with the following information in relation to the 'complete review' referred to by you at page 4 of the transcript of the radio interview:

- d) the date on which you ordered such a review;
 - e) the person or persons to whom you ordered such a review;
 - 1) whether your order was given orally or in writing;
 - g) the name of the person or persons who were ordered to conduct the review;
 - h) the date on which any such review concluded;
 - i) whether any such review made any findings or recommendations;
 - j) if so, what were the findings/recommendations?
20. The letter invited Mr Thomson to respond to the information sought in the letter on or before 5pm on Tuesday, 13 September 2011. On 13 September 2011 FWA received a response from Mr Thomson ([WIT.THO.006.0001](#)), the contents of which are as follows:

Dear Sir,

I refer to your letter of 30 August which asks for my response to a number of matters. I am aware that both the NSW Police and the Victorian Police are investigating matters that may overlap with your inquiry. In those circumstances I have been advised by my lawyers to decline the opportunity to respond to your specific questions.

Regards,

Craig Thomson.

Evidence of other witnesses

21. Mr Williamson was asked by FWA about expenditure on credit cards on escort agencies in Sydney. He told FWA that he was not aware of any instances in which funds of the HSU were expended at an escort agency or any other form of adult service. Nor was Mr Williamson aware of such expenditure ever being authorised by the National Executive. Mr Williamson said that he could not think of any circumstances in which such expenditure, if it had occurred, could be legitimate

expenditure of the HSU or expenditure on the general administration of the HSU or for a purpose reasonably incidental thereto (Thomson PN 634 - 641).

22. Mr Brown was also asked at interview whether National Executive was ever asked to approve expenditure for adult services. He replied (Brown PN 437) '[a]bsolutely not'.
23. Dr Kelly also told FWA that the National Executive had never been asked to approve expenditure on 'adult services' (Kelly PN 769 - 770).
24. Ms Jackson was asked by FWA about expenditure by the National Office on escort services (Jackson (1) PN 272 - 278):

MR NASSIOS: Now, escort services, are you aware of the - - -

MS JACKSON: They're called adult services in our report.

MR NASSIOS: Adult services. Are you aware of the national executive ever being asked to approve expenditure on adult services?

MS JACKSON: Yes, weekly, weekly.

MR NASSIOS: All right.

MS JACKSON: For the men.

MR NASSIOS: Yes, I think we can indicate for the recording it was a sarcastic response.

Conclusions about Mr Thomson's general claims

25. A number of general propositions emerge from Mr Thomson's statements which are discussed at paragraphs 9 to 20 of this chapter. In summary:
 - a. Mr Thomson did not use his credit cards to incur expenditure on escort services;
 - b. In particular Mr Thomson has often referred to the fact that (on at least one occasion) he was not in the same state as the escort agency where expenditure was incurred on the day that it was incurred;
 - c. Mr Thomson's credit cards were, or could have been, used by another officer (identified by Mr Thomson as being Mr Jackson) of the HSU to procure escort services without his knowledge or approval;
 - d. It was notable that each of the transactions which appear on Mr Thomson's credit cards had occurred in Sydney;
 - e. Mr Thomson did authorise expenditure on escort services which was incurred on his credit cards by approving credit card statements which record that expenditure, however Mr Thomson claims that he did so unknowingly;
 - f. expenditure of HSU funds on escort services could not be legitimate expenditure of the National Office; and
 - g. Mr Thomson claimed to have ordered 'a complete review' of the use of his credit cards to procure the services of escorts.
26. Although he has admitted that he approved the payment of credit card statements containing expenses charged for escort services, Mr Thomson denies that he

personally was involved in the use of his credit card in relation to these transactions. Mr Thomson states that:

- a. at the time of approving a credit card statement with these expenses he did not understand what the expense item was;
- b. the signature on the receipt for one transaction is not his signature, which is written differently;
- c. he was not in New South Wales at the time of some transactions;
- d. staff of the National Office had access to his electronic signature;
- e. there has been a fraudulent use of his credit card, and another HSU official, Mr Jackson, had settled and repaid the HSU in 2009 \$15,000 in confidential settlement following allegations of using credit cards at Keywed Pty Ltd (**Keywed**);
- f. Keywed was an organisation that has been mentioned in relation to use of a credit card of the Victoria No 1 Branch. The transactions on his credit card are largely with this company.

Mr Thomson's claim to have been interstate when some of the transactions occurred

27. The discussion below establishes that Mr Thomson was in NSW on the dates on which five of the six transactions with escort agencies are recorded in his credit card statements. The significance (if any) of the fact that Mr Thomson was in Perth on the day that a payment to Aboutoun Catering appears on his CBA Mastercard statement is discussed at paragraphs 57 to 67 of this chapter.
28. Moreover, documents produced by the HSU relating to Mr Thomson's own hotel accounts establish that he paid for telephone calls from hotel rooms to escort agencies using his HSU issued credit cards on three occasions when he was travelling interstate.
29. In all the circumstances, the fact that Mr Thomson was in Perth on one occasion when his credit card statement identifies an expense at a Sydney based escort agency is of minimal significance in determining whether he was responsible for each of the other five payments made to escort agencies using his credit cards.

Mr Thomson's claim that in 2009 Mr Jackson repaid to the HSU \$15,000 in confidential settlement following allegations of using credit cards at Keywed

30. There is no evidence before FWA which suggests that Mr Jackson repaid any sum to the National Office in a confidential settlement.
31. Mr Jackson did repay a sum of \$15,000 to the Victoria No 1 Branch of the HSU in 2009, however there is no evidence that the repayment of this amount had anything to do with allegations of unauthorised use of credit cards at Keywed or at any establishment in relation to escort services. The circumstances which led to the repayment of this sum of money by Mr Jackson to the Victoria No 1 Branch have been considered by FWA in a separate investigation conducted pursuant to section 331 of the RO Act.

32. No evidence available to FWA suggests that this repayment related to allegations that Mr Jackson had misused his credit cards at all, let alone in relation to escort services.
33. Given the absence of any evidence before FWA to support this claim, I do not accept Mr Thomson's suggestion that Mr Jackson was responsible for the expenditure on escort agencies which was incurred on Mr Thomson's credit cards.

Mr Thomson's claim to have ordered 'a complete review' of the use of his credit cards to procure the services of prostitutes

34. So far as FWA has been able to determine, Mr Thomson made this claim for the first time on 30 August 2011, in the radio interview. Mr Thomson made no such claim at interview with FWA or in any of his subsequent correspondence to FWA about allegations relating to escort services. On 30 August 2011 FWA invited Mr Thomson to provide certain information in relation to this claim but he has not done so, although it is acknowledged that he has advised that this is as a result of legal advice received relating to the NSW and Victoria Police investigations.
35. It is true that National Executive passed a resolution while Mr Thomson was still National Secretary that a 'clearing audit' be conducted of the National Office. Minutes of the National Executive meeting on 6 December 2007 ([HSUNO.024.0014](#)), at which he was present, record passage of the following resolution:

Clearing Audit of National Office.

RESOLUTION

Moved Dan Hill/Jorge Navas that;

'A Clearing Audit of National Office accounts as a result of the election of Craig Thomson to the Federal Parliament, take place. The clearing audit is to occur at the declaration of the poll in the NSW seat of Dobell.'

- Carried

36. Minutes of the next National Executive meeting on 14 December 2007 ([HSUNO.025.0012](#)) record that 'Craig Thomson announced that his election to the seat of Dobell had just been declared...'
37. There is no evidence before FWA, however, that Mr Thomson in particular ordered such a review. Rather, past practice suggests that a 'clearance audit' was routinely conducted upon the resignation of the National Secretary. Minutes of a meeting of National Council on 23 July 2002 ([HSUNO.023.0033](#)), being the meeting at which National Council accepted the resignation of the former National Secretary (Mr Rob Elliott) and appointed Mr Thomson as National Secretary from 16 August 2002, indicate that a clearance audit was also conducted at this time. Minutes of that meeting on 23 July 2002 record the following:

13 GENERAL BUSINESS

Dan Hill indicated that with a change in the office of National Secretary, that the incoming National Secretary should arrange for an independent clearance audit to be conducted. The National President advised that this would be done.

38. In all the circumstances I do not accept Mr Thomson's claim that he ordered a complete review of credit cards.

Specific transactions

26 February 2003 - Aboutoun Catering

The transaction

39. Mr Thomson's CBA Mastercard statement dated 26 March 2003 ([HSUNO.014.0007](#)) discloses a payment of \$330 on 26 February 2003 to what is described in the statement as 'Aboutoun Catering North Sydney' (**Aboutoun Catering**).

Details about Aboutoun Catering

40. On 29 July 2010 FWA searched the NSW Office of Fair Trading Business Names Extract for 'Aboutoun Catering'. The extract ([FWA.006.0017](#)) confirmed that Aboutoun Catering was registered as a Catering business on 11 November 2004 and was removed on 12 February 2008. The principal place of business was listed as 17/1 Hordern Place, Camperdown NSW 2050. A further search ([FWA.006.0016](#)) identified that Aboutoun Catering was initially registered between 11 September 1997 and 21 November 2000 and the principal place of business was 5 Lavender St, McMahon's Point, NSW. Both searches identified the same individual proprietor.
41. On 4 November 2011 FWA conducted a search of the Yellow Pages website ([PUB.008.0015](#)) which identified Aboutoun Catering as an Escort Service 'in all states except VIC & QLD'. The same search identifies the phone number of 1300 367 322 as being the phone number for Aboutoun Catering.
42. On 6 November 2011 FWA conducted a search of the Local business website [www.local.com.au](#) ([PUB.008.0110](#)) which identified Aboutoun Catering as an Adult service located at 5 Lavender St, Milsons Point, NSW 2061. The same search identifies the phone number of Aboutoun Catering as (02) 9929 9699.

Mr Thomson's explanation for this transaction

43. Mr Thomson was asked by FWA to explain this expense. He said that he believes that he was in Western Australia at the time and that the transaction is fraudulent (Thomson PN 1960 - 1965):

MR NASSIOS: 26 February 2003 a charge of \$330 was placed on the Commonwealth Bank MasterCard at Aboutoun Catering, North Sydney. Do you recall this transaction?

MR THOMSON: No.

MR NASSIOS: Yellow pages and web searches indicate that Aboutoun is an escort agency at 5 Lavender Street, Milsons Point.

MR THOMSON: I do know in relation to this one, that's also the time that I was in Western Australia. I think I provided to - I don't have it here today, but I provided to the internal inquiry a range of dates and places where I was for a number of these, where I wasn't even in the state at the

time. In fact in that one I don't think I was in New South Wales six to eight weeks around that particular event.

MR NASSIOS: Again I ask you, can you offer any explanation as to why your credit card could have been used on that occasion?

MR THOMSON: Not more than what I've said about it being used in a fraudulent manner by someone else.

44. On 25 February 2011 Mr Thomson rang an employee at FWA, Ms Ailsa Carruthers. The file note taken by Ms Carruthers of their conversation is set out as follows ([FWA.007.0011](#)):

File Note of telephone conversation with Craig Thomson, MP

CT has details that he has confirmed with Qantas regarding a flight he took in February (he didn't specify the year) that prove his location at that time. CT thought it would be useful to FWA, given what happened in Senate Estimates on 23 February 2011.

CT wants to provide it on a 'confidential' basis. I advised that, while we do keep documents confidential, FWA is currently subject to Court proceedings that may require FWA to produce to the Court a whole range of documents that could include any document that CT wishes to provide to us today. I therefore cannot give any sort of guarantee that anything he provides to us will not be made available to a third party.

CT further advised that, in future, he may wish to provide us with other documents that he believes may be relevant to our Investigation, such as statements by third parties regarding his location on particular dates.

45. Also on 25 February 2011 Mr Thomson emailed Ms Carruthers as follows ([WIT.THO.004.0005](#)):

Hi Ailsa,

Craig Thomson Flight

Melbourne - Perth Flight OF 769 21st February 2003

Perth - Melbourne Flight OF 776 27th February 2003

Simply not in Sydney at all.

Regards

Craig Thomson

46. On 7 April 2011 Mr Thomson left a voicemail message with Ms Carruthers. A file note of that voicemail message records the following ([FWA.013.0001](#)):

File Note of voicemail message left by Craig Thomson at 4.16pm on 7 April 2011

Craig Thomson left a voicemail that the information that he provided to FWA 'the other day' has also now been provided to Fairfax, who have made an offer with the result that they have settled the defamation claim. The information that Thomson provided about his whereabouts and so forth has led to that settlement. He has settled with both HSU and Fairfax.

Craig Thomson offered to confirm this information in writing to FWA if considered necessary by FWA. His mobile number is 0428 469 577.

47. On 12 April 2011 FWA sent a letter by email to Mr Thomson referring to the voicemail message that he left with Ms Carruthers on 7 April 2011. The substantive portions of this letter state as follows ([WIT.THO.005.0006](#)):

Dear Mr Thomson,

...

I refer to a voicemail message that you left with Ailsa Carruthers on 7 April 2011 in which you advised that 'the information' that you had provided to Fair Work Australia (FWA) 'the other day' has now also been provided by you to Fairfax, who have made 'an offer'. The defamation claim has now been settled and you have stated that the information that you have been able to give Fairfax about your 'whereabouts and so forth' has led to that settlement.

In referring to 'the information' that you provided to FWA 'the other day', I presume that you are referring to the email that you sent to Ailsa Carruthers on 25 February 2011 which stated as follows:

Hi Ailsa.

Craig Thomson Flight

Melbourne - Perth Flight UF769

Perth - Melbourne Flight QF776

Simply not in Sydney at all.

Regards

Craig Thomson

This is the only information of which I am aware that you have provided to FWA since your interview on 15 September 2010. If, however, you believe that there is further information beyond that which was contained in your email which has resulted in the settlement then I would appreciate it if you could also provide that information to FWA.

48. Later that same day on 12 April 2011, Mr Thomson contacted Ms Carruthers by SMS. This exchange is recorded in a file note made by Ms Carruthers as follows ([WIT.THO.005.0005](#)):

At 8.32 pm AEST on Tuesday, 12 April 2011 I received a text message to my mobile phone [number] from telephone number +61 428 469 577 stating the following:

'Hi Ailsa it is Craig Thomson here. I am still away and will be for a few more weeks o/s in different time zones. Is it convenient for me to call you on this number about 4.30pm your time tmw? Regards Craig'

'Hi Craig. That would be fine to speak tomorrow on this number at 4.30 AEST. Regards, Ailsa'

Shortly thereafter, I received a further message from telephone number +61 428 469 577 as follows:

'Thanks. Talk tmw regards Craig'

49. On 13 April 2011 Mr Thomson rang Ms Carruthers, who made the following file note of her conversation with Mr Thomson ([WIT.THO.005.0003](#)):

File Note of telephone conversation with Craig Thomson, MP

At 4.26pm on Wednesday, 13 April 2011 I received a telephone call from Craig Thomson, MP to my mobile [number].

CT is currently in Paris talking to the OECD. He has received the email I sent yesterday containing a letter from Terry Nassios regarding information that CT provided to FWA by email on 25 February 2011 concerning flights to Perth.

CT is overseas until 8 May 2011 talking to the European Bank and various other bodies about economic issues.

CT has accepted an offer from the Sydney Morning Herald to settle the defamation proceedings. He has now 'got rid of' proceedings with both SMH and HSU. A date had been set down for hearing of the defamation matter in June 2011 but he was able to provide further evidence to Fairfax when doing interrogatories. This evidence (which has not been provided to FWA) concerns people who are able to corroborate his whereabouts on 2 different dates in 2007. He has further evidence concerning a 3rd date that has been provided to Fairfax showing that he was staying in Sydney with people rather than in a hotel.

CT has evidence of 3 dates in total (other than Perth) from people who can corroborate his whereabouts on that particular date.

CT understands from his lawyers that Fairfax also obtained an opinion from a handwriting expert regarding signatures on transaction slips but CT is unable to provide that evidence to FWA as Fairfax paid for the handwriting expert and that evidence is not in CT's possession.

CT was reluctant to take the settlement offer but, for someone in his position, winning would not have been great publicity either. CT's wife is pregnant and he doesn't want to cause her stress.

I advised CT that it would be best to provide whatever evidence he has about these 3 occasions to FWA in writing. He should provide as much information as possible (including supporting documentation). I cannot tell CT what weight Terry Nassios will place upon such evidence, if any.

I advised CT that it would be fine to wait until his return to Australia to send us the additional evidence.

CT stated that he would send a letter or email to FWA either in the next week or so or upon his return to Australia.

CT stated that 'people from time to time' had raised with him the fact that Kathy Jackson has a relationship with a member of the FWA Tribunal. CT stated that he understands that the process is 'totally separate'.

I advised CT that the power to conduct investigations into financial affairs of a registered organisation resides with the General Manager of FWA, Tim Lee, and that the General Manager is not a member of the Tribunal. The General Manager's powers of investigation have been delegated to Terry Nassios to the extent that that is permissible under the Act since Terry is the senior manager who is responsible for registered organisations. I advised CT that both Terry and I are public servants carrying out powers under the relevant legislation as required by Parliament and that, to coin an old phrase, both Terry and I act 'without fear or favour'. On a more personal level, I noted that I have never actually spoken to the member of the Tribunal with whom Kathy Jackson has a relationship.

50. Mr Thomson provided further information to FWA regarding allegations that he used credit cards to pay for escort services in his email of 18 May 2011 that is set out at

paragraph 15 of this chapter ([FWA.021.0007](#)). In that email he stated that '[a]mongst others my (former) wife, Christa, was prepared to provide evidence as to my whereabouts that would prove it was impossible for me to be at the escort agencies on the dates specified; including being with me on the trip to Perth. Other direct evidence was to be adduced that Christa was with me at the precise times the card was being used in locations in Sydney'.

Other evidence which is relevant to this transaction

51. Mr Thomson's Diners Club statement dated 20 February 2003 ([HSUNO.013.0034](#)) discloses that he incurred the following charges:
 - a. on 28 January 2003:
 - i. \$856.62 for a Qantas return flight from Melbourne to Perth on 21 February 2003;
 - ii. \$856.62 for a Qantas return flight in name of Christa Thomson from Melbourne to Perth on 21 February 2003; and
 - iii. \$856.62 for a Qantas return flight in name of Karene Walton from Melbourne to Perth on 21 February 2003.
 - b. on 18 February 2003 he spent \$115.90 at the Westin Hotel in Sydney.
52. Mr Thomson's Diners Club statement dated 20 March 2003 ([HSUNO.013.0043](#)) discloses that he used his Diners Club card to pay for the following cabcharge fares:
 - a. On 17 February 2003:
 - i. \$31.64 for 'Airport to City';
 - ii. \$22.20 for 'City to Suburbs'.
 - b. On 18 February 2003 for 'Suburbs to Suburbs' \$26.31;
 - c. On 21 February 2003:
 - i. \$50.16 for 'City to Airport' (charge is to Taxi Brokers Pty Ltd, not cabcharge); and
 - ii. \$41.85 for 'Suburbs to Suburbs'.
 - d. On 23 February 2003 for 'Home to Hotel' \$40.50;
 - e. On 24 February 2003:
 - i. \$40.74 taxi fare for 'Suburbs to City'; and
 - ii. \$40.18 taxi fare for 'Hotel to Home'.
 - f. On 26 February 2003:
 - i. \$39.29 for 'Hotel to Office'; and
 - ii. \$28.42 for 'Hotel to City'
 - g. On 27 February 2003 \$32.30 for 'Hotel to City'.
53. Mr Thomson's CBA Mastercard statement dated 25 February 2003 ([HSUNO.014.0006](#)) discloses that:

- a. on 18 February 2003 he withdrew \$300 in cash from a Rediteller ATM in Martin Place, Sydney; and
 - b. on 24 February 2003 he withdrew \$300 in cash from a Westpac ATM in Fremantle, WA.
54. Mr Thomson's Diners Club statement dated 20 March 2003 ([HSUNO.013.0043](#)) discloses that he used his Diners Club card to pay:
- a. \$494.35 to the Esplanade Hotel Fremantle on 26 February 2003; and
 - b. \$782.90 to the Esplanade Hotel Fremantle on 27 February 2003.
55. A meeting of the National Executive was held in Perth on 25 and 26 February 2003. The minutes of that meeting ([HSUNO.024.0055](#)) disclose that both Mr Thomson and Mr Jackson attended this meeting.
56. There is no specific evidence to verify the exact date on which Mr Thomson returned from Perth. However, the transactions on his Diners Club statement dated 20 March 2003 set out above at paragraph 54 of this chapter suggest that Mr Thomson could not have returned to Melbourne earlier than 27 February 2003. This is the last date on which either of Mr Thomson's credit cards records a transaction in Western Australia.

Analysis

57. The documents discussed above at paragraphs 51 to 56 of this chapter suggest that:
- a. On 21 February 2003 Mr Thomson and his wife, Christa Thomson, flew to Perth;
 - b. Mr Thomson attended the National Executive Meeting in Perth on 25 and 26 February 2003;
 - c. Mr Thomson returned to Melbourne no earlier than 27 February 2003;
 - d. Mr Jackson was also in Perth on 25 and 26 February 2003 for the National Executive meeting;
 - e. On 26 February 2003, during his stay in Perth, \$330 was charged by Aboutoun Catering to Mr Thomson's CBA Mastercard. It is evident that Mr Thomson was in Perth on that date; and
 - f. Mr Thomson took his CBA Mastercard with him to Perth and used it to withdraw \$300 from an ATM in Western Australia on 24 February 2003.
58. The documents do not disclose the date on which Christa Thomson returned to Melbourne.
59. Additionally, Mr Thomson was in Sydney the previous week, on 17 and 18 February 2003. On 18 February 2003 he withdrew \$300 from his CBA Mastercard at Martin Place (see paragraph 53 of this chapter) and charged \$115.90 at the Westin Hotel, Sydney (see paragraph 51.b of this chapter).
60. A credit card payment which is processed by an old style manual franking machine is not always posted by the merchant on the same day that the credit card imprint is made. When processing a credit card payment using a franking machine, the

merchant first makes an imprint of the customer's credit card on a pre-numbered form. This form contains the merchant's company details. After the customer has signed the form, the merchant provides a copy of the form to the customer and retains the other copies. The merchant must then itemise each charge on a 'Credit Card summary form' and deposit it with the bank. The bank then processes the charge. Some merchants who use franking machines wait for a number of charges to be processed before depositing a credit card summary form with the bank for processing.

61. It is therefore well known that transactions which are incurred by a manual franking machine are not always deposited by the merchant who received payment on the same day that the transaction occurred. It is not uncommon for such transactions to be posted by a merchant several days after they have occurred.
62. Additionally, evidence that is set out below at paragraph 125.a of this chapter indicates that at least one escort agency in Sydney was still using manual franking machines as late as August 2007.
63. Despite Mr Thomson's claim that, on the date that a transaction occurred, he was often in a different state to the state in which the transaction with an escort services establishment was made using his credit card, this is the only occasion where evidence before FWA suggests that he was not in the state where the transaction occurred on the date that it occurred.
64. In any event, the Yellow pages website for Aboutoun Catering, which is discussed above at paragraph 41 of this chapter, states that Aboutoun Catering provides escorts in all states except Victoria and Queensland.
65. The possibility that Mr Thomson could have used his credit card to procure these services in Perth from Aboutoun Catering, or could have procured the services in Sydney the previous week, means that the fact that he was not in Sydney on 26 February 2003, of itself, carries little weight.
66. Mr Thomson's claim that another person may have used his CBA Mastercard to obtain escort services from Aboutoun Catering while he was in Perth, and his suggestion that this person may have been Mr Jackson, is inherently unlikely, but is made more so by the fact that:
 - a. it is clear that Mr Thomson took his CBA Mastercard with him to Perth, and used it while in Perth;
 - b. Mr Thomson has not claimed that his CBA Mastercard was stolen or lost at this time; and
 - c. Mr Jackson was also in Perth on the day that Mr Thomson's CBA Mastercard statement records the transaction with Aboutoun Catering.
67. On the basis of the matters set out at paragraphs 39 to 56 of this chapter, I consider that Mr Thomson used his CBA Mastercard to purchase \$330 in escort services from Aboutoun either during his visit to Sydney on 17 February 2003 or while in Perth on 26 February 2003.

11 March 2003 - Keywed

The transactions

68. Mr Thomson's CBA Mastercard statement dated 26 March 2003 ([HSUNO.014.0007](#)) discloses a payment of \$570 on 11 March 2003 to Keywed.
69. Mr Thomson's Diners Club card statement dated 20 March 2003 ([HSUNO.013.0043](#)) discloses a second payment of \$570 on 11 March 2003 to Keywed.

Details about Keywed

70. The Affidavit of Paul Svilans sworn on 24 September 2010 and filed in the Fairfax proceeding exhibits WHOIS domain registration information from Network Solutions accessed on www.networksolutions.com/whois-search/sydneyoutcalls.com ([FAI.002.0026](#)) 13 May 2010. This document identifies the administrator of the domain name 'sydneyoutcalls.com' as 'J and K Keywed' of 573 Elizabeth St, Surry Hills. The registrant is listed as 'Keywed Pty Ltd', more specifically, John and Kati Traunwieser, of 573A Elizabeth St, Surry Hills. Keywed's account details are provided for purchases of Sydney Outcalls escort agency (**Sydney Outcalls**).
71. On 20 September 2010 the website www.sydneyoutcalls.com stated ([FAI.002.0046](#)) that Sydney Outcalls has the 'finest escorts in Sydney'. The Sydney Outcalls website further states that ladies 'are available to gentlemen in the privacy of their hotel or home, for all occasions'.

Mr Thomson's explanation for the transaction

72. At interview with FWA Mr Thomson was asked about the transactions dated 11 March 2003 appearing on his credit card statements with Keywed (Thomson PN 1927 - 1933):
 - MR NASSIOS: ...In terms of Keywed, looking at the records of the credit cards on 11 March 2003, your credit card statement says that you charged two separate transactions with Keywed Pty Ltd to the two HSU credit cards, \$570 to your Diners card and \$570 to your Commonwealth MasterCard. Do you recall these transactions?
 - MR THOMSON: No, I don't.
 - MR NASSIOS: Can you offer any explanation why these transactions, which I think as you've indicated is an escort agency, appear on your card statement?
 - MR THOMSON: I'm told it's an escort agency.
 - MS CARRUTHERS: I'll just pass you some documentation.
 - MR NASSIOS: I think we're able to confirm that.
 - MR THOMSON: Yes. No.
73. When asked to explain the expense incurred with Keywed, Mr Thomson claimed that this was an organisation mentioned in relation to the Victoria No 1 Branch issues with

credit cards. Mr Thomson also stated that all escort services were recorded in Sydney and that he also travelled to other places (Thomson PN 1966 - 1969).

MR NASSIOS: Are you able to provide any explanation as to why these transactions have occurred?

MR THOMSON: No, other than I understand Keywed was the organisation that has been mentioned in relation to some of the Victoria number 1 branch issues with credit cards. That's the only explanation. I also make - I'm not sure if you've finished on that. I was going to make a general point.

MR NASSIOS: Well, I'd ask you to make your general point.

MR THOMSON: They're all in Sydney as well, all of these. I travel much more than just Sydney. It seems unusual that they're all just in Sydney, but that's by way of observation.

Other evidence which is relevant to this transaction

74. Mr Thomson's Diners Club statement dated 20 March 2003 ([HSUNO.013.0043](#)) discloses a payment of \$82.15 made on 11 March 2003 to the Merchant Court Hotel.
75. The website www.tripadvisor.com.au ([PUB.008.0052](#)) states that the Merchant Court Hotel located at 68 Market Street, Sydney has become the Swissotel Sydney.
76. Mr Thomson's Diners Club statement dated 20 April 2003 ([HSUNO.013.0052](#)) discloses the following payments:
 - a. \$32.86 on 10 March 2003 to Cabcharge, described as being for 'City to Suburbs';
 - b. \$35.63 on 10 March 2003 to Cabcharge, described as being for 'City to Hotel';
 - c. \$33.30 on 10 March 2003 to 'RSL Ex Servicemens Cabs Coop';
 - d. \$22.20 on 11 March 2003 to Cabcharge, described as being for 'City to Suburbs'; and
 - e. \$42.07 on 11 March 2003 to Cabcharge, described as being for 'Office to Airport'.

Analysis

77. On the basis of the matters set out above at paragraphs 68 to 76 of this chapter, it appears that:
 - a. Mr Thomson was in Sydney on 11 March 2003, and used his Diners Club card on that date to make a purchase of \$82.15 at the Merchant Court Hotel in Sydney;
 - b. The amount of \$33.30 was charged to Mr Thomson's Diners card by RSL Cabs, a Sydney taxi company based at Darlinghurst on 10 March 2003;
 - c. On 11 March 2003 Keywed charged separate amounts of \$570 to:
 - i. Mr Thomson's Diners Club card; and

- ii. Mr Thomson's CBA Mastercard.
 - d. It appears Mr Thomson caught a taxi to the Airport that same day, perhaps to fly to Melbourne.
78. It appears that Mr Thomson was in Sydney on 10 March 2003. In particular it is possible that he stayed at the Merchant Court Hotel, in downtown Sydney, on that day and paid for his incidental hotel expenses upon check out the following day.
79. I consider that Mr Thomson made two purchases (each for \$570) of services from Sydney Outcalls on 11 March 2003, that one of these purchases was made using his CBA Mastercard, while the other was made using his Diners Club card.
80. It is not apparent why two separate amounts were charged by Keywed, one to each of Mr Thomson's two credit cards. But given that neither transaction appears to have been reversed it seems likely that the separate charges were for two separate transactions.

7, 8 and 9 April 2005 - Keywed

The transactions

81. Mr Thomson's Diners Club statement dated 20 April 2005 ([HSUNO.013.0248](#)) discloses the following series of transactions with Keywed on 7 and 8 April 2005:
- a. a payment of \$570 on 7 April 2005;
 - b. a credit of \$570 on 8 April 2005;
 - c. two further payments, each of \$550, on 8 April 2005; and
 - d. two further credits, each of \$550, on 8 April 2005.
82. The three payments and three credits each total \$1,670. Since the sum of credits equal the sum of payments the net result of these six transactions is that all monies paid to Keywed using Mr Thomson's Diners Club card on 7 and 8 April 2005 were refunded by Keywed on 8 April 2005.
83. Mr Thomson's CBA Mastercard statement dated 27 April 2005 ([FAI.002.0024](#)) discloses a payment of \$2,475 to 'Keywed Pty Ltd Restaur (sic) Surry Hills AUS' on 9 April 2005, that is two days after charges by the same merchant were made to his Diners Club card.

Details about Keywed

84. Details about Keywed are set out in paragraphs 70 to 71 of this chapter.

Mr Thomson's explanation for these transactions

85. During Mr Thomson's interview with FWA the following exchange occurred (Thomson PN 1934 - 1939):

MR NASSIOS: On 7 April 2005 and 8 April 2005 a total of \$1670 was charged to your HSU Diners Club card in three separate transactions from the same business. Those three transactions were subsequently

reversed on 8 April 2005 and a payment to Keywed of \$2475 was charged to your CBA MasterCard on 9 April 2005. Are you able to provide any explanation?

MR THOMSON: No.

MR NASSIOS: The national executive held a special executive meeting at the Swissotel in Sydney on 7 April 2005 to discuss the HSU response to the Howard government IR proposals.

MR THOMSON: Yes.

MR NASSIOS: Does this in any way provide an explanation for that expenditure

MR THOMSON: Well, that's one of the few that I think I'm actually in the state at the same time, but that's - I have theories and views, but they're not going to be of assistance to you here today.

86. Mr Thomson was asked by FWA why there are charges relating to escort agencies which appear to have been subsequently reversed (Thomson PN 1966 - 1967):

MR NASSIOS: I'll ask you this question and ask you if you're able to provide any explanation. In contrast to the sums charged at establishments that appear to be brothels such as Tiffany's and A Touch of Class, the sums charged to the HSU credit cards at Keywed, which provides, escorts, are considerably higher. In addition, whenever charges are made to Keywed there is always - there is more than one transaction charged to the card at around the same time. By way of example, two transactions of \$570 each on 11 March 2003, two separate transactions of \$550 and one transaction of \$570 on 7 and 8 April 2005 were reversed and a new charge of \$2475 was made and there are two separate transactions of \$770 on 16 August 2007. Are you able to provide any explanation as to why these transactions have occurred?

MR THOMSON: No, other than I understand Keywed was the organisation that has been mentioned in relation to some of the Victoria number 1 branch issues with credit cards. That's the only explanation. I also make - I'm not sure if you've finished on that

87. During the radio interview with Mr Smith on 2UE on 1 August 2011 (PUB.005.0011 at 0013) the following exchange occurred:

MICHAEL SMITH: Very well. You'd be aware of a credit card voucher that was produced in Supreme Court proceedings. It's got your name on it, Craig Thomson, Health Services Union. It's got your driver's license number on the back of it, it's got your signature which matches your driver's license on the front and the amount is for two-thousand-four-hundred and- seventy-five dollars that went to Sydney Outcall Services - that's their trading name. It was Keywed Proprietary Limited. How did all those details get on that voucher?

CRAIG THOMSON: Well look, Michael, thanks for having me on and giving me the opportunity, because you did say some things last week and you've given me the opportunity to respond to those and I will as best I can.

Contrary to what you actually said last week when you were talking about it, I actually reached an agreement with Fairfax in March ...

MICHAEL SMITH: This has got nothing to do with Fairfax, mate. I'm asking you how your driver's license...

CRAIG THOMSON: Sure.

MICHAEL SMITH: ...your signature, all those details, your credit card got on that voucher.

CRAIG THOMSON: I understand that and I'm going to the answer the answer in terms of what I can answer for you. You had a pretty free go and you've invited me on to put my side and I thank you for that and that's what I'm trying to do at the moment, Michael. So I took action against Fairfax and I also took action against the Health Services Union.

MICHAEL SMITH: Hang on, mate, I'm repeating it. I'm saying your signature is on that voucher, your driver's license...

CRAIG THOMSON: Well, we...

MICHAEL SMITH: ... number has been transcribed onto the back of it. How did all that get there?

CRAIG THOMSON: Well it's - there - I'm not saying that's my signature, for a start. That's the first thing that's there.

MICHAEL SMITH: Okay, so has somebody forged your signature for the procurement of those services and produced your credit card?

CRAIG THOMSON: Well, it certainly wasn't me. And in fact, on over half of the occasions that I'm alleged to have been using that card in those sorts of establish ...

...

88. During the radio interview Mr Thomson admitted that he approved an invoice for payment containing an expense of Keywed for \$2,475 transacted on 9 April 2005. He said that he did not understand what the expense was in the credit card statement and that he found out later what it related to:

MICHAEL SMITH: Okay. Craig, when you got the credit card statement for that month with two-thousand-four-hundred-and-seventy-five dollars appearing...

CRAIG THOMSON: Michael, I've said the difficulty I have in terms of going through these issues. I've tried to explain it. ..

MICHAEL SMITH: Hang on a sec, mate. It's just a simple question.

CRAIG THOMSON: ...around it. Yep.

MICHAEL SMITH: A simple question, Craig.

CRAIG THOMSON: Mmhmm.

MICHAEL SMITH: Did you authorise it getting paid?

CRAIG THOMSON: In terms of the actual bills that are being paid? Yes, I authorised all the credit card bills and there are a number of people who had credit cards.

MICHAEL SMITH: Why did you authorise the payment from the Health Services Union account to an escort agency in Sydney?

CRAIG THOMSON: Well I didn't know it as an escort agency and can I say, Michael, that there are legitimate criticisms in terms of some of the processes and procedures of the Health Services Union.

...

MICHAEL SMITH: Yeah, okay. So you signed it off?

CRAIG THOMSON: Mmhmm.

MICHAEL SMITH: You approved ~ for payment?

CRAIG THOMSON: Yep.

MICHAEL SMITH: And you didn't ask questions about it?

CRAIG THOMSON: Well on the face of it, I didn't understand what it was, Michael. But I was told ...

MICHAEL SMITH: When did you find out, Craig?

CRAIG THOMSON: When we started to delve into those issues.

...

Other evidence which is relevant to this transaction

89. In addition to the registered domain information referred to at paragraph 70 of this chapter, the affidavit of Paul Svilans referred to at paragraph 70 ([FAI.002.0026](#)) also exhibits the following documents:

- a. copies of Keywed credit card receipts ([FAI.002.0035](#)) identifying CBA Mastercard transaction records which contain a credit card receipt dated 8 April 2005 for \$2,475 which has been imprinted on Mr Thomson's CBA Mastercard, containing a signature which appears to be Mr Thomson's. Written on the back of the receipt is the following:

'NSW D/L 5298YY
card number: 0005975593
exp 31st Jul 09'

- b. a certified copy of Mr Thomson's driver's license number 5298YY, produced by Mr Thomson's lawyers ([FAI.002.0037](#)).
- c. documents from the Roads and Traffic Authority of NSW which specify that Mr Thomson was the holder of the NSW driver's licence 5298YY as at 8 April 2005 and 15 August 2007 ([FAI.002.0038](#)).
- d. a copy of the HSU media release dated 19 April 2006 which identifies Mr Thomson's mobile number as 0419 498 691 ([FAI.002.0040](#)).

- e. a copy of Mr Thomson's media release dated 19 April 2006 which identifies his mobile number as 0419 498 691 (FAI.002.0042).
 - f. copies of records produced by Telstra for phone number 0419 498 691 (Mr Thomson's mobile phone) (FAI.002.0043) for the period of 2 to 9 April 2005 which identify the following phone calls made from that number:
 - i. 7 April 2005 at 23:13 - 9699 7018 for 3:30 minutes; and
 - ii. 8 April 2005 at 00:05 - 9699 7018 for 0:30 seconds.
 - g. copies of internet pages from www.sydneyoutcalls.com (FAI.002.0046) which show that the phone number for 'Sydney Escorts - Room Service' is 02 9699 7018.
90. Mr Thomson's Diners Club statement dated 20 April 2005 ([HSUNO.013.0002](#)) discloses the following transactions:
- a. a payment of \$38.85 on 6 April 2005 to GM Cabs, described as being for 'Airport to City';
 - b. a payment of \$49.50 on 6 April 2005 to Emjay Taxis, described as being for 'City to Airport'; and
 - c. a payment of \$392.85 on 8 April 2005 to Swissotel.
91. The National Executive held a special meeting in Sydney on 7 and 8 April 2005 to discuss the HSU's response to the government's proposed industrial relations amendments ([HSUNO.018.0322](#)).

Analysis

92. On the basis of the matters set out above at paragraphs 81 to 91 of this chapter, it appears that:
- a. On 6 April 2005 Mr Thomson flew to Sydney for the Special National Executive Meeting to examine the response to Workchoices, held at the Swissotel the next day;
 - b. During the afternoon and the evening of 7 April 2005 Mr Thomson made a number of phone calls on his mobile phone between 1:06pm and 11:04pm. ([FAI.002.0043](#)) These records also indicate that he called the Sydney Outcalls telephone number for Room Escort Services using his mobile telephone on 7 April 2005 at 11.13pm, and again on 8 April 2005 at 12.05am;
 - c. On 7 April 2005 Keywed charged \$570 to Mr Thomson's Diners Club card;
 - d. On 8 April two further Keywed charges of \$550 were each debited to Mr Thomson's Diners Club card. However, both charges and the earlier charge of \$570 were subsequently reversed that same day and re-credited to the Diners Club card; and
 - e. The Keywed credit card franking machine receipt for \$2,475 imprinted on Mr Thomson's CBA Mastercard is dated 8 April 2005. It also contains Mr Thomson's signature and his drivers' licence details were handwritten on the

back of the receipt. This charge was subsequently processed by the CBA on Mr Thomson's Mastercard the following day on 9 April 2005;

93. It therefore appears that the three Keywed purchases initially charged on 7 and 8 April 2005 to Mr Thomson's Diners Club card were subsequently charged on 9 April 2005 to Mr Thomson's CBA Mastercard, as was a further charge of \$805.
94. I consider that Mr Thomson telephoned Sydney Escorts - Room Service at 11:13pm on 7 April 2005 and again at 12:05am on 8 April 2005, and that during these phone calls he secured escorts from Sydney Outcalls. Although Mr Thomson initially paid for these services in three separate transactions totalling \$1,670 using his Diners Club card over the evening of 7-8 April 2005, these transactions were subsequently reversed by Keywed and Mr Thomson was then charged a larger sum (of \$2,475) from Keywed to his CBA Mastercard on 9 April 2005.
95. Mr Thomson claims that these transactions were incurred fraudulently by another person using his credit cards. However the following matters overwhelmingly support an inference that it was Mr Thomson who used his own credit cards to make these transactions:
 - a. Mr Thomson used his mobile telephone to call Keywed twice on the evening of 7 April 2005;
 - b. seven separate transactions were processed by Keywed between 7 and 9 April 2007 on Mr Thomson's credit cards (six on the Diners Club card, and one on the CBA Mastercard) which means that, if the transactions were all incurred by another person, that person must have been able to transact on both cards;
 - c. Mr Thomson's driver's licence details appear on the back of the receipt from Keywed for \$2,475;
 - d. A signature which bears a strong likeness to Mr Thomson's signature appears on the receipt from Keywed for \$2,475; and
 - e. Mr Thomson authorised payment of both the Diners Club statement and the CBA Mastercard statement on which the transactions appear.
96. It is not clear why Mr Thomson reversed the initial purchases which were made using his Diners Club card, and re-incurred a larger charge on his CBA Mastercard.
97. The fact that the \$2,475 Keywed transaction was processed with an old style credit card franking machine suggests that Mr Thomson may have visited the Keywed premises. Alternatively it is possible that one of the escorts who attended upon Mr Thomson in his hotel room or at some other location carried such a device with them.
98. I consider that Mr Thomson made a purchase of services using his CBA Mastercard to the value of \$2,475 from Keywed on or about 8 April 2005.

11 June 2005 - Nolta Pty Ltd

The transaction

99. Mr Thomson's CBA Mastercard statement dated 28 June 2005 ([HSUNO.010.0007](#)) discloses a payment of \$418 on 11 June 2005 to Nolta Pty Ltd Surry Hills.
100. A credit card receipt dated 11 June 2005 from Nolta Pty Ltd for \$418 ([HSUNO.018.0288](#)) has been franked over Mr Thomson's CBA Mastercard and also bears a signature which appears to be Mr Thomson's.

Details about Nolta Pty Ltd

101. On 2 November 2011 FWA searched the Sydney City Council website www.cityofsydney.nsw.gov.au for searches related to Nolta Pty Ltd (**Nolta**) ([PUB.010.0147](#)). The website search revealed a document described as '195th Council Minutes - 15 Oct 1997' located at <http://www.cityofsydney.nsw.gov.au/Council/documents/meetings/FormerSCCMeetings/195th.pdf> (**the Council meeting minutes**). Page 1,310 of the Council meeting minutes includes the following (**our emphasis**):

'5. Albion Street, Nos 93-101, Surry Hills - Alterations and Additions to existing Brothel - Development Application (U97-00589)

(A) That the Council, as the responsible authority, grants its consent to the application submitted by Nolta Pty Ltd, with the authority of Mr N Vassiliadis, for permission to carry out alterations and additions to the existing brothel known as '**Tiffanys**', subject to the following conditions, namely:-

(1) That the development shall be generally in accordance with plans DWG 97/21 Sheet 1;

(2) That suitable signage shall be erected within the premises requesting that clients leaving the premises leave the premises in a quiet and orderly manner and take into consideration the amenity of adjoining residents;

....

(7) That the hours of operation shall be restricted to between 11.00 a.m. and 5.00 a.m. daily'

102. On 3 November 2011 FWA searched the ASIC website for the business name Nolta Pty Ltd. The ASIC search ([PUB.010.0141](#)) states that Nolta:
 - a. has a registered office is 93 Albion Street, Surry Hills, NSW 2010;
 - b. is currently registered as a Australian proprietary company limited by shares;
 - c. the Australian Business Number is 62 002 880 382;
 - d. was formerly known as Olastraw Pty Ltd; and
 - e. is a registered business located at Surry Hills NSW 2010 formerly named 'Olastraw Pty Ltd'.
103. On 2 December 2011 FWA accessed the website www.tiffanysgirls.com.au. A page on that website ([PUB.010.0001](#)) states that Tiffany's was established 37 years ago

and is 'one of Sydney's classiest bordellos' located at 99 Albion Street, Surry Hills, Sydney. The website states that the phone numbers for Tiffany's are +612 9212 1195 or + 612 9212 3804.

104. The rates on the website include \$190 for one hour at the bordello. The website also states that the escort service is \$400 per hour, and that a minimum of 3 hours is required. Additionally, the website states that Tiffany's only provides escorts to 5 star hotels within the CBD.

Mr Thomson's explanation for the transaction

105. During the FWA interview the following exchange occurred (Thomson PN 1942 - 1953):

MR NASSIOS: 11 June 2005, \$418 was charged from your CBA MasterCard to Nolta Pty Ltd. Do you have any recollection of what that would be for?

MR THOMSON: No.

MR NASSIOS: That was the day of the New South Wales ALP conference. Does that in any way provide an explanation?

MR THOMSON: No. There were quite a few of the executive members in Sydney on that day.

MR NASSIOS: We have information that Nolta is a brothel called Tiffany's, and that [it] operates at 99 Albion Street, Surry Hills.

MR THOMSON: Yes.

MR NASSIOS: I apologise for interrupting you before. Can you offer any explanation about how your CBA MasterCard was used to spend \$418 at that establishment?

MR THOMSON: No, but I'm very happy if you can get video evidence of everyone going in that day. We'd be enormously happy.

MR NASSIOS: I'm going to show you in relation to that particular credit card event a slip that has your signature seemingly on it. Is that your signature.

MR THOMSON: It's similar to my signature. I'm not sure it's exactly my signature.

MR NASSIOS: Are you able to explain how - what purports to be your signature would appear on that payment slip?

MR THOMSON: My signature is one like a 12-year-old's. That's not exactly my signature, by the way, but it's every branch of the HSU had electronic copies of my signature and every office then had access to that. That was part of being able to make sure in short time we could have agreements signed by me, which was the obligation of the rules, but yes, I can't offer you any more than that.

Other evidence which is relevant to this transaction

106. Mr Thomson's Diners Club statement dated 20 June 2005 discloses the following transactions ([HSUNO.013.0272](#)):
- a. a payment of \$44.40 on 11 June 2005 to Cabcorp Australia Melbourne for a taxi fare described as: 'City to Airport';
 - b. a payment of \$34.41 on 11 June 2005 to Cabcharge for a taxi fare described as 'City to Wynyard';
 - c. a payment of \$8.72 on 12 June 2005 to Cabcharge for a taxi fare described as 'City to Taylor Square'; and
 - d. a payment of \$12.54 on 12 June 2005 to Cabcharge for a taxi fare described as 'Hotel to Hotel'.
107. Mr Thomson's CBA Mastercard statement dated 28 June 2005 ([HSUNO.010.0007](#)) indicates that on 13 June 2005 he used his CBA Mastercard to withdraw:
- a. \$300 from an ATM at the Qantas Departure Lounge at the Tullamarine Airport; and
 - b. a further \$500 from an ATM on Bourke Street, Melbourne.
108. Mr Thomson completed a memorandum ([HSUNO.010.0002](#)) in relation to a cash withdrawal of \$800 from his CBA Mastercard on 13 June 2005. In that memorandum he described the purpose of this cash withdrawal as being 'NSW ALP Conference'. Mr Thomson identified the date of this conference as 10 to 13 June 2005.

Analysis

109. On the basis of the matters set out above at paragraphs 99 to 108 of this chapter it appears that:
- a. On 11 June 2005, Mr Thomson caught a taxi to Melbourne airport to fly to Sydney for the NSW ALP conference that day. At some point that day he caught a taxi from the city to Wynyard, Sydney;
 - b. On 11 June 2005, Nolta charged \$418 to Mr Thomson's CBA Mastercard. Nolta is the escort agency in Surry Hills, Sydney, trading as 'Tiffany's';
 - c. This amount was charged to Mr Thomson's CBA Mastercard, which was physically presented by the person who paid for the transaction, franked with a Tiffany's credit card device and signed for with a signature that appears to have been Mr Thomson's;
 - d. On 12 June 2005, two taxi fares were charged to Mr Thomson's Diners Club card, one described as 'city to Taylor Square' and the other as 'hotel to hotel'. Taylor Square is in Darlinghurst, Sydney, approximately 500 metres from 99 Albion Street, Surry Hills. There are no other charges on that date to either Mr Thomson's Diners Club card or CBA Mastercard; and
 - e. Mr Thomson returned to Melbourne on Monday 13 June 2005 and made two cash withdrawals from ATMs in Melbourne on that day.

110. I consider that Mr Thomson used his CBA Mastercard to purchase \$418 of escort services from Tiffany's, most likely on-site at 99 Albion Street Surry Hills, during his stay in Sydney for the ALP Conference on 11 June 2005.
111. The following matters overwhelmingly support an inference that it was Mr Thomson who used his own credit cards to make these transactions:
- Mr Thomson was in Sydney on the day that the transaction was incurred;
 - the transaction was incurred using Mr Thomson's own CBA Mastercard, and the receipt issued by Nolta bears a signature which appears to be Mr Thomson's; and
 - On the day that the transaction occurred Mr Thomson took a taxi ride to a place approximately 500 metres from the premises in which Nolta operated.

26 August 2006 - Staff Call, Surry Hills

The transaction

112. Mr Thomson's CBA Mastercard statement dated 26 September 2006 ([HSUNO.014.0071](#)) includes a charge of \$660 from Staff Call Surry Hills, on 26 August 2006.

Details about Staff Call

113. On 22 June 2010 FWA searched the website www.aussieweb.com.au/directory/escort+agencies/nsw/surry+hills/2010. The Aussieweb directory identifies ([FWA.006.0021](#)) that 'A Touch of Class' was listed as located at 377 Riley Street, Surry Hills NSW 2010 and has the telephone number (02) 9212 2646.
114. On 28 July 2010 FWA received a Business Name extract from the NSW Office of Fair Trading register for 'Staff Call' ([FWA.006.0019](#)). The extract identified that Staff Call was an escort agency registered on 3 December 1986. According to the register the business traded from 'Unknown to 3.3.2008' and was not presently trading. The principal place of business from 3 December 1986 until 3 March 2008 was listed as 377 Riley Street, Surry Hills, NSW 2010.
115. On 2 August 2010 FWA conducted a search of the ASIC Register. The ASIC register revealed that the business number of A Touch of Class was 97881505 and that the business was currently registered. ([FWA.006.0022](#))
116. As at 21 October 2011 the Yellow Pages website lists 'A Touch of Class' as operating at 377 Riley St, Surry Hills, and states that the phone number is (02) 9212 2646.

Mr Thomson's explanation for this transaction

117. During the FWA interview the following exchange occurred (Thomson PN 1954 - 1959):

MR NASSIOS: 26 August 2006, \$660 was charged to your CBA MasterCard to Staff Calls, Surry Hills. Can you say what this expenditure was for?

MR THOMSON: No, I haven't heard of that one before.

MR NASSIOS: Well, we have information that Staff Call is a brothel called A Touch of Class operating at 377 Riley Street, Surry Hills. Can you offer an explanation for those transactions - - -

MR THOMSON: No.

MR NASSIOS: - - - being charged to your card?

MR THOMSON: No, I can't.

118. Mr Thomson's Diners club statement dated 20 September 2006 ([HSUNO.001.0476](#)) includes a charge of \$50.47 from Secure Parking Wynyard Lane on 25 August 2006.

119. There is no evidence available to FWA which suggests that Mr Thomson was not in Sydney or the Central Coast on 26 August 2006.

Analysis

120. On the basis of the matters set out above at paragraphs 112 to 119 of this chapter it appears that:

- a. On Saturday 26 August 2006 Staff Call, an escort agency in Surry Hills, Sydney, charged \$660 to Mr Thomson's CBA Mastercard. This is the only transaction recorded on either Mr Thomson's Diners Club card or CBA Mastercard on that date;
- b. Mr Thomson paid for parking in Wynyard Lane, Sydney, using his Diners Club card the previous day; and
- c. Staff Call was operating as an escort agency in August 2006.

121. I consider that Mr Thomson used his CBA Mastercard to purchase \$660 in escort services from the Staff Calls escort agency at 377 Riley Street, Surry Hills, on or about 26 August 2006.

16 August 2007 - Keywed

The transactions

122. Mr Thomson's CBA Mastercard statement dated 28 August 2007 ([HSUNO.001.0094](#)) discloses two separate payments of \$385 each on 16 August 2007 to Keywed Pty Ltd 'Restaur' Surry Hills.

Details about Keywed

123. Details about Keywed are set out in paragraphs 70 to 71 of this chapter.

Mr Thomson's explanation for the transactions

124. During the FWA interview the following exchange occurred (Thomson PN 1940 - 1941):

MR NASSIOS: On 16 August 2007 two further payments of \$385 each totalling \$770 were made on your CBA MasterCard to Keywed Restaurant Pty Ltd. Are you aware of that expenditure, or can you in any way offer an

explanation how these transactions would have been charged to your card?

MR THOMSON: Other than - as I've said, I think it was done fraudulently, but I don't know anything other than that. I can't offer you anything more than that.

Other evidence which is relevant to the transactions

125. The Affidavit of Paul Svilans referred to above at paragraph 70 of this chapter ([FAI.002.0026](#)) exhibits the following documents:
- a. copies of a Keywed credit card receipt dated 15 August 2007, containing a signature which appears to be Mr Thomson's. Written on the back of this receipt is the following:

NSW D/L 5298YY
card number: 0005975593
exp 31st Jul 09
 - b. copies of Telstra records for telephone number 0419 498 691 (Mr Thomson's mobile phone number) including for the period 9 -16 August 2007 inclusive which identifies the following phone calls:

16.08.07 at 00:55 - 9252 8877 Origin: 'Sydney CBD' for 0.07 seconds; and
16.08.07 at 00:55 - 9698 0159 Origin: 'Sydney CBD' for 3.17 seconds.
 - c. copies of internet pages from www.sydneyoutcalls.com ([FAI.002.0046](#)) which show that:
 - i. 'Sydney Escorts - Room Service' phone number is 02 9252 8877; and
 - ii. 'Sydney Escort Connections' phone number is 02 9698 0159.
126. Mr Thomson's Diners Club statement dated 20 August 2007 ([HSUNO.015.0236](#)) discloses the following transactions:
- a. a payment of \$212 on 14 August 2007 to Flairview Travel Pty Ltd, Sydney; and
 - b. a payment of \$47.50 on 16 August 2007 to Fraser Suites, of 488 Kent Street, Sydney.
127. On 7 November 2011 a search of the ASIC database (PUB.010.0116) identified that Flairview Travel Pty Ltd is now 'HotelClub Pty Ltd'.
128. The website www.hotelclub.com/corporate/default.asp ([PUB.010.0260](#)) states that Hotel Club (ABN 092 445 442) is a wholly owned subsidiary of Orbitz Worldwide Inc (NSYE: OWW), a leading global accommodation specialist website offering hotel and accommodation bookings for up to 12 months in advance.
129. A meeting of the Finance Committee was held by telephone on 15 August 2007 at 2.30pm ([HSUNO.020.0132](#)). An invoice dated 15 August 2007 from Enterprise Care Teleconferencing Pty Ltd ([HSUNO.006.0249](#)) indicates that Mr Thomson chaired that meeting and was dialled into the meeting on number 02 9229 4905 - which is a Sydney telephone number.

Analysis

130. On the basis of the matters set out above at paragraphs 122 to 129 of this chapter, it appears that:
- a. On 14 August 2007 Mr Thomson charged \$212 to his Diners Club card with Flairview Travel Pty Ltd, Sydney. On 16 August 2007 he made a payment of \$47.60 to Fraser Suites Sydney. It seems likely that Mr Thomson stayed at the Fraser Suites in Sydney on the evening of 14 and 15 August 2007 and that he charged \$47.50 in incidentals to his Diners Club card at checkout on 16 August 2007;
 - b. Mr Thomson was in Sydney on the afternoon of 15 August 2007, when he chaired a teleconference meeting of the Finance Committee;
 - c. Mr Thomson's telephone records show that on 15 August 2007 he called Sydney Rooms - Escort Service and Sydney Escort Connections at 12.55am; and
 - d. On 16 August 2007 two separate payments of \$385 to Keywed were made using Mr Thomson's CBA Mastercard.
131. I consider that on 15 August 2007 Mr Thomson stayed at the Fraser Suites, and purchased (in two transactions) escort services to the value of \$770 from Sydney Outcalls using his CBA Mastercard.
132. It appears that on 14 August 2007 Mr Thomson, or someone on his behalf, booked the Fraser Suites for the evening of 15 August 2007 at a cost of \$212 and paid for this booking using his Diners Club card. There is no evidence before the HSU which discloses any reason related to the business of the National Office which required Mr Thomson to book a hotel room in Sydney on that evening. Although Mr Thomson chaired a meeting of the Finance Committee at 2.30pm that day, he did so by telephone and there is no apparent reason why he needed to be in Sydney to do so.

Other expenditure by Mr Thomson which may be related to escort services

133. There is evidence before FWA which indicates that on three occasions Mr Thomson used his Diners Club card to pay for hotel accounts which included charges for telephone calls made from a telephone in his hotel room to escort agencies. While the cost of these telephone calls is trivial, these instances suggest that Mr Thomson was prone to engage the services of escorts when travelling on HSU business. This in turn makes it more likely that it was Mr Thomson, and not some other person, who used Mr Thomson's credit cards to engage in the transactions discussed above.
134. These three instances are discussed below.

11 April 2006 - The Boardroom of Melbourne

Evidence

135. Mr Thomson's Diners Club statement dated 20 April 2006 discloses the following transactions ([HSUNO.002.0333](#)):
- the payment of \$397.34 to Qantas Airways on 7 April 2006 for a flight from Sydney to Brisbane on 12 April 2006 (Booking reference YBF68H);
 - the payment of \$239.97 to Qantas Airways on 7 April 2006 for a flight from Brisbane to Melbourne on 12 April 2006 (Booking reference YBAN2G);
 - the payment of \$172.55 to Qantas Airways on 7 April 2006 for a flight from Melbourne to Sydney on 13 April 2006 (Booking reference YBKLLG);
 - the payment of \$264.95 to Qantas Airways on 13 April 2006 for a flight from Melbourne to Sydney on 13 April 2006 (Booking reference Z7AP5Y); and
 - the payment of \$11.50 to Pacific International Suites on 13 April 2006.
136. Two Qantas booking confirmations issued in Mr Thomson's name ([WIT.WIL.001.0336](#)) indicate that on 12 April 2006 Mr Thomson:
- departed Sydney on Qantas flight QF 528 at 1.05pm, and arrived in Brisbane at 2.35pm (booking reference YBF68H) ([WIT.WIL.001.0336](#)); and
 - departed Brisbane a little more than two hours later at 4.50pm on Qantas flight QF637, and arrived in Melbourne at 9.10pm (booking reference YBAN2G [WIT.WIL.001.0337](#)).
137. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.010.0058](#)) discloses that on 11 April 2006 he used his CBA Mastercard to withdraw \$500 from an ATM in Terrigal Beach NSW.
138. An undated Wotif Booking confirmation emailed to Mr Thomson ([HSUNO.002.0374](#)) confirms his booking at Pacific International Suites Melbourne for the night of 12 April 2006, at a cost of \$173.85.
139. A \$46.07 cabcharge tax invoice dated 13 April 2006 for Silvertop Vic 131008 states 'Pick up: City Dest: Airport' at 14:31. This cabcharge invoice indicates that Mr Thomson caught a taxi from Melbourne to the airport at approximately 2:31pm ([HSUNO.002.0350](#)).
140. A Qantas booking confirmation issued in Mr Thomson's name ([HSUNO.002.0367](#)) indicates that on 13 April 2006 he was booked to fly to Melbourne on Qantas flight QF 438 at 2.00pm and arrive at Sydney at 3.20pm (booking reference YBKLLG).
141. However a Qantas E-Ticket Itinerary and Receipt in Mr Thomson's name ([HSUNO.002.0325](#)) indicates that on 13 April 2006 he in fact departed Melbourne on Qantas flight QF0442 at 3.00pm and arrived at Sydney at 4.20pm (booking reference Z7AP5Y). The receipt indicates that Mr Thomson paid for this flight on his Diners Club card. It appears that Mr Thomson changed his ticket so that he departed Melbourne at 3:00pm rather than 2:00pm as originally intended.

142. An invoice dated 13 April 2006 from Pacific International Suites Melbourne ([HSUNO.002.0331](#)) (invoice number 3-255099), addressed to Mr Thomson, records a charge of \$11.50 for incidentals incurred during his stay in room #1010 on 12 April 2006. The invoice includes a telephone call made on 12 April 2006 at 10.02pm to telephone number 9699 1711. The invoice stated that the cost of this call was \$0.91.
143. On 24 August 2011 FWA accessed the Yellow Pages website listing, and a linked Yellow Pages advertisement, for 'The Boardroom of Melbourne' and identified telephone number 9699 1711 as that of 'The Boardroom of Melbourne' Escort Agency.

Explanation sought from Mr Thomson in relation to this transaction

144. On 30 August 2011 FWA wrote to Mr Thomson ([WIT.THO.006.0003](#)). That letter referred to the radio interview and included, relevantly, the following paragraphs:

I attach the following documents:

- 3.1.1 Pacific International Suites Melbourne invoice 30255099 in your name for \$11.50 in incidentals incurred during your stay in room #1010 on 12 April 2006. The invoice itemises a telephone call made on 12 April 2006 at 22:02 to 9699 1711.
- 3.1.2 Diners card statement dated 20 April 2006 itemising a charge from Pacific International Suites on 13 April 2006 for \$11.50.
- 3.1.3 Yellow Pages website printout accessed on 26 August 2011 identifying telephone number 9699 1711 as that of 'The Boardroom of Melbourne' Escort Agency and attached Yellow Pages advertisement for The Boardroom of Melbourne Escort Agency.

It appears from the documents set out at paragraphs 3.1.1 to 3.1.3 above that on 11 April 2006 you stayed at the Pacific International Suites in Melbourne and that, during your stay, a telephone call was made from your hotel room to 'The Boardroom' escort agency. You subsequently authorised payment of the Pacific International invoice that was charged to your HSU Diners Card on 13 April 2006.

In relation to these events, I invite you to provide me with the following information:

- k) Did you make the telephone call from Pacific International Suites as identified?
- l) If you did not make the telephone call, can you identify any other person who may have made the telephone call?
- m) If not, why did you authorise payment of the telephone charge?
145. The letter invited Mr Thomson to respond to the information sought in the letter on or before 5pm on Tuesday 13 September 2011.
146. On 13 September 2011 FWA received the response from Mr Thomson ([WIT.THO.006.0001](#)) which is referred to at paragraph 20 of this chapter.

Analysis

147. On the basis of the matters set out above at paragraphs 135 to 146 of this chapter, it appears that:
- a. On 7 April 2006 Mr Thomson, or someone on his behalf, booked flights for 12 April 2006 from Sydney to Brisbane and Brisbane to Melbourne, and for 13 April 2006 from Melbourne to Sydney departing at 2:00pm.
 - b. On 11 April 2006 Mr Thomson withdrew \$500 in cash using his CBA Mastercard from the ATM at Terrigal Beach, NSW.
 - c. On 12 April 2006 Mr Thomson flew from Sydney to Brisbane on flight QF528 at 2:35pm, and subsequently departed Brisbane on flight QF637 at 4:50pm, and arrived in Melbourne at 9:10pm. He caught a taxi from the Melbourne airport to the city, presumably to the Pacific International Suites.
 - d. After checking in Mr Thomson placed a call at 10:02pm from his hotel room number 1010 to the Boardroom escort agency.
 - e. On 13 April 2006 Mr Thomson paid for incidentals purchased during his stay at the Pacific International Suites the evening before using his Diners Club card. Included in the costs that Mr Thomson charged to his Diners Club card was the cost (\$0.91) of placing the phone call from his hotel room to the Boardroom Escort agency.
 - f. At some point that day Mr Thomson, or someone on his behalf, purchased a further flight from Melbourne to Sydney departing at 3:00pm. Mr Thomson caught that flight to Sydney and collected his car from Qantas Valet parking.
148. I consider that Mr Thomson used his Diners Club card to pay \$0.91 for a telephone call from his hotel room to The Boardroom escort agency during his stay in Melbourne on 11 April 2006.
149. In all the circumstances it is possible that Mr Thomson paid for services from the Boardroom escort agencies with the cash withdrawn from an ATM at Terrigal Beach using his CBA Mastercard the previous day, however the evidence does not permit a finding to this effect.

20 April 2006 - Young Blondes/Confidential models escorts

Evidence

150. Mr Thomson's Diners Club statement dated 20 April 2006 ([HSUNO.002.0333](#)) discloses a payment of \$494.26 to Qantas Airways on 7 April 2006 for a return flight from Sydney to Melbourne on 21 April 2006 (booking reference YBK9HN). The same Diners Club statement also discloses a payment of \$202.85 to Wotif.
151. Mr Thomson's CBA Mastercard statement dated 27 April 2006 ([HSUNO.010.0058](#)) discloses that on 20 April 2006 he used his CBA Mastercard to withdraw \$400 in cash from Cashcard/Caltex Forresters Beach NSW.

152. A Qantas Express ticket dated 20 April 2006 ([HSUNO.002.0071](#)) indicates that Mr Thomson travelled from Sydney to Melbourne on 20 April 2006, departing from Sydney at 4.30pm and arriving in Melbourne at 6.00pm, and that he returned the following day on a flight departing Melbourne at 3.30pm and arriving in Sydney at 4.50pm.
153. On an unknown date Wotif issued a booking confirmation / tax invoice and receipt in Mr Thomson's name verifying payment of \$202.85 for a room at the Grand Hyatt Melbourne on Thursday 20 April 2006 ([HSUNO.002.0375](#)).
154. An invoice dated 21 April 2006 from the Grand Hyatt hotel in Melbourne ([HSUNO.002.0069](#)) issued in Mr Thomson's name indicates charges of \$124.60 for incidentals incurred on 20 April 2006. These charges included charges totalling \$1.90 for two phone calls placed from room 2004 to the following telephone numbers:
 - a. 9495 2792; and
 - b. 9416 6222.
155. A receipt from the Grand Hyatt dated 21 April 2006 indicates that the sum of \$124.60 was paid by a Diners Club card. The receipt indicates that the Diners Club card includes the numbers '364365... 979' ([HSUNO.002.0063](#)).
156. On 26 August 2011 FWA accessed the Yellow Pages website and identified:
 - a. phone number 9495 2792 as belonging to the 'Young Blondes' escort agency; and
 - b. phone number 9416 6222 as belonging to 'Confidential Model Escorts' escort agency.
157. Mr Thomson's Diners Club statement dated 20 May 2006 discloses the following transactions:
 - a. a payment of \$235.40 to Qantas Airways on 20 April 2006 for a return flight from Sydney to Melbourne, departing Sydney on 20 April 2006;
 - b. a payment of \$65.50 to South Eastern Taxi Brokers on 20 April 2006 for a taxi fare described as for 'Suburb to Suburb';
 - c. a payment of \$63.81 to Caltex Starshop on 20 April 2006;
 - d. a payment of \$92 to Valet Parking Sydney Airport on 20 April 2006;
 - e. a payment of \$124.60 to the Grand Hyatt on Collins on 21 April 2006; and
 - f. a payment of \$46.18 to Cabcharge on 21 April 2006 for a taxi fare described as for 'Carlton to Melbourne Arpt'.

Explanation sought from Mr Thomson for this transaction

158. On 30 August 2011 FWA wrote to Mr Thomson ([WIT.THO.006.0003](#)). That letter referred to the radio interview between Mr Thomson and Mr Smith on 2UE on 1 August 2011 and included, relevantly, the following paragraphs:

I attach the following documents:

- 3.2.1 Diners card statement dated 20 May 2006 containing your signature itemising a charge by Grand Hyatt on Collins of \$124.60 on 21 April 2006.
- 3.2.2 Grand Hyatt Melbourne invoice 330391 in your name for \$124.60 in incidentals incurred during your stay in room #2004 on 20 April 2006. The invoice itemises charges including the following:
- Telephone call to 9495 2792
 - Telephone call to 9416 6222
- 3.2.3 Receipt of Grand Hyatt Melbourne dated 21 April 2006 at 08:38:34 for the amount of \$124.60.
- 3.2.4 Yellow Pages website printouts accessed on 26 August 2011 identifying the following:
- Telephone number 9495 2792 as that of 'Young Blondes' Escort Agency
 - Telephone number 94166222 as that of 'Confidential Model Escorts' and advertisement.

On the basis of documents set out at paragraphs 3.2.1 to 3.2.4 above it appears that on 20 April 2006 you stayed at the Grand Hyatt hotel in Melbourne and that, during your stay, two telephone calls were made from your hotel room to 'Young Blondes' escort agency and 'Confidential Model Escorts'. You subsequently authorised payment for the Grand Hyatt invoice that was charged to your HSU Diners Card on 21 April 2006.

In relation to these events, I invite you to provide me with the following information:

- n) Did you make the telephone calls from the Grand Hyatt hotel as identified?
- o) If you did not make the telephone calls, can you identify any other person who may have made the telephone calls?
- p) If not, why did you authorise payment of the telephone charges?
159. The letter invited Mr Thomson to respond to the information sought in the letter on or before 5pm on Tuesday 13 September 2011.
160. On 13 September 2011 FWA received the response from Mr Thomson which is set out above at paragraph 20 of this chapter.

Analysis

161. On the basis of the matters set out at paragraphs 150 to 160 of this chapter, it appears that:
- a. On 7 April 2006 Mr Thomson, or someone on his behalf, booked a flight from Sydney to Melbourne return on 21 April 2006.

- b. On 20 April 2006 Mr Thomson, or someone on his behalf, changed his flight bookings to enable him to fly to Melbourne that afternoon departing Sydney at 4:30pm. This appears to have incurred an additional cost of \$237.65.
 - c. After arriving in Melbourne Mr Thomson checked in to the Grand Hyatt and while at his hotel room made separate telephone calls to the Young Blondes and Confidential Model Escorts escort agencies.
 - d. On 21 April 2006 Mr Thomson used his Diners Club card to pay for incidentals incurred during his stay at the Grand Hyatt hotel, including \$1.90 for the cost of his telephone calls to Young Blondes and Confidential Model Escorts escort agencies.
 - e. On 21 April 2006 Mr Thomson returned to Sydney on a flight departing Melbourne at 3:30pm.
162. I consider that Mr Thomson used his Diners Club card to pay for \$1.90 in telephone calls to the Young Blondes and Confidential Model Escorts escort agencies on 20 April 2006.
163. In addition, it is possible that Mr Thomson used the \$400 which he had withdrawn in cash earlier that day from his CBA Mastercard account to purchase escort services from one or both of the Young Blondes or Confidential Model Escorts escort agencies on 20 April 2006, however the evidence does not permit a finding to this effect.

6 June 2006 - Miss Behaving

The evidence

164. At approximately 3:51pm on 5 June 2006 Wotif emailed to Mr Thomson a tax invoice and booking confirmation verifying \$393.85 payment received for accommodation at the Pacific International Suites Melbourne for Tuesday 6 and Wednesday 7 June 2006 ([HSUNO.002.0181](#)).
165. Mr Thomson's CBA Mastercard statement dated 27 June 2006 ([HSUNO.001.0280](#)) discloses the withdrawal of \$500 cash at ANZ ATM Erina Caltex on 6 June 2006.
166. Mr Thomson's Diners Club statement dated 20 June 2006 ([HSUNO.001.0457](#)) discloses the following transactions:
- a. a payment of \$729.97 on 6 June 2006 to Qantas Airways for a flight from Sydney to Melbourne on 6 June 2006 (booking reference 2NZD7T);
 - b. a payment of \$393.85 to Wotif on 5 June 2006;
 - c. a payment of \$23.69 to Secure Parking, Wynyard Lane on 6 June 2006;
 - d. a payment of \$52.85 to Cabcharge at 9.46pm on 6 June 2006 for a taxi fare described as 'Pick Up: Airport Dest: Suburbs';
 - e. a payment of \$179 to Valet Parking Sydney Airport on 8 June 2006;
 - f. a payment of \$265 to Pacific International Suites on 9 June 2006; and

- g. a payment of \$37 to Valet Parking Sydney Airport on 9 June 2006.
167. On 8 June 2006 the Pacific International Suites at Melbourne issued an invoice, numbered 30255099, to Mr Thomson for the sum of \$265.56 for an extra night's accommodation on 8 June 2006 and incidentals during his stay between 6 and 9 June 2006 ([HSUNO.002.0179](#)). The invoice includes a charge of \$00.91 for a telephone call made on 7 June 2006 at 10.30pm to 9510 9969 and a movie charge at 10.46pm of \$13.59.
168. On 24 August 2011 FWA accessed the Yellow Pages website and identified phone number 9510 9969 as that of the 'Miss Behaving' Escort Agency.

Explanation sought from Mr Thomson for this transaction

169. On 30 August 2011 FWA wrote to Mr Thomson ([WIT.THO.006.0003](#)). That letter referred to the radio interview between Mr Thomson and Mr Smith on 2UE on 1 August 2011 and included, relevantly, the following paragraphs:

I attach the following documents:

- 3.3.1 Pacific International Suites Melbourne invoice 30258712 in your name for \$265.56 in incidentals relating to your stay between 6 and 9 June 2006. The invoice itemises a charge on 7 June 2006 for a telephone call at 22:30 to 9510 9969.
- 3.3.2 Yellow Pages website printout accessed on 26 August 2011 identifying telephone number 9510 9969 as that of 'Miss Behaving' Escort Agency.
- 3.3.3 Diners card statement dated 20 June 2006 itemising a charge by Pacific International Suites Melbourne of \$265.56 on 9 June 2006:

On the basis of the documents set out at paragraphs 3.3.1 to 3.3.3 above, it appears that you stayed at the Pacific International Suites in Melbourne on 6 and 7 June 2006 and that on 7 June 2006 a telephone call was made from your room to the 'Miss behaving' escort agency. You authorised payment of the Pacific International Suites invoice that was charged to your HSU Diners Card on 9 June 2006.

In relation to these events, I invite you to provide me with the following information:

- q) Did you make the phone call from the Pacific International Suite as identified?
- r) If you did not make the telephone call, can you identify any other person that may have made the phone call?
- s) If not, why did you 'authorise payment of the telephone charge?
170. The letter invited Mr Thomson to respond to the information sought in the letter on or before 5pm on Tuesday 13 September 2011.
171. On 13 September 2011 FWA received the response from Mr Thomson which is set out at paragraph 20 of this chapter.

Analysis

172. On the basis of the matters set out at paragraphs 164 to 171 of this chapter it appears that:
- a. On 5 June 2006 Mr Thomson, or someone on his behalf, booked accommodation at the Pacific International Suites for the nights of 6 and 7 June 2006;
 - b. On 6 June 2006 Mr Thomson withdrew \$500 in cash using his CBA Mastercard at the ATM in Erina, on the Central Coast, and flew from Sydney to Melbourne on flight QF 0453. Mr Thomson stayed at the Pacific International Suites between 6 and 9 June 2006;
 - c. On 7 June 2006 at approximately 10:30pm Mr Thomson phoned Miss Behaving escort agency from his hotel room;
 - d. It appears that at some point Mr Thomson changed his flight arrangements to enable him to stay in Melbourne for an additional night on 8 June 2006;
 - e. On 9 June 2006 Mr Thomson checked out of the Pacific International Suites, and paid for the extra night's accommodation and incidentals incurred during his stay, including \$0.91 being the cost of his telephone call to the Miss Behaving Escort Agency. Mr Thomson returned to Sydney, collected his car from Valet parking and paid an additional \$37 for the additional night during which he was interstate; and
 - f. Mr Thomson returned to the Central Coast, eating dinner at the Dekk Restaurant and Bar in Terrigal that evening.
173. I consider that on 8 June 2006 Mr Thomson used his Diners Club card to pay \$00.91 for a telephone call that he had made from the Pacific International Suites to the Miss Behaving Escort Agency, while staying at the Pacific International Suites.
174. It is also possible that Mr Thomson used the \$500 which he had withdrawn on his CBA Mastercard on 6 June to pay for escort services purchased from the Miss Behaving Escort Agency, however the evidence does not permit a finding to this effect.

Mr Thomson's submissions

175. With respect to findings 72 to 75, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies findings 72 to 75. Mr Thomson denies contravening Sub-rule 36(b) of the Rules and denies contravening any of subsections 285(1), 286(1) or 287 of the RAO Schedule.
 - b. He denies authorising expenditure incurred on his credit cards for escort services. Mr Thomson was unaware that the expenditure related to escort services as this was not explicit in the credit card statements and these were not raised with Mr Thomson by the National Finance Officer as anomalies on his

credit card statement. Mr Thomson did not use his credit card to procure escort services. Mr Thomson is unable to explain how the expenditure was incurred but notes that there may have been instances of misuse of HSU credit cards.

Mr Thomson makes reference to submissions that he has made in paragraph 39.d at page 134 in chapter 3, in relation to potential threats against Mr Thomson.

- c. He denies improperly using his position to gain an advantage for himself or any another (sic) person.

Conclusions

176. In all the circumstances I consider that:

- a. Mr Thomson used his credit cards to spend the amounts set out in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of this chapter, totalling \$5,793 on the procurement of escort services;
- b. Mr Thomson used his Diners Club card to make the payment of \$212 to Flairview Travel Pty Ltd which is referred to in paragraph 126.a of this chapter;
- c. Mr Thomson used his credit cards to pay hotel bills which included the amounts set out in paragraphs 142, 154 and 167 of this chapter, totalling \$3.72 on telephoning escort agencies while he was travelling away from home and staying in hotels;
- d. The amounts set out in subparagraphs a. b. and c of this paragraph were not authorised by the National Executive or the National Council;
- e. The amounts set out in subparagraphs a. b. and c of this paragraph were not expenditure on the general administration of the HSU or for a purpose reasonably incidental thereto;
- f. Mr Thomson purported to authorise payment by the National Office of each of the amounts set out in subparagraphs a. b. and c of this paragraph;
- g. The reporting unit has failed to keep such financial records as correctly record and explain transactions relating to Mr Thomson's expenditure of the amounts set out in subparagraphs a. and b of this paragraph;
- h. Mr Thomson incurred the expenditure set out in subparagraphs a. b. and c. of this paragraph either for his own benefit, or for the benefit of some other person;
- i. A reasonable person in Mr Thomson's position as National Secretary would not have used his credit cards to make those payments. A reasonable person in Mr Thomson's position as National Secretary would not have purported to authorise those payments knowing that such payments were not for the purposes of carrying out the objects of the HSU;
- j. Mr Thomson did not believe it was in the best interests of the HSU to make, or purport to authorise, these payments. It was not a proper purpose to:

- i. expend the funds of the HSU on escort services, or on accommodation to facilitate the enjoyment of escort services; or
- ii. purport to authorise the expenditure of the funds of the HSU on escort services or on accommodation to facilitate the enjoyment of escort services.

Findings 72 to 75 - Purported authorisation of expenditure incurred on Mr Thomson's credit cards for escort services

- 72.** Mr Thomson breached Sub-rule 36(b) which required that the National Council or National Executive control the funds of the HSU by purporting to authorise payment by the National Office of the amounts set out in paragraphs 39, 68 to 69, 83, 99, 112, 122 and 126.a of this chapter totalling \$6,008.72 when that expenditure was not authorised by National Council or National Executive and those funds were not expended on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU.
- 73.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by:
- making the payments totalling \$5,793 referred to in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of this chapter and the payment of \$212 referred to in paragraph 126.a of this chapter; and
 - purporting to authorise those payments.
- 74.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose, by:
- making the payments totalling \$5,793 referred to in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of this chapter and the payment of \$212 referred to in paragraph 126.a of this chapter; and
 - purporting to authorise those payments.

75. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself or another person by:
- making the payments totalling \$5,793 referred to in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of this chapter and the payment of \$212 referred to in paragraph 126.a of this chapter; and
 - purporting to authorise those payments.

Mr Thomson 's claim to have taken annual leave in 2007

177. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 76 to 78 - Mr Thomson did not take annual leave during October and November 2007, which are set out below at page 524.

Historical background

Treatment of Mr Thomson's predecessor as National Secretary

178. The minutes of the National Council meeting held on 22 July 2002 ([HSUNO.023.0033](#)) record a resolution that a termination payment be made to the outgoing National Secretary of the HSU, Mr Rob Elliot. The resolution provides that this payment is to be calculated by reference to Mr Elliot's accumulated annual leave, long service leave (from January 1986) and accumulated sick leave up to 16 August 2002. A 'M.H' (presumably 'M.Hall' - see [HSUNO.023.0302](#)) is recorded as opposing the Resolution.

Summary of leave taken by Mr Thomson prior to the 2007 federal election

179. A table which is set out below at paragraph 233 of this chapter summarises Mr Thomson's leave records that were provided by the National Office to FWA. In particular, paragraphs 531 to 536 of chapter 5 also set out information regarding annual leave that was taken by Mr Thomson between 20 May 2004 and 24 June 2004.
180. The table at paragraph 233 of this chapter indicates that Mr Thomson took a total of nine days of leave (on three separate occasions) in 2005. No further leave is recorded in the HSU's records as having been taken by Mr Thomson after 16 September 2005.

Mr Thomson's claim to have taken six weeks' leave prior to the 2007 federal election

181. After his resignation as National Secretary, Mr Thomson made a claim against the HSU for payment of his accrued annual leave and long service leave entitlements. An issue arose between Mr Thomson and the National Office about the quantum of

those entitlements. Mr Thomson's claim was complicated by the question of whether or not he had taken annual leave commencing six weeks prior to the 2007 federal election. There was much evidence before FWA, which was consistent with his own statements to FWA, which suggested that during this period Mr Thomson was overwhelmingly concerned with campaigning in the electorate of Dobell, in which he was a candidate.

182. Mr Thomson told FWA that he was 'officially on leave' for approximately six weeks prior to the 2007 Federal Election (Thomson PN 159) and that his primary role was 'spearheading the union's campaign or contribution to the National campaign in terms of the WorkChoices regime'.
183. When referred to the table at paragraph 233 below of this chapter, Mr Thomson told FWA that 'up until the [2007] election' he had not taken any leave from September 2005 (Thomson PN 1058 - 1068). Mr Thomson said that (Thomson PN 1067 - 1068):
- [t]o the best of [his] recollection, [he] took leave...from that first - the October long weekend at the start of October through till the end of election day.
184. Mr Thomson said that he had not resigned from the position of National Secretary because he had been asked not to resign until a new National Secretary had been appointed (Thomson PN 1075).
185. Mr Thomson then told FWA that he faced an 'incredibly difficult situation' whereby there was a conflict across the organisation as to who would be the most suitable replacement as the National Secretary (Thomson PN 1025). Mr Thomson said that (Thomson PN 1027):
- ...there weren't options [for candidates for the position of National Secretary]...being put forward...at the same time I was trying to get elected and not wanting to be doing that role, which is impossible to properly do.
186. Mr Thomson continued (Thomson PN 1026):
- ...we had various discussions that I would do stuff related to the campaigns that...everyone was running, but there would be a very minimalist approach, which no-one had any problems with because, quite frankly I think...some of the branch secretaries' views were that we were better off not having a national office in any event and they would have been happy to pay me to sit at home and do nothing, but that was a constant discussion that was going on.
187. Mr Thomson did not identify who he had had such discussions with. However he appears to be suggesting that at least some persons expressed concern to him about confronting the question of who would replace him. It is possible that this contributed to his consideration about whether to take leave during October and November 2007.
188. In response to a question from FWA, Mr Thomson described the work that he undertook as National Secretary of the HSU when on leave as follows (Thomson PN 1080 - 1086):
- ...in a limited sense. I don't think in that period, for example, that I went to Sydney at all where I was...spending up until that period of time two, three days a week at least in Sydney and probably a couple on the Central Coast, and that was one of the reasons why I didn't want to - I couldn't afford to be commuting during that period of time, so that was one of the things that certainly changed.

Other evidence which bears on Mr Thomson's claim

The National Office's own MYOB data

189. Weekly Payroll Advices that were generated by the HSU from MYOB ([HSUNO.017.0029](#)) record that, for each week starting with the week commencing on 30 September 2007 until the week commencing on 3 December 2007 (inclusive), Mr Thomson was paid salary at the gross rate of \$154,536.07 per annum. On that basis Mr Thomson received a gross weekly pay of \$2,971.85 and a net weekly pay of \$1,369.51. His hourly rate of pay was \$78.20. If this is divided into his weekly salary of \$2,971.85, this indicates that Mr Thomson's salary was based on a 38 hour working week.
190. Mr Brown told FWA that Mr Thomson should have been paid a 'leave loading each time he went on leave' (Brown PN 297 - 298). The Payroll Advice data does not disclose any additional payment to Mr Thomson during this period in respect of annual leave loading. Further (apart from a second payment that was made on 27 November 2007 and which is discussed at paragraph 196 and following of this chapter), the gross and net amounts appearing on each of the Payroll Advices did not vary between those that were paid in the six weeks leading up to the federal election on 24 November 2007 and the final two payments that were made in the period between election day and the date of Mr Thomson's resignation on 14 December 2007 (when Mr Thomson does not claim to have been on leave).
191. The payslips for partial payment of Mr Thomson's outstanding entitlements in 2008 which are discussed at paragraphs 247 to 250 of this chapter indicate that Mr Thomson was paid annual leave loading at a rate of 17.5%. This implies that, if he had been paid leave loading on his salary during October and November 2007, it would have been paid at 17.5% of \$2,971.85 each week, which is \$520.07 per week. There is no indication from any of Mr Thomson's weekly Payroll Advices during October and November 2007 that such an additional weekly sum was paid to Mr Thomson in respect of this period.
192. It is not clear from data that appears in the MYOB General Ledger in relation to the weekly payroll payment of all salaries of National Office employees for the period 1 July 2007 to 31 March 2008 ([HSUNO.029.0001](#)) whether Mr Thomson was paid leave loading in the six weeks preceding the federal election. The General Ledger records weekly payroll payments as follows between 28 August and 21 December 2007:

Week	Amount
28 August	\$7,086.74
4 September	\$7,267.73
11 September	\$7,320.30
18 September	\$5,871.93
25 September	\$7,871.93
2 October	\$5,871.93

Week	Amount
9 October	\$7,246.57
16 October	\$7,548.74
23 October	\$7,086.74
30 October	\$7,086.74
6 November	\$7,086.74
13 November	\$7,086.74
20 November	\$7,086.74
27 November	\$6,784.15
27 November	\$11,490.98
4 December	\$12,425.58
11 December	\$7,086.74
18 December	\$6,377.21
21 December	\$6,098.71

193. Apart from the second payment made on 27 November 2007 (which is discussed at paragraph 196 of this chapter and following), these appear to be weekly gross payments of all salaries of employees of the National Office.
194. There does not seem to be any change to the pattern of weekly salary payments in the table above which would suggest that the National Office started to pay Mr Thomson leave loading of \$520 per week in (or about) early October 2007. However it is true that the information available does not explain why weekly salary payments made by the National Office varied as much as they did from week to week.
195. The available information does not explain why the salary payment which is recorded in the general ledger for 4 December 2007 is so high.

The payment to Mr Thomson on 27 November 2007 of 'RDO Leave Pay not used'

196. The Payroll Advices obtained from MYOB ([HSUNO.017.0029](#)) indicate that Mr Thomson received two payments on 27 November 2007:
- The first was Mr Thomson's regular 'base salary' of \$2,971.85 (gross) which is described in the MYOB records as being for pay period 26/11/07 to 2/12/07; and
 - the second is a payment of \$7,507.83 (gross) which is described in the MYOB records as being 'RDO Leave Pay not used' (96 hours) as being for pay period 02/01/07 to 31/12/07.
197. The reference to 'RDO Leave Pay not used' presumably refers to a payment made in lieu of accrued rostered days off which had not been taken as days off.
198. This could partly explain the second salary payment of \$11,490.98 recorded in the MYOB General Ledger (set out above at paragraph 192 of this chapter) as being

made on 27 November 2007, although clearly the sum paid to Mr Thomson could not account for all of this payment.

199. Despite the fact that the payment was made on 27 November 2007, the description of the pay period in the second payroll advice relating to Mr Thomson dated 27 November 2007 is from 2 January 2007 to 31 December 2007. This is a period of 52 weeks up until the end of the 2007 calendar year. It therefore appears on the face of the Payroll Advice that Mr Thomson was prepaid on 27 November 2007 for RDO leave pay for the five weeks between 27 November and 31 December 2007, even though he was likely to have known by 27 November 2007 (being three days after the election) that he was likely to have won the seat of Dobell.
200. The method by which an entitlement of 96 hours was calculated is not transparent on the information that is before FWA. It does seem highly likely, however, that RDO leave accumulated at the rate of 2 hours per week. This is on the basis that, while the period from 2 January 2007 to 31 December 2007 is exactly 52 weeks, the period from 2 January to 27 November 2007 is exactly 47 weeks. Given that 96 hours were paid out, this suggests that an RDO was accrued every two weeks and that Mr Thomson decided on 27 November 2007 to pay himself out for a period of 48 weeks of unused RDO leave (that is, from 2 January 2007 through to 4 December 2007) on the basis that the poll in Dobell was unlikely to be declared in the following week leading up to 4 December 2007, meaning that he was also unlikely to have resigned as National Secretary before that date. On this basis, it seems quite likely that, despite the date range that appears in the Payroll Advice ([HSUNO.017.0029](#)), Mr Thomson authorised payment of 48 weeks of unused RDO leave to himself on 27 November 2007 (although he only had an entitlement as at 27 November 2007 to a payment for 47 of those 48 weeks).
201. However, Mr Thomson continued to be employed by the HSU up until (and indeed after) 4 December 2007 and so did not receive payment for an entitlement that did not, ultimately, accrue (presuming that Mr Thomson was not on annual leave for the six weeks prior to the general election). If Mr Thomson had been on annual leave for the six weeks prior to the 2007 federal election then it is not likely that he would have been accruing 2 hours each week toward an RDO, although FWA does not have any information before it regarding the basis upon which RDOs were accrued by employees of the National Office. As a consequence, if Mr Thomson had been on leave then it would be expected that any payment that he might purport to authorise on 27 November 2007 in respect of untaken RDOs would only have been made in respect of 84 hours, not 96 hours. Accordingly the payment of this sum suggests that Mr Thomson did not consider that he had taken leave in October or November 2007 when he purported to authorise this payment on 27 November 2007.

The fact that Ms Jackson did not act as National Secretary during this period

202. There were only two occasions during Mr Thomson's five years as National Secretary on which he took (or may have taken) extended annual leave. The first occasion was between 20 May and 24 June 2004, as discussed at paragraphs 531 to 536 of chapter 5. The minutes of the Special Teleconference of the National Executive on 22 April 2004 ([HSUNO.024.0097](#)) contain (at Item 9) a reference that Mr Thomson would be on leave between 20 May 2004 and 24 June 2004. The

accompanying Resolution, which was moved by Mr Thomson and seconded by Mr Lloyd Williams and then carried, was expressed in the following terms:

That in accordance with rule 33 (a) (ii) the Senior National Assistant Secretary shall act in the National Secretary's stead whilst he is absent on leave.

203. Despite the fact that she could not recall in interview having acted as the National Secretary at this time, Ms Jackson signed a statutory declaration in which she states that she was 'the Acting National Secretary of the Health Services Union of Australia' ([FWA.004.0184](#)). Similarly, Mr Williamson could not recall if any other person ever acted as National Secretary during Mr Thomson's tenure (Williamson PN 197 - 198). Nevertheless, it is clear on the evidence that Ms Jackson acted as National Secretary between 20 May and 24 June 2004.
204. Given the length of time that Mr Thomson says that he was on leave leading up to the 2007 federal election and given that Ms Jackson had acted in his role previously, there could be a reasonable expectation that Ms Jackson would have been appointed to act as the National Secretary had Mr Thomson been on leave in the six weeks preceding the federal election.
205. Ms Jackson, who (as Senior National Assistant Secretary) would have been required to act as the National Secretary if Mr Thomson had been on leave, told FWA however, that she was appointed Acting National Secretary on 14 December 2007 (Jackson (1) PN 104). This is the day that Mr Thomson resigned
206. When asked to comment on the statement recorded in the minutes of the meeting of the National Executive on 18 and 19 March 2008 that Ms Jackson 'asked that the minutes record our thanks to Mark McLeay for holding together the National Office in the past year in what have been difficult circumstances', Mr Thomson said that he was unsure of Ms Jackson's motivation for moving a resolution thanking Mr McLeay for 'holding together' the office in 2007 (Thomson PN 1094). However Mr Thomson did state that '[Mr McLeay] probably did stuff that the national secretary would have been doing' (Thomson PN 1090). This may further explain why it was not necessary to formally appoint Ms Jackson as Acting National Secretary until 14 December 2007, particularly if Mr Thomson was continuing to act as National Secretary 'in a limited sense' during this period (see above at paragraph 188 of this chapter).

Minutes of National Executive meetings

207. No minutes of any meeting of National Executive record any statement by Mr Thomson that he was planning to take, or had taken, leave during this period. Equally, no minutes of National Executive record that Ms Jackson (or any other person) was acting as National Secretary during this period.

Evidence of other persons interviewed by FWA

208. Mr Thomson told FWA that he would advise the 'office and [Ms Ord]' (who was employed in February 2005 as his administrative assistant and the National Office's finance officer) when he was on leave and that he was sure that he (Thomson PN 1030):

raised it with people at executive, but...we didn't have any resolution because there wasn't a resolution to what happens in that situation, so it was discussed around the table but it was put off.

209. None of the members of National Executive who were interviewed by FWA, however, were aware that Mr Thomson had taken leave in October and November 2007. Mr Williamson told FWA that he learned of Mr Thomson's leave during the period of October to November 2007 (only) as a result of Mr Thomson's statement to Parliament (Williamson PN 190) - see paragraph 258 below of this chapter.
210. Dr Kelly confirmed that she had no recollection of Mr Thomson taking leave during the period October to November 2007 (Kelly PN 534–541), but suggested he was not working for the HSU during this period. Dr Kelly told FWA that there was a question, which both she and Mr Brown had raised at the National Executive during 2008, as to 'whether [he] should be deemed to be on leave while he was campaigning' (Kelly PN 533).
211. Dr Kelly stated that Mr Thomson did not advise the National Executive that he was on leave during October to November 2007. She speculated that Mr Williamson would have been the person responsible for the approval of Mr Thomson's leave (Kelly PN 545–550), although Mr Williamson himself stated in interview that Mr Thomson would have been required to seek permission from National Executive before taking leave (Williamson PN 182). Dr Kelly emphasised that there was no information forthcoming to National Executive that Mr Thomson was to take leave during that period (Kelly PN 705).
212. Mr Brown emphatically denied any recollection of Mr Thomson taking leave during October to November 2007 (Brown PN 292). He said that he had spoken with Mr Thomson possibly in July 2007 (Brown PN 302), about whether Mr Thomson would take leave or resign from his position. Mr Brown also stated that (Brown PN 292):
- [t]here was no request [for leave made by Mr Thomson] to national executive, there was no advice to national executive that that was what he was doing.
213. Mr Brown also said that Mr Thomson's claim for entitlements was based 'on the fact that he hadn't, during his period of national secretary, taken any leave...for the entire period' (Brown PN 292 - 294). Mr Brown further explained that he had contested Mr Thomson's claim for entitlements on the basis that he personally knew that Mr Thomson had taken some leave during the period 2002 to 2007. Mr Thomson's claim for payment of his accrued leave balances is discussed at paragraphs 255 to 263 of this chapter.
214. Mr Brown told FWA that he was 'bemused' by Mr Thomson's statement to Parliament (see paragraph 258 below of this chapter) about the leave that he took during October to November 2007 as it was not based on the facts as he understood them and that this period was not part of the claim made by Mr Thomson (Brown PN 300).
215. Mr Brown told FWA (Brown PN 274) there was no 'specific requirement' for the National Secretary of the HSU to seek permission to take leave from the National Executive. There were occasions when the National Executive was advised of Mr Thomson's leave. Mr Brown had no knowledge of what document management

- procedures were used for the maintenance of leave records. Mr Brown surmised that there was probably 'some understanding' between Mr Thomson and Mr Williamson as to when Mr Thomson would be on leave (Brown PN 275). Mr Brown also stated that there were times when he telephoned the HSU office and was unable to contact Mr Thomson because he was on leave. Mr Brown was unable to identify these occasions with precision (Brown PN 278). Mr Brown stated that there was at least one occasion where he had telephoned the HSU to speak with Mr Thomson and was advised that he was 'overseas'. Mr Brown agreed that this may have related to the period of travel when Mr Thomson was in the USA in May to June 2004 (Brown PN 280), but said that it could also have related to a 'study tour' (Brown PN 288).
216. Ms Stevens told FWA that (Stevens PN 73) Mr Thomson 'stopped being national secretary...maybe a little bit before October [2007]'. Ms Stevens also stated that Mr Thomson had a certain timeframe in which to conduct action relating to his pre-selection in Dobell – whereby he had a choice between either 'resign[ing] from his position or [taking] leave' (Stevens PN 97). Ms Stevens indicated that she would be 'very surprised' if Mr Thomson had not properly recorded the leave he took during that period as, in her opinion, he was meticulous on this point (Stevens PN 97). Ms Stevens indicated that Mr Thomson was active in responding to phone calls from the National Executive, and stated '...I never had any reason to ask' about the leave he took in the lead-up to the Election' (Stevens PN 101).
217. While Ms Stevens was of the view that Mr Thomson was on leave during the relevant period, she stated in interview that it would have been 'perfectly reasonable' if people thought that he was still working as National Secretary because the HSU were supportive of the Your Rights at Work campaign (Stevens PN 103). She stated that she would be 'very surprised' if Mr Thomson did not respond to telephone calls from the National President during the relevant period. Ms Stevens was not aware of anyone acting in the role of National Secretary in Mr Thomson's stead during the relevant period (Stevens PN 103).
218. Mr McLeay, who was employed by the National Office in January 2007 as its Industrial Officer, told FWA that he attended meetings with the ACTU on behalf of Mr Thomson, but it would only have been for a maximum of 8 days during 2007 (McLeay PN 368). He further stated that he was responsible in the Sydney Office for '[turning] on the lights' during 2007, while Ms Ord was responsible in that respect in the Melbourne Office (McLeay PN 372). Mr McLeay explained that the National Secretary was responsible for 'running the office...answered back to the national executive, made sure that [the HSU was] represented...lobbying, auspiced our campaigns' (McLeay PN 380). Mr McLeay intimated that the majority of his directions from Mr Thomson came by telephone (McLeay PN 382) and that he communicated with Mr Thomson on a frequent basis – perhaps every second day (McLeay PN 386).
219. Mr McLeay was unable to confirm whether or not Mr Thomson was on leave during the period October to November 2007, stating that he knew that Mr Thomson was 'campaigning' and presumed that he may have been on leave but speculated that he may not have been (McLeay PN 415). Mr McLeay also suggested that Mr Thomson was likely to have been the person discharging the duties of National Secretary, but if he had not it may have been 'one of the two national assistant secretaries' (McLeay

PN 419). Mr McLeay stated that he had no reason to question who his supervisor was during that period as he presumed it was Mr Thomson (McLeay PN 422 – 425).

220. The evidence discussed above at paragraphs 208 to 219 of this chapter overwhelmingly suggests that no person other than Mr Thomson himself regarded Mr Thomson as being on leave during the six weeks prior to the federal election. Even Ms Stevens, who said that Mr Thomson 'stopped being national secretary...maybe a little bit before October' also suggested that Mr Thomson continued to carry out some of the duties of National Secretary during this period and agreed that she had never had any reason to ask him about this issue.

The National Office's own leave records

221. Mr Thomson's claim to have been on annual leave during this period is also unsupported by the National Office's own leave records.
222. Mr Thomson told FWA that there were financial and MYOB records remaining with the National Office when he resigned (Thomson PN 97) and that it was Ms Ord's responsibility to look after those records (Thomson PN 108). He stated that he had an electronic diary (Thomson PN 141). There is no reason to doubt the accuracy of the leave records produced by the National Office.
223. When asked about the process for approval of his annual leave, Mr Thomson said (Thomson PN 1046):
- ...the office process that we adopted, which obviously worked for everyone else because I would approve their leave, but was obviously a little bit ambiguous in relation to myself, and I acknowledge that. Not enough thought perhaps was gone into the way in which that could be better dealt with, but it wasn't a pressing issue for the union. It wasn't the pressing issue for the union. There were many other issues that were taking far more time than that, but yes, look, I would say that that's not the best practice in relation to approving your own leave.
224. Ms Ord stated (Ord (1) PN 275 – 282) that Mr Thomson would approve staff annual leave and that Mr Dick would prepare an accrual of leave entitlements in order to calculate the liability of the HSU in employee entitlements. Ms Ord stated that this type of information was kept in a spreadsheet and was relatively easy to calculate (Ord (1) PN 287). Ms Ord did not know who was the responsible officer for approval of Mr Thomson's leave and did not know whether or not Mr Thomson had taken leave at all during the period of her tenure, including during the period October to November 2007 (Ord (1) PN 288 – 311).
225. Ms Ord stated that all of the leave documents for staff were kept 'manually', not electronically, and if leave loading was ever paid it would have been calculated and recorded in a MYOB document (Ord (1) PN 319 – 320). She also stated that a report could have been generated from MYOB which enabled review of leave accrual during a relevant year (Ord (1) PN 321 – 324).
226. Mr Williamson told FWA (Williamson PN 177 – 180) that Mr Thomson did not seek authorisation from him in relation to any leave. Rather he said that Mr Thomson would have sought permission from the National Executive (Williamson PN 182).

227. On 26 May 2010 FWA served a notice on Ms Jackson ([HSUNO.017.0062](#)) requiring her to produce:
1. All documents relating to the accrual of, application for, or taking of, leave (however described) by Mr Craig Thomson from his position as Secretary of the Health Services Union.
 2. All documents which record any leave balances relating to Mr Craig Thomson in respect of the time in which he was Secretary of the Health Services Union.
 3. All correspondence or other documents recording any communications between Mr Craig Thomson, or any person on his behalf, and any other official of the Health Services Union, or any other person on behalf of the Health Services Union, about any leave balances relating to Mr Craig Thomson at the time of his resignation of the office of Secretary of the Health Services Union.
228. During the course of her first interview, Ms Jackson suggested that the leave records for the National Office were 'all over the place' and not properly kept (Jackson (1) PN 47) and that the audit conducted by the HSU after Mr Thomson resigned did not turn up any relevant attendance books (Jackson (1) PN 49, PN 92). However at least as far as Mr Thomson is concerned, the leave records provided by the National Office appear to record every known instance of leave taken by Mr Thomson, although they do not record that Mr Thomson was on leave for the six week period prior to the 2007 federal election.
229. Documents that have been provided by the National Office indicate that Mr Thomson's annual leave and long service leave entitlements were transferred from his former employer to the National Office when he became National Secretary on 16 August 2002. The National Office has provided FWA with two undated 'Audit Program' Documents, prepared for the 'Health & Research Employees Association of New South Wales' ('Client Number: 45762001). One document is titled 'Accrued Annual Leave - Termination' ([HSUNO.021.0670](#)); the other is titled 'Long Service Leave - Termination' ([HSUNO.021.0669](#)).
230. The document titled 'Accrued Annual Leave - Termination' sets out an equation for the calculation of Mr Thomson's accrued annual leave entitlement as at 16 August 2002. This is the date on which Mr Thomson became the National Secretary. In summary, the document indicates that, as at that date, Mr Thomson had:
- a. 113.90 days, or 22.78 weeks, of annual leave;
 - b. Total Accrued Annual Leave on Termination on 16 August 2002 of \$46,465.58 (being Mr Thomson's weekly salary of \$1,735.96 x 22.78 weeks, with a 17.5% leave loading); and
 - c. A handwritten annotation indicates that the 'HSU of A National Office owes C.T. 27.5 days (10.0 less taken) = 17.5 days'.
231. The document titled 'Long Service Leave - Termination' sets out an equation for the calculation for Mr Thomson's accrued annual leave entitlement as at 16 August 2002. In summary, the document indicates that Mr Thomson commenced with the Health & Research Employees Association of New South Wales on 4 October 1988 and that as at 16 August 2002 he had:

- a. A period of service of 13 years, 10 months and 2 weeks ;
 - b. An entitlement to 60 days' long service leave in recognition of 10 years' service + 58.125 days, totalling 118.125 days; and
 - c. An entitlement in the sum of \$29,294.35 (calculated with reference to his weekly salary of \$1,735.96 x 118.125 days / 7 days).
232. The National Office has provided FWA with a number of leave records relating to Mr Thomson, which indicate the following:
- a. On 13 January 2003, Mr Thomson authorised his own leave for a duration of 4 days' annual leave on 15 to 16 January and 20 and 22 January 2003 ([HSUNO.017.0007](#));
 - b. On 28 August 2003, Mr Thomson authorised his own leave for a duration of 10 days between 8 and 19 September 2003 ([HSUNO.017.0006](#));
 - c. On 31 March 2004, Mr Thomson authorised his own leave for a duration of 2 days' annual leave on 7 and 8 April 2004 ([HSUNO.017.0011](#));
 - d. On 13 December 2004, Mr Thomson authorised his own leave for a duration of 4 days' annual leave between 4 and 7 January 2005 ([HSUNO.017.0010](#));
 - e. On 14 September 2005, Mr Thomson authorised his own leave for a duration of 1 day's annual leave on 16 September 2005 ([HSUNO.017.0009](#)).
233. The National Office has provided FWA with a document titled 'Employee History and Leave Record Card' which evidences each of the above instances of annual leave as taken by Mr Thomson ([HSUNO.021.0668](#)). Information from the table marked 'Annual Holiday Record' is extracted below.

From	To	No. of Days	Balance Due
Transferred from Health & Research Employees Association	19 August 2002	Not marked	113
15 January 2003	16 January 2003	-2	111
20 January 2003	22 January 2003	-2	109
[CREDIT] 25 days	Accrued on 19 August 2003	+25	134
8 September 2003	19 September 2003	-10	124
20 May 2004	23 June 2004	-25	99
7 April 2004	8 April 2004	-2	97
[CREDIT] 25 days	Accrued on 19 August 2004	+25	122
4 January 2005	7 January 2005	-4	118
[CREDIT] 25 days	Accrued on 19 August 2004	+25	143
<u>4 January 2005</u>	<u>7 January 2005</u>	<u>-4</u>	<u>139</u>

From	To	No. of Days	Balance Due
[CREDIT] 25 days	Accrued on 19 August 2005	+25	164
16 September 2005	16 September 2005	-1	163

234. The Balance Due recorded in this document as at 19 August 2002 accords with the record referred to in paragraph 230 above of this chapter. On the basis of the records discussed above at paragraphs 230 to 233 of this chapter, it appears that as at 16 September 2005 Mr Thomson had an accrued annual leave balance of 163 days.
235. The leave records referred to in paragraphs 221 to 233 of this chapter strongly suggest that Mr Thomson took no steps to apply for leave, approve leave in relation to himself, or notify any person in the National Office that he regarded himself as being on leave, in respect of any period in October and November 2007.

Mr Thomson's own actions during this period

236. Other evidence suggests that Mr Thomson was actively undertaking at least some of the duties of National Secretary during October and November of 2007:
- a. the annual return of information for 2006 ([FWA.004.0045](#)) was lodged with the AIR by Mr Thomson under his signature on 8 November 2007 (FWA.004.0045);
 - b. Mr Thomson approved a number of payments to Central Coast Radio totalling \$14,647 on 12 November 2007 ([HSUNO.001.0170](#), [HSUNO.001.0173](#), [HSUNO.001.0176](#), [HSUNO.001.0179](#), and [HSUNO.001.0182](#)). Mr Thomson stated in interview that these were payments for campaign advertisements (Thomson PN 904);
 - c. Mr Thomson approved a payment to Branded Products on 27 October 2007 ([HSUNO.006.0199](#)).
237. I consider that Mr Thomson could not have purported to have carried out these tasks (and especially the task of purporting to authorise payment of \$14,647 in political advertising for himself) if he considered that he was on official leave from his position as National Secretary during this period.

Calculation of Mr Thomson's accrued leave entitlements by the National Office after his resignation

238. A table presented to the meeting of the National Executive held on 18 and 19 March 2008 ([HSUNO.017.0036](#)) lists a number of debts apparently owed by the National Office at that time. Included amongst the debts is the following:

Craig Thomson:

Annual leave entitlement	\$110,608.08
Long Service Leave	\$87,271.20
	\$197,877.28

239. The figure of \$110,608.08 for annual leave entitlements accords with a calculation in a spreadsheet headed 'Annual Leave Calculation Projected - 6/12/07' ([HSUNO.017.0008](#)). That calculation is based on Mr Thomson having an accrued annual leave balance of 176.5 days as at 6 December 2007.
240. The figure of \$87,271.71 for long service leave entitlements appears to be based on a calculation in a spreadsheet headed 'Long Service Leave Calculations projected to 6/12/07' ([HSUNO.017.0013](#)). That calculation is based on Mr Thomson having an accrued long service leave balance of 27.9 weeks as at 6 December 2007. (Despite the fact that Payroll Advices referred to in paragraph 189 of this chapter suggested that Mr Thomson was paid on the basis of a 38 hour week, this calculation is based on a 40 hour week).
241. Both of these spreadsheets were provided by the National Office to FWA as attachments to an email from a Jane Holt to Kathy Jackson dated 17 June 2010 ([HSUNO.017.0023](#)). In that email Ms Holt stated to Ms Jackson:
- I have trawled my email and found an email from Belinda Ord to Michael Williamson dated 28 November 2007. This includes excel attachments with LSL and Annual Leave for HSU National Office, projected to 6 Dec 2007. Michael Williamson forwarded this email to you, and you forwarded it to me. This is the basis of establishing Craig's entitlements. (Belinda did not set up MYOB payroll to perform these calculations automatically.)
- I have attached copies of the above as pdfs.
- I have also attached the updated figures for Craig's entitlements, deducting what has been paid to him since Dec 2007.
- Not shown in any of the above is the leave loading also paid to Craig. This is for consistency because it is not included in the HSU balance sheet, but I did pay it on the 285 hours of annual leave paid out so far.
242. It appears from Ms Holt's emails that these spreadsheets were initially prepared by Ms Ord on, or shortly before, 28 November 2007 and that Ms Ord forwarded these to Mr Williamson on that date. Sometime after this Mr Williamson must have forwarded the email and attachments to Ms Jackson. Given the fact that almost identical calculations of Mr Thomson's outstanding annual leave and long service leave entitlements were circulated at the meeting of the National Executive on 18 and 19 March 2008, it seems probable that Ms Jackson received these spreadsheets from Mr Williamson sometime between 28 November 2007 and 18 March 2008, and used them as the basis of her advice to National Executive about Mr Thomson's outstanding accrued leave entitlements.
243. As discussed above at paragraphs 221 to 235 of this chapter, the National Office does not have any records which suggest that Mr Thomson took any annual leave between 16 September 2005 (when his accrued annual leave balance was 163 days) and his resignation on 14 December 2007. If this was correct, then Mr Thomson would have accrued approximately 56 further days of annual leave during this 27 month period (25 days per year, for nearly 2¼ years). On the hypothesis that he took no annual leave between 16 September 2005 and 14 December 2007, Mr Thomson's accrued annual leave balance at the time of his resignation would be expected to be approximately 219 days (163 days plus 56 days).

244. It follows that there is a difference of 42.5 days between:
- a. the calculation of Mr Thomson's accrued annual leave of 176.5 days on 6 December 2007 that is contained in the documents referred to above in paragraphs 238 to 242 of this chapter and which appear to have been prepared around the time of his election to parliament and resignation as National Secretary; and
 - b. the balance of accrued annual leave of 219 days which Mr Thomson would be expected to have had as at 6 December 2007 based on the leave records discussed above at paragraphs 220 to 234 of this chapter, on the assumption that he had not taken any annual leave since 16 September 2005.
245. The period of 42.5 days does not seem consistent with Mr Thomson's claim to have commenced annual leave six weeks (30 working days) prior to the 2007 federal election (which was held on 24 November 2007).
246. However, if he had commenced annual leave six weeks prior to the 2007 federal election and remained on annual leave after 24 November 2007 until (at least) 6 December 2007 then, at 6 December 2007, Mr Thomson would have taken a total of 39 (working) days of annual leave. Although this does not exactly match the figure of 42.5 days referred to in paragraph 244 above of this chapter, it is close enough to suggest that whoever created the spreadsheets referred to above in paragraphs 239 and 240 of this chapter (on or about 27 November 2007) could have done so on the basis that Mr Thomson had commenced annual leave six weeks prior to the 2007 federal election and would remain on leave until 6 December 2007 (and may have assumed that he would resign on that date). However the evidence does not disclose who prepared these spreadsheets, when, or why.

Payments made to Mr Thomson in respect of annual leave and long service leave

247. A payslip in Mr Thomson's name dated 13 May 2008 ([HSUNO.017.0015](#)) indicates that the National Office made a payment to Mr Thomson of the following sums on that date:
- a. a payment in respect of 105 hours of annual leave (at an hourly rate of \$78.20) totalling \$8,211.68;
 - b. a payment in respect of 105 hours of leave loading of \$1,437.04 (at an hourly rate of \$13.68); and
 - c. a payment in respect of 110 hours of long service leave of \$8,602.72 (at an hourly rate of \$78.20).
248. These three amounts total a gross payment of \$18,251.44. The payslip states that the sum of \$8,232 has been withheld from this payment as PAYG tax instalments, leaving a net payment of \$10,019.44 to Mr Thomson.

249. A payslip in Mr Thomson's name dated 4 August 2008 ([HSUNO.017.0016](#)) indicates that the National Office made a payment to Mr Thomson of the following sums on that date:
- a. a payment in respect of 180 hours of annual leave (at an hourly rate of \$78.20) totalling \$14,077.17;
 - b. a payment in respect of 180 hours of leave loading of \$2,463.51 (at an hourly rate of \$13.68); and
 - c. a payment in respect of 100 hours of long service leave of \$7,820.65 (at an hourly rate of \$78.20).
250. These three amounts total a gross payment of \$24,361.33. The payslip states that the sum of \$8,650 has been withheld from this payment as PAYG tax instalments, leaving a net payment of \$15,711.33 to Mr Thomson.
251. In Ms Holt's email to Ms Jackson dated 17 June 2010 ([HSUNO.017.0023](#)) referred to above at paragraph 241 of this chapter, Ms Holt stated that she had 'attached the updated figures for Craig's entitlements, deducting what has been paid to him since Dec 2007'. A table which is attached to that email records payments to Mr Thomson of the monies set out in paragraphs 247 and 249 of this chapter as follows:
- a. \$8,211.68 for 105 hours of annual leave on 13 May 2008;
 - b. \$8,602.72 for 110 hours of long service leave on 13 May 2008;
 - c. \$14,077.17 for 180 hours of annual leave on 4 August 2008; and
 - d. \$14,077.17 for 180 hours of long service leave on 4 August 2008.
252. On the basis of these payments, the spreadsheet prepared by Ms Holt records that the National Office continued, as at 4 August 2008, to owe \$152,720.86 to Mr Thomson in outstanding accrued annual leave and long service leave entitlements.
253. However, the figures used by Ms Holt in her spreadsheet do not match the figures shown by the two payslips referred to above in paragraphs 247 and 249 of this chapter, in the following respects:
- a. Ms Holt has failed to include the payment to Mr Thomson of \$1,437.04 on 13 May 2008 in respect of 105 hours of leave loading;
 - b. Ms Holt has failed to include the payment to Mr Thomson of \$2,463.51 on 4 August 2008 in respect of 180 hours of annual leave loading; and
 - c. Ms Holt has incorrectly described the payment made on 4 August 2008 in respect of long service leave as being a payment of \$14,077.17 for 180 hours of long service leave when the payslip indicates that it was a payment of \$7,820.65 in respect of 100 hours of long service leave.

254. If Ms Holt's calculations are corrected for these three errors then it appears that, according to the HSU's own records, Mr Thomson's outstanding accrued annual leave and long service leave entitlements as at 17 June 2010 were:

	\$152,720.86
minus	\$1,437.04
minus	\$2,463.51
minus	\$7,820.65
<hr/>	
Sub-total:	\$140,999.66
<hr/>	
plus	\$14,077.17
<hr/>	
Total:	\$155,076.83
<hr/>	

Correspondence from Mr Thomson about his claim for payment of his accrued leave entitlements

255. On 8 May 2008, Mr Thomson wrote to Ms Jackson by e-mail, confirming an earlier telephone discussion with Ms Jackson, and seeking that \$10,000 of his entitlements be paid 'asap' ([HSUNO.017.0046](#)). It appears that the payment discussed at paragraphs 247 and 248 of this chapter was made in response to this request.
256. In a letter dated 7 July 2009 ([HSUNO.017.0048](#)), Mr Thomson demanded Ms Jackson authorise full and final payment of his entitlements, totalling approximately \$190,000, by 21 July 2009. His letter stated:

I hereby request full and immediate payment of all outstanding monies owed to me comprising my accrued entitlements associated with my employment with the Union for over 19 years. These outstanding entitlements equate to close to \$190,000.

I ceased employment with the Union over 20 months ago and I have not received payment of any of my outstanding entitlements.

Could you please provide me with payment of my outstanding entitlements by close of business 21 July 2009. If I do not receive payment by that date I will seek legal advice.

257. Mr Thomson's claim that his outstanding entitlements equate to 'close to \$190,000' is at odds with the HSU's own records which indicate that at this time his outstanding employee entitlements were \$152,720.86. As discussed above at paragraphs 253 and 254 of this chapter, that calculation in turn appears to be based on an error, and the correct amount (by reference to the HSU's own records) was \$155,076.83. However if Ms Thomson's accrued annual leave balance upon resignation had been 219 days, as set out above at paragraph 243 of this chapter, Mr Thomson's outstanding accrued leave entitlements at resignation would increase by the following:

42.5 (days) x 8 (hours) x \$78.20 (per hour) x 1.175 (17.5% annual leave loading).

258. This additional amount is \$31,240.90. If this sum was added to Mr Thomson's outstanding accrued leave entitlement as at 21 July 2009 then those entitlements would be \$186,317.73. That figure is very close to Mr Thomson's claim that his outstanding employer entitlements 'equate to close to \$190,000'. The strong

inference is that, even in July 2009, Mr Thomson did not consider that he had taken any annual leave during October and November 2007, or indeed any leave since September 2005. The earliest indication which FWA has been able to find that Mr Thomson had, or acted upon, any contrary view was his statement to the House of Representatives, which he made only on 10 February 2010 ([WIT.BRO.003.0056](#)). Mr Thomson subsequently made the same statement to FWA at interview that he had commenced six weeks of leave in October 2007.

259. Mr Thomson stated that it had been 'difficult' for him to 'independently verify' the actual amount that he was owed in leave entitlements, and intimated that he had accepted a lesser amount from the HSU as the correct figure during settlement negotiations (Thomson PN 1109). He also confirmed that the sum for which he settled his claim for outstanding accrued leave entitlements was approximately \$130,000, which took into account a reduction of 6 weeks' annual leave (Thomson PN 1107 – 1109).

Mr Thomson's submissions

260. With respect to finding 76, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies breaching Rule 32 of the Rules. Mr Thomson did take annual leave during October and November 2007 and his entitlements were deducted by the HSU. The National Executive had been notified of Mr Thomson's intention to take annual leave during October and November 2007.
 - b. The leave was taken properly, recorded in the National Office records and was treated by the National Office as annual leave.
261. With respect to finding 77, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening subsection 285(1) of the RAO Schedule. It was well known by the National Executive that Mr Thomson was campaigning in Dobell and Mr Thomson had taken leave during October and November 2007. Ms Jackson was appointed as the acting National Secretary, and she did act during this time.
262. With respect to finding 78, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies breaching subsection 286(1) of the RAO Schedule. Mr Thomson followed the appropriate procedures to arrange his annual leave and did take annual leave during October and November 2007. Mr Thomson's entitlements were deducted by the HSU. The National Executive had been notified of Mr Thomson's intention to take annual leave during this time.
 - b. The leave was taken properly, recorded in the National Office records and was treated by the National Office as annual leave.

Conclusions

263. On the basis of the matters set out above, I consider that Mr Thomson did not take annual leave during October and November 2007. While the records discussed above at paragraphs 238 to 246 of this chapter provide some support to his claim, it is not clear who created these records, when, or why. It is possible to read these records in such a way that they imply an assumption (by whoever created them) that Mr Thomson took approximately eight weeks' leave which is not otherwise recorded in the National Office's records. But this period does not exactly accord with Mr Thomson's claim. On balance, this limited evidence does not outweigh the significant body of evidence discussed above, which overwhelmingly indicates that:
- a. The National Office has no leave records which suggest that Mr Thomson sought, or was granted, or had his annual leave balance deducted, for leave during October or November 2007;
 - b. Mr Thomson was not paid annual leave loading during this period;
 - c. Mr Thomson was paid an amount referable to unused rostered days off which included payment for rostered days off which would not have been 'unused' if he had been on leave during October and November 2007;
 - d. no-one else was appointed to act as National Secretary during this period. Despite Mr Thomson's submission at paragraph 261 above of this chapter that Ms Jackson was appointed and that she did act as National Secretary during this time, his claim in interview was that he did not arrange for Ms Jackson to do so. This is supported by evidence given by Ms Jackson during interview that she was not the Acting National Secretary in October and November 2007;
 - e. there is no reference in any minutes of National Executive meetings to Mr Thomson having been on annual leave during this period;
 - f. no other member of National Executive interviewed by FWA, including the National President and the Senior Assistant National Secretary, considered Mr Thomson to have been on leave during this period, despite Mr Thomson's submission at paragraph 260.a above of this chapter that members of National Executive were notified of his intention to take annual leave;
 - g. Mr Thomson continued to discharge at least some of the functions of National Secretary during this period, including by purporting to make decisions to authorise expenditure on his own election campaign, which on any view would be powers unavailable for him to exercise if he were on annual leave from his position as National Secretary during this period;
 - h. after his resignation Mr Thomson made a claim for payment of his outstanding accrued leave entitlements which was for an amount which was consistent with him not regarding himself as having been on leave during this period.
264. I also consider that, although he was not on annual leave during this period, Mr Thomson spent most, if not all, of this period campaigning for his own election as the member for Dobell and could not have been carrying out the full time duties of National Secretary during this period. To a casual observer, I have no doubt that

Mr Thomson would appear to have been on leave during this period and ought, properly to have been on leave. Nevertheless, for the reasons set out at paragraph 263 above of this chapter, this was not the case.

265. A reasonable person in Mr Thomson's position would have sought approval from the National Executive to take leave during this period to enable him to carry out election campaigning in his electorate, and would have ensured that appropriate records relating to his application for leave were maintained, in order that the National Office would be appropriately protected against any claim which Mr Thomson might make after his resignation for payment of his accrued leave entitlements on the basis that he had not been on leave during this period. A reasonable person in Mr Thomson's position would have arranged to hand over his functions to Ms Jackson.
266. A reasonable person in Mr Thomson's position would not have failed to discharge his duties as National Secretary during the six week period prior to the 2007 Federal Election, without taking any steps to ensure that:
- a. the National Executive was notified that he would not be discharging his duties during this period;
 - b. he was officially recorded in records of the National Office as being on leave during this period; and
 - c. appropriate arrangements were put in place to ensure that the Senior National Assistant Secretary was acting in his stead during this period.

Findings 76 to 78 - Mr Thomson did not take annual leave during October and November 2007

76. Mr Thomson breached Rule 32 by failing to exercise his powers and discharge his duties as National Secretary during the six week period prior to the 2007 Federal Election and by failing to take any steps to ensure that:
- the National Executive was notified of, and had approved the taking of, annual leave by him during this period;
 - he was officially recorded in records of the National Office as being on leave during this period; and
 - appropriate arrangements were put in place to ensure that the Senior National Assistant Secretary was acting in his stead during this period.
77. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing during October and November 2007 to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she were the National Secretary in the same circumstances.

78. Mr Thomson breached subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the HSU, and for a proper purpose during October and November 2007.

Expenditure on accommodation in Sydney after Mr Thomson moved to the Central Coast of NSW

Evidence

267. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 79 to 82 - Expenditure on accommodation in Sydney after Mr Thomson moved to the Central Coast of NSW, which are set out below at page 547.
268. Paragraphs 272 to 371 below of this chapter consider 20 occasions in 2006 and 2007, after his move to live on the NSW Central Coast, where Mr Thomson appears to have used National Office funds to pay for accommodation for himself in Sydney.
269. The costs incurred by Mr Thomson on the 20 occasions in 2006 and 2007 when he travelled to Sydney are summarised in Annexure E.
270. Information regarding the methodology that I have used in the analysis that follows has already been set out at paragraphs 657 to 665 at pages 368 to 370 in chapter 5 under the heading 'Notes on methodology'.
271. The following additional information regarding is relevant to the methodology used in paragraphs 272 to 371 below:

Cash withdrawals

- a. CBA Mastercard statements during the period when Mr Thomson was National Secretary (details of which are set out in Annexure A) included the following charges that were made by the financial institution on each occasion that a cash advance was made at an ATM:
- i. No charges were made for cash advances between 13 November 2002 and 19 December 2002;
 - ii. On 23 December 2002, a cash withdrawal from a CBA ATM is evidenced on a CBA Mastercard statement (HSUNO.014.0005) by a \$1.25 cash advance charge;
 - iii. From 18 February 2003 to 17 February 2004, a cash withdrawal from a non-CBA ATM is evidenced on a CBA Mastercard statement by a cash advance charge of between \$2.50 and \$6.25 with no charges appearing for a cash withdrawal from a CBA ATM; and

- iv. From 25 February 2004 onwards, a cash withdrawal from a CBA ATM is evidenced on a CBA Mastercard statement by a \$1.25 cash advance charge while a cash withdrawal from a non-CBA ATM is evidenced by a \$1.50 charge. Cash withdrawals made from overseas terminals were evidence by a \$4 charge.

Other general comments about methodology

- b. All Qantas flights referred to below are booked in Mr Thomson's name except where otherwise specified.
- c. According to the Australian Business Register on www.business.gov.au, ([PUB.008.0079](#)) 'Secure Parking Wynyard Lane' which is frequently referred to below is Secure Parking Financial Services Pty Ltd. It appears that Mr Thomson used Secure Parking Wynyard Lane when driving from the Central Coast to Sydney for work.
- d. The Valet Parking, Sydney airport service appears to often process charges hours after the car is delivered to the car park, and also in some instances on the following day. It is therefore possible that the Valet parking, Sydney airport invoices and receipts are not a definitive indicator of Mr Thomson's location on the day that these invoices were processed.

Stay 1: 19 and 20 February 2006 Radisson Plaza Hotel

Evidence

272. Mr Thomson's Diners Club statement dated 20 March 2006 ([HSUNO.015.0026](#)) discloses that on 18 February 2006 he paid \$693.41 for a Qantas flight from Sydney to Melbourne on 21 February 2006.
273. Mr Thomson's Diners Club statement dated 20 March 2006 ([HSUNO.015.0026](#)) also discloses that on Tuesday 21st February 2006 he incurred the following charges:
 - a. \$402.45 at the Radisson Plaza Hotel in Sydney;
 - b. \$55 at Valet Parking at the Sydney airport; and
 - c. \$45.51 taxi fare for 'airport to city'.
274. Mr Thomson's CBA Mastercard statement dated 24 February 2006 ([HSUNO.014.0056](#)) discloses that on Tuesday 21 February 2006 he withdrew \$200 cash from an ATM at Melbourne airport.
275. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).

Analysis

276. On the basis of this evidence, and in the absence of any other explanation for the charge, it appears that Mr Thomson's charged \$402.45 to his Diners Club card for one or two nights' accommodation at the Radisson Hotel in Sydney on 19 and 20 February 2006.

Stay 2: 18 May 2006 – Star City, Darling Harbour

Evidence

277. Mr Thomson's Diners Club statement dated 20 May 2006 ([HSUNO.021.0341](#)) discloses that on 11 May 2006 he made a Wotif booking for \$251.85.
278. An undated Wotif tax invoice and receipt ([HSUNO.002.0065](#)) was sent to Mr Thomson's email address 'craigt@hsu.net.au' confirming \$251.85 payment for accommodation at the Star City Hotel and Apartments, Darling Harbour, from 18 May 2006. This Wotif invoice stated that inclusions were 'Buffet Breakfast for 2, \$20 Restaurant Voucher, Bvlgari Gift pack per stay and complimentary upgrade to next available room type'.
279. Mr Thomson's Diners Club statement dated 20 May 2006 further discloses that on 18 and 19 May 2006 he incurred the following charges:
 - a. on 18 May 2006, \$50.47 for secure parking Wynyard Lane;
 - b. on 19 May 2006:
 - i. \$54.50 at Star City; and
 - ii. \$63.27 at the Caltex Starshop.
280. Mr Thomson's CBA Mastercard statement dated 26 May 2006 ([HSUNO.002.0241](#)) discloses that on 18 May 2006 he withdrew \$300 cash from an ATM at 'Star Cistar City (11) Sydney'.
281. Mr Thomson's Diners Club statement dated 20 June 2006 ([HSUNO.002.0188](#)) discloses that on 18 May 2006 he incurred an additional charge of \$13.76 for a taxi fare for 'city to Pyrmont'.
282. On 18 May 2006 the Transport Workers Union National Council was held in Sydney. A memorandum submitted by Mr Thomson claims business expenses of \$300 at this event for 150 delegates. ([HSUNO.002.0245](#))
283. A tax invoice from Star City dated 19 May 2006 ([HSUNO.002.0064](#)) discloses that \$54.50 was charged to Diners Club card 36 4365 5548 2979. This included \$24 for valet parking and \$30.50 for mini bar expenses.

Analysis

284. It appears that Mr Thomson used his Diners Club card to pay \$251.85 to Wotif for accommodation at Star City Hotel & Apartments on 18 May 2006, including buffet breakfast for 2 people, a restaurant voucher and car park.
285. On the basis of this evidence, and in the absence of any other explanation for the charge, it appears the \$54.50 Star City charge to Mr Thomson's Diners Club card on 19 May 2006 was for extras during his stay at Star City.

Stay 3: 29 June 2006 – Radisson Plaza Hotel, Sydney

Evidence

286. Mr Thomson's CBA Mastercard statement dated 26 July 2006 ([HSUNO.001.0282](#)) discloses that on 28 June 2006 he withdrew \$300 cash from an ATM at Swansea NSW.
287. Mr Thomson's Diners Club statement dated 20 July 2006 ([HSUNO.015.0077](#)) discloses that he incurred the following charges:
- a. on 28 June 2006, \$12.99 taxi fare for 'city to Macdonaldtown'.
 - b. on 29 June 2006:
 - i. \$412.45 to the Radisson Plaza Hotel Sydney; and
 - ii. \$70.40 at the Caltex in Wamberal.
 - c. on 30 June 2006, \$23.69 for Secure Parking, Wynyard Lane.
288. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).

Analysis

289. On the basis of this evidence it appears that Mr Thomson charged \$412.45 to his Diners Club card for accommodation and extras at the Radisson Plaza Hotel, Sydney on 28 June 2006.

Stay 4: 31 July 2006 – Shangri-La Hotel Sydney

Evidence

290. Mr Thomson's Diners Club statement dated 20 August 2006 ([HSUNO.001.0467](#)) discloses that between 29 July 2006 and 1 August 2006 he incurred the following charges:
- a. on 29 July 2006, \$84.81 at the Caltex in Wamberal.
 - b. on 30 July 2006:
 - i. \$35.19 taxi fare for 'suburbs to Circular Quay'; and
 - ii. \$27.75 taxi fare for 'home to Narabeen'.
 - c. on 1 August 2006, \$363 at the Shangri-la Hotel, Sydney.
291. Mr Thomson's CBA Mastercard statement dated 25 August 2006 ([HSUNO.001.0284](#)) discloses that on 31 July 2006 he withdrew \$500 cash from an ATM at 182 George St, Sydney.
292. As at 7 November 2011 the Wotif website identified that the room rates at the Shangri-La Hotel, Sydney, range between \$290 and \$755 per night ([FWA.012.0064](#)).

Analysis

293. On the basis of this evidence, it appears that Mr Thomson's charged \$363 to his Diners Club card for one night's accommodation at the Shangri-La Hotel in Sydney on 31 July 2006 and extras incurred during his stay.

Stay 5: 7 September 2006 –Radisson Plaza , Sydney

Evidence

294. Mr Thomson's Diners Club statement dated 20 September 2006 ([HSUNO.001.0476](#)) discloses that between 6 September 2006 and 8 September 2006 he incurred the following charges:
- a. on 6 September 2006:
 - i. \$601.87 for a Qantas from Sydney to Melbourne on 7 September 2006, return on unknown date;
 - ii. \$271.85 and \$278.85 to Wotif; and
 - iii. \$49.96 at Dick Smith, Bateau Bay.
 - b. on 7 September 2006:
 - i. \$50 at the Hilton Melbourne airport;
 - ii. \$51.54 at the Caltex Star Mart Gosford West;
 - iii. \$55 for Valet Parking, Sydney airport;
 - iv. \$48.29 taxi fare for 'airport to hotel'; and
 - v. \$25.42 taxi fare for 'city to Randwick South'.
 - c. on 8 September 2006, \$79.10 at the Radisson Plaza Hotel Sydney.
295. Mr Thomson's CBA Mastercard statement dated 26 September 2006 ([HSUNO.014.0069](#)) discloses that on 6 September he withdrew \$500 cash from an ANZ ATM at Bay Village, Bateau Bay.
296. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).

Analysis

297. On the basis of this evidence it appears that Mr Thomson:
- a. on 6 September 2006:
 - i. withdrew \$500 cash using his CBA Mastercard; and
 - ii. booked accommodation for the following night at the Radisson Blu Plaza Hotel in Sydney, and used his Diners Club card to pay either \$271.85 or \$278.85 for this booking.

- b. on 7 September 2006:
 - i. filled his car with petrol in Gosford West, drove to Sydney, left his car at Valet Parking at Sydney airport and flew to Melbourne; and
 - ii. later that day flew back to Sydney, collected his car from Valet Parking, Sydney airport and stayed at the Radisson Plaza Hotel, Sydney that evening.
 - c. on 8 September 2006, paid for \$79.10 in extras incurred during his stay at the Radisson Plaza Hotel.
298. It is also appears that one of the Wotif charges incurred on 6 September 2006, using his Diners Club card, was for one night's accommodation at the Shangri-La Hotel in Sydney on 9 September 2006.

Stay 6: 9 September 2006 Shangri-La Hotel

Evidence

299. As set out in paragraph 294.a.ii of this chapter, on 6 September 2006 Mr Thomson paid two amounts to Wotif, namely \$271.85 and \$278.85 using his Diners Club card.
300. Mr Thomson's Diners Club statement dated 20 September 2006 ([HSUNO.001.0476](#)) discloses that he incurred the following charges:
- a. on 9 September 2006:
 - i. \$45.95 at the Mobil in East Gosford for 23.56 litres of petrol;
 - ii. \$22.31 taxi fare for 'city to Uni of NSW';
 - iii. \$30.53 taxi fare for 'city to Circular Quay'; and
 - iv. \$37.19 taxi fare for 'city to suburbs'.
 - b. on 10 September 2006:
 - i. \$69.50 at the Shangri-La Hotel Sydney; and
 - ii. \$36.63 taxi fare for 'home to Circular Quay'.
301. As at 7 November 2011 the Wotif website identified that the room rates at the Shangri-La Hotel, Sydney, range between \$290 and \$755 per night ([FWA.012.0064](#)).

Analysis

302. On the basis of this evidence it appears that Mr Thomson:
- a. on 6 September 2006, booked and paid for accommodation at the Shangri - La Hotel Sydney on 9 September 2006 and used his Diners Club card to pay either \$271.85 or \$278.85 in respect of this booking;
 - b. on 9 September 2006, purchased petrol in East Gosford, drove to Sydney and stayed at the Shangri-La Hotel that evening; and

- c. on 10 September 2006, spent \$69.50 using his Diners Club card at the Shangri-La for extras incurred during his stay the night before.
303. It also appears that one of the Wotif charges that was incurred on 6 September 2006 using Mr Thomson's Diners Club card was for one night's accommodation at the Shangri-La on 9 September 2006.

Stay 7: 16 to 21 September 2006 Sydney Harbour Marriot Hotel, Shangri-La Hotel, Swissotel and a further hotel

Evidence

304. Mr Thomson's Diners Club statement dated 20 September 2006 ([HSUNO.001.0476](#)) discloses that he incurred the following charges:
- a. on 16 September 2006:
 - i. \$391 for a Qantas return flight from Sydney to Canberra on 22 September 2006;
 - ii. \$230 to Qantas Domestic Holidays for accommodation on 21 September 2006;
 - iii. \$539.85 to Wotif; and
 - iv. \$657.75 at the Sydney Harbour Marriot.
 - b. on 18 September 2006, \$70.98 at the Caltex, Dee Why Sydney.
 - c. on 19 September 2006, \$620.90 at the Shangri-La Hotel Sydney.
 - d. on 20 September 2006, \$400.19 at Parramatta Auto Rentals.
305. Mr Thomson's CBA Mastercard statement dated 26 September 2006 ([HSUNO.014.0069](#)) discloses that he:
- a. on 19 September 2006, withdrew \$500 cash from a CBA ATM at Bateau Bay NSW; and
 - b. on 21 September 2006, withdrew \$500 cash from an STG ATM at St George NSW.
306. Mr Thomson's Diners Club statement dated 20 October 2006 ([HSUNO.015.0113](#)) discloses that he incurred the following additional charges:
- a. on 19 September 2006, \$230 to Qantas Domestic Holidays for accommodation on 20 September 2006.
 - b. on 22 September 2006:
 - i. \$252.55 at the Swissotel Sydney; and
 - ii. \$55.77 Mobil Killara for 47.52 litres of petrol.
307. As at 7 November 2011 the Wotif website identified that
- a. the rates for a room at the Marriott Sydney Harbour hotel range between \$339 to \$945 per night ([FWA.012.0042](#)); and

- b. the rates for a room at the Swissotel Sydney range between \$269 to \$1,499 per night ([FWA.012.0082](#)).

Analysis

308. On the basis of this evidence it appears that Mr Thomson:
- a. on 16 September 2006:
 - i. used his Diners Club card to pay Qantas \$391 for a return flight from Sydney to Canberra on 22 September 2006; and
 - ii. used his Diners Club card to pay Qantas Domestic Holidays \$230 for accommodation on Thursday 21 September 2006 at the Swissotel.
 - b. on 18 September 2006, stayed overnight at the Shangri-La Hotel in Sydney, paying \$620.90 on check out the next morning. It also appears that Mr Thomson purchased petrol at the Caltex in Dee Why on the way to Sydney.
 - c. on Tuesday 19 September 2006:
 - i. checked out of the Shangri-La Hotel in Sydney and returned home to the Central Coast;
 - ii. withdrew \$500 from a CBA ATM in Bateau Bay using his CBA Mastercard;
 - iii. used his Diners Club card to pay \$230 on Qantas Domestic Holidays for accommodation the next evening, 20 September 2006, at the Swissotel.
 - d. on Wednesday 20 September 2006:
 - i. checked into the Swissotel; and
 - ii. used his Diners Club card to pay \$400.09 at Parramatta Auto Rentals.
 - e. on Thursday 21 September 2006, remained at the Swissotel, under the booking he had made with Qantas Holidays Domestic on 19 September 2006.
 - f. on Friday 22 September 2006:
 - i. checked out of the Swissotel and used his Diners Club card to pay \$252.55 for extras incurred during his stay the previous evening;
 - ii. flew to and from Canberra; and
 - iii. drove home to the Central Coast, stopping at the Mobil in Killara to purchase \$55.77 in petrol on the way home.
309. I have noted at paragraph 304.a.iv above of this chapter that a charge of \$657.75 was made on 16 September 2006 at the Sydney Harbour Marriot to Mr Thomson's Diners Club card. On 15 September 2006 Ms Stevens had charged \$151 and \$56 at the Sydney Harbour Marriot to her Diners Club card ([HSUNO.021.0208](#)). It is therefore possible that the payment of \$657.75 at the Sydney Harbour Marriot related to accommodation for Ms Stevens.

Stay 8: 20 November 2006 Shangri-La Hotel

Evidence

310. Mr Thomson's Diners Club statement dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that on 15 November 2006 he spent \$327.15 on Wotif.
311. Mr Thomson's CBA Mastercard statement dated 24 November 2006 ([HSUNO.014.0074](#)) discloses that on 20 November 2006 he withdrew \$500 cash from a Westpac ATM at 275 George St, Sydney.
312. Mr Thomson's Diners Club statement dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that on 21 November 2006 he incurred the following charges:
 - a. \$94.50 at the Shangri-La Hotel Sydney;
 - b. \$49.33 at the Mobil Killara for 42.20 litres of petrol;
 - c. \$27.48 taxi fare for 'city to Daceyville'; and
 - d. \$25.20 taxi fare for 'suburbs to city'.
313. The Shangri-La charge on 21 November 2006 includes ABN 92003643963 (PUB.008.0177). An ASIC search undertaken on 16 November 2006 ([PUB.008.0178](#)) identifies this ABN as relating to the company 'Lilyvale Hotel Pty Ltd' and indicates that the principal place of business is 'Shangri La Hotel Sydney' located at 176 Cumberland Street, The Rocks NSW 2000.
314. A Google maps search indicates that the Shangri-La Hotel where Mr Thomson was staying on 20 November 2006 is located three minutes away from the ATM where Mr Thomson made this withdrawal (PUB.008.0174).
315. As at 7 November 2011 the Wotif website identified that the room rates at the Shangri-La Hotel, Sydney, range between \$290 and \$755 per night ([FWA.012.0064](#)).

Analysis

316. On the basis of the matters set out above at paragraphs 310 to 315 of this chapter, it appears that Mr Thomson:
 - a. on 15 November 2006, used his Diners Club card to pay \$327.15 for one night's accommodation at the Shangri-La Hotel on 20 November 2006 through Wotif.
 - b. on 20 November 2006:
 - i. withdrew \$500 cash from an ATM located at 275 George St, Sydney using his CBA Mastercard; and
 - ii. caught a taxi from the suburbs to the Shangri-La Hotel in the city.
 - c. on 21 November 2006:
 - i. checked out of the Shangri - La Hotel and used his Diners Club card to pay \$94.50 at the Shangri-La Hotel for extras incurred during his stay; and
 - ii. caught a taxi from city to Daceyville.

Stay 9: 2 December 2006 Sheraton on the Park

Evidence

317. Mr Thomson's Diners Club statement dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that on 2 December 2006 he incurred the following charges:
- a. \$351.30 at Sheraton on the Park Sydney;
 - b. \$52.53 for Secure Parking Wynyard Lane; and
 - c. \$71.31 at Coles Express 1596 Wahroonga.
318. Mr Thomson's CBA Mastercard statement dated 27 December 2006 ([HSUNO.014.0081](#)) discloses that on 28 November 2006 he withdrew \$500 cash from an CBA ATM at Pitt St, Sydney NSW.
319. As at 7 November 2011, the Wotif website identified that the room rates at the Sheraton on the Park range between \$200 to \$690 per night ([FWA.012.0068](#)).

Analysis

320. On the basis of this evidence it appears that the \$351.30 Sheraton on the Park charge on Mr Thomson's Diners Club card on 2 December 2006 was for accommodation on Friday 2 December 2006.

Stay 10: 8 December 2006 Hilton International Hotel

Evidence

321. Mr Thomson's Diners Club statement dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that on 16 November 2006 he paid \$415 to Qantas Holidays Domestic for accommodation on 8 December 2006.
322. Mr Thomson's CBA Mastercard statement dated 27 December 2006 ([HSUNO.014.0081](#)) discloses that on 7 December 2006 he withdrew \$300 cash from an ANZ ATM at Forresters Beach.
323. Mr Thomson's Diners Club statement dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that he incurred the following charges :
- a. on 7 December 2006, \$23.69 for Secure Parking Wynyard Lane.
 - b. on 9 December 2006:
 - i. \$186.25 at the Hilton International Sydney; and
 - ii. \$66.13 at Mobil West Gosford NSW for 32.08 litres of petrol.
324. A National Executive meeting took place at the NSW Branch office in Sydney on Thursday 7 December 2006 (HSUNO.018.0192).
325. As at 7 November 2011, the Wotif website identified that the room rates at the Hilton Sydney range between \$259 and \$969 per night ([FWA.012.0034](#)).

Analysis

326. On the basis of this evidence it appears that
- a. the \$415 Qantas Domestic Holidays charge on Mr Thomson's Diners Club card on 16 November 2006 was for accommodation at the Hilton International on Friday 8 December 2006.
 - b. the \$186.25 Hilton International charge on Mr Thomson's Diners Club card on 9 December 2006 related to extras incurred during his stay the previous evening.

Stay 11: 10 January 2007 Swissotel

Evidence

327. Mr Thomson's Diners Club statement dated 20 January 2007 ([HSUNO.015.0152](#)) discloses that he incurred the following charges:
- a. on 4 January 2007 \$225 was paid to Qantas Holidays Domestic for accommodation on 10 January 2011.
 - b. on 9 January 2007:
 - i. \$52.53 for Secure Parking, Wynyard Lane;
 - ii. \$26.88 at Caltex Starshop; and
 - iii. \$12.70 at Caltex Starshop.
 - c. on 11 January 2007:
 - i. \$186.45 at the Swissotel Sydney;
 - ii. \$280.00 at the Kent hotel;
 - iii. \$37.41 taxi fare for 'city to Seven Mile Beach';
 - iv. \$11.10 taxi fare for 'City to suburbs'; and
 - v. \$55.16 taxi fare for 'airport to city'.
328. Mr Thomson's CBA Mastercard statement dated 24 January 2007 ([HSUNO.014.0085](#)) discloses that on 10 January 2007 he withdrew \$500 cash from an ATM at the Westpac Central Plaza Sydney.
329. As at 7 November 2011 the Wotif website identified that the room rates at the Swissotel Sydney, range between \$269 and \$1,499 per night ([FWA.012.0082](#)).

Analysis

330. On the basis of this evidence, it appears that:
- a. the \$225 Qantas Domestic Holiday charge on Mr Thomson's Diners Club card on 4 January 2007 was for accommodation at the Swissotel on 10 January 2007; and
 - b. the \$186.45 Swissotel charge on Mr Thomson's Diners Club card on 11 January 2007 was for extras incurred during his stay the previous evening.

Stay 12: 20 March 2007 Quay West, Sydney

Evidence

331. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that he incurred the following charges:
- a. on 18 March 2007:
 - i. \$290 to Qantas Holidays Domestic for accommodation on 20 March 2007; and
 - ii. \$292.38 for a Qantas flight from Sydney to Canberra on 20 March 2007.
 - b. on 19 March 2007, \$292.38 for a Qantas flight from Sydney to Canberra on 20 March 2007 in the name of Mr Matthew Burke.
 - c. on 20 March 2007:
 - i. \$200 to Qantas Holidays Domestic for accommodation on 20 March 2007 in the name of Mr Matthew Burke;
 - ii. \$44.00 credit from the Pacific International Suites Adelaide;
 - iii. \$17.98 taxi fare for 'Airport to Capital Hill';
 - iv. \$58.34 taxi fare for 'Office to Pialligo'; and
 - v. \$55.50 GM Cabs 7 fare for 'Airport to City'.
 - d. 21 March 2007:
 - i. \$59.40 at Quay West Apartments, Sydney;
 - ii. \$19.43 taxi fare for 'airport to Cairns city'; and
 - iii. \$135 at 2 Fish Restaurant, Cairns.
332. As at 7 November 2011 the Wotif website identified that the room rates at the Quay West Suites Sydney, range between \$347 and \$707 per night ([FWA.012.0057](#)).

Analysis

333. On the basis of this evidence, it appears that:
- a. Mr Thomson and Mr Burke flew from Sydney to Canberra and back to Sydney on 20 March 2007 and that both flights were charged to Mr Thomson's Diners Club card;
 - b. the \$290 Qantas Domestic Holiday charge on Mr Thomson's Diners Club card on 18 March 2007 was for his own accommodation at the Quay West in Sydney on 20 March 2007;
 - c. the \$290 Qantas Domestic Holiday charge on Mr Thomson's Diners Club card on 20 March 2007 was for Mr Burke's accommodation at the Quay West in Sydney on 20 March 2007; and

- d. the \$59.40 Quay West charge on 11 March 2007 was for extras incurred during Mr Thomson's stay the previous evening.

Stay 13: 27 and 28 March 2007 Radisson Plaza Hotel and Swissotel

Evidence

334. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that he incurred the following charges:
- a. on 26 March 2007 he paid \$255 to Qantas Holidays Domestic for accommodation on 27 March 2007.
 - b. on 27 March 2007:
 - i. \$38.85 taxi fare for 'city to suburbs'; and
 - ii. \$44.40 taxi fare for '5 city to 6 suburbs'.
 - c. on 28 March 2007:
 - i. \$88.45 at Radisson Plaza Hotel Sydney;
 - ii. \$40.10 at Café Bluestone; and
 - iii. \$67.50 at Industrie.
 - d. on 29 March 2007:
 - i. \$366.65 at Swissotel Sydney;
 - ii. \$49.69 at Caltex Starshop; and
 - iii. \$52.53 for Secure Parking Wynyard Lane.
335. Mr Thomson's CBA Mastercard statement dated 27 March 2007 ([HSUNO.014.0088](#)) discloses that on 27 March 2007 he withdrew \$500 cash from an ANZ ATM at Forrester's Beach.
336. The National Executive met in Sydney on 28 and 29 March 2007 ([HSUNO.018.0151](#)).
337. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).
338. As at 7 November 2011 the Wotif website identified that the room rates at the Swissotel Sydney, range between \$269 and \$1,499 per night ([FWA.012.0082](#)).

Analysis

339. On the basis of this evidence, and in the absence of any other explanation, it appears that Mr Thomson:
- a. on 26 March 2007 used his Diners Club card to pay \$255 to Qantas Domestic Holidays for accommodation at the Radisson Plaza Hotel, Sydney for 27 March 2007, charging this expense to his Diners Club card.

- b. on 27 March 2007:
 - i. withdrew \$300 cash from the ANZ ATM at Forresters Beach using his CBA Mastercard;
 - ii. caught taxis to and from the Sydney airport; and
 - iii. stayed at the Radisson Plaza Hotel that evening.
- c. on 28 March 2007:
 - i. checked out from the Radisson Plaza Hotel Sydney using his Diners Club card to pay \$88.45 for extras incurred during his stay;
 - ii. attended the National Executive meeting in Sydney;
 - iii. used his Diners Club card to pay \$40.10 at Café Bluestone;
 - iv. used his Diners Club card to pay \$67.50 at Industrie bar; and
 - v. stayed at the Swissotel that evening.
- d. on 29 March 2007 upon check out from the Swissotel, used his Diners Club card to pay \$366.65 for accommodation for the previous night and extras incurred during his stay.

Stay 14: 26 to 29 April 2007 Shangri-La Hotel

Evidence

- 340. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that on 3 April 2007 he paid \$986 to Qantas Holidays Domestic for accommodation on 26 April 2007.
- 341. Mr Thomson's Diners Club statement dated 20 May 2007 ([HSUNO.015.0198](#)) discloses that he incurred the following charges:
 - a. on 26 April 2007:
 - i. \$17.21 taxi fare for 'city to Woollahra'; and
 - ii. \$17.04 taxi fare for 'suburbs to Gallows Hill'.
 - b. on 27 April 2007:
 - i. \$520 at the Aria Restaurant;
 - ii. \$17.21 taxi fare for '5 City to 5 City'; and
 - iii. \$19.65 taxi fare for 'suburbs to Circular Quay'.
 - c. on 28 April 2007:
 - i. \$12.65 taxi fare for 'office to office';
 - ii. \$12.21 taxi fare for 'city to Gallows Hill';
 - iii. \$14.76 taxi fare for 'suburbs to Darling harbour'; and
 - iv. \$14.99 taxi fare for 'suburbs to Gallows Hill'.

- d. on 29 April 2007:
 - i. \$553.15 at Shangri-La Hotel Sydney;
 - ii. \$13 at Shangri-La Hotel Sydney; and
 - iii. \$11.10 taxi fare for 'suburbs to Gallows Hill'.
 - e. on 30 April 2007:
 - i. \$571.45 at Shangri-La Hotel Sydney; and
 - ii. \$57.48 at Caltex Starshop
342. Mr Thomson's CBA Mastercard statement dated 26 April 2007 ([HSUNO.021.0494](#)) discloses that on 26 April 2007 he withdrew \$500 cash from a CBA ATM at The Entrance NSW.
343. As at 7 November 2011 the Wotif website identified that the room rates at the Shangri-La Hotel, Sydney, range between \$290 and \$755 per night ([FWA.012.0064](#)).

Analysis

344. On the basis of this evidence, and in the absence of any other explanation, it appears that Mr Thomson:
- a. on 3 April 2007 used his Diners Club card to pay \$986 to Qantas Holidays Domestic for accommodation at the Shangri-La Hotel on Thursday 26 and Friday 27 April 2007, using his Diners Club card.
 - b. on Thursday 26 April 2007:
 - i. withdrew \$500 cash from the CBA ATM at The Entrance using his CBA Mastercard;
 - ii. drove to Sydney that day and checked in to the Shangri-La Hotel;
 - iii. caught a taxi from the city to Woollahra; and
 - iv. caught a taxi from the suburbs to Gallows Hill.
 - c. on Friday 27 April 2007:
 - i. caught a taxi within the city of Sydney;
 - ii. caught a taxi from the city to the suburbs;
 - iii. caught a taxi from the suburbs to Circular Quay; and
 - iv. stayed at the Shangri-La Hotel that evening.
 - d. on Saturday 28 April 2007:
 - i. caught four taxis throughout the day, including two taxis to Gallows Hill and one to Darling Harbour; and
 - ii. stayed at the Shangri-La Hotel that evening.

- e. on Sunday 29 April 2007:
 - i. used his Diners Club card to pay the Shangri-La Hotel \$533.15 for the previous evening's accommodation and \$13 for incidentals incurred during his stay; and
 - ii. caught a taxi from the suburbs to Gallows Hill.
- f. on Monday 30 April 2007:
 - i. checked out of the Shangri-La Hotel using his Diners Club card to pay the Shangri-La Hotel \$571.45 for the previous evening's accommodation; and
 - ii. drove home to the Central Coast, stopping at the Caltex for petrol on the way.

Stay 15: 13 June 2007 Radisson Plaza Hotel

Evidence

345. Mr Thomson's Diners Club statement dated 20 June 2007 ([HSUNO.015.0212](#)) discloses that he incurred the following charges:
- a. on 12 June 2007:
 - i. \$43.91 at the Caltex Starshop; and
 - ii. \$43.26 at Secure Parking Wynyard Lane.
 - b. on 14 June 2007:
 - i. \$444.90 at Radisson Plaza Hotel Sydney;
 - ii. \$75.88 at Caltex Starshop;
 - iii. \$59.89 at Mobil Killara; and
 - iv. \$21.40 at Cafe Bluestone.
346. Mr Thomson's CBA Mastercard statement dated 27 June 2007 ([HSUNO.001.0110](#)) discloses that he:
- a. on 12 June 2006, withdrew \$500 from St George ATM in Bateau Bay; and
 - b. on 14 June 2006, withdrew \$500 from an ANZ ATM at 68 Pitt Street Sydney.
347. Mr Thomson's Diners Club statement dated 20 July 2007 ([HSUNO.015.0289](#)) discloses that he incurred the following charges on 13 June 2007:
- a. \$22.20 taxi fare for 'suburbs to Martin Place'; and
 - b. \$33.96 Dick Smith at Bateau Bay.
348. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).

Analysis

349. On the basis of this evidence it appears that Mr Thomson:
- a. on Tuesday 12 June 2007:
 - i. withdrew \$500 from the ST George ATM in Bateau Bay using his CBA Mastercard;
 - ii. drove to Sydney, filling up with petrol at the Caltex Starshop on the way; and
 - iii. parked his car at Secure Parking in Wynyard Lane.
 - b. on Wednesday 13 June 2007, stayed at the Radisson Plaza Hotel Sydney.
 - c. on Thursday 14 June 2007:
 - i. withdrew \$500 cash from an ANZ ATM at 68 Pitt Street, Sydney using his CBA Mastercard; and
 - ii. used his Diners Club card to pay \$444.90 when checking out from the Radisson Plaza Hotel for accommodation the previous evening and extras incurred during his stay.

Stay 16: 18 and 19 June 2007 Radisson Plaza Hotel

Evidence

350. Mr Thomson's Diners Club statement dated 20 June 2007 ([HSUNO.015.0212](#)) discloses he incurred the following charges:
- a. on 13 June 2007 he paid \$493 to Qantas Holidays Domestic for accommodation on 18 June 2007.
 - b. 17 June 2007, \$72.98 at Caltex Starshop
 - c. on 18 June 2007:
 - i. \$23.60 at Café Bluestone;
 - ii. \$44.96 taxi fare for 'city to Brighton Le-Sands'; and
 - iii. \$94.35 taxi fare for 'office to home'.
 - d. on 19 June 2007:
 - i. \$108 at Valet Parking Sydney airport;
 - ii. \$22.20 taxi fare for 'suburbs to suburbs';
 - iii. \$17.65 taxi fare for 'office to Pialligo'; and
 - iv. \$93.45 at Radisson Plaza Hotel Sydney.
 - e. on 20 June 2007, \$55.52 at Caltex Starshop

351. Mr Thomson's CBA Mastercard statement dated 27 June 2007 ([HSUNO.001.0110](#)) discloses that on 19 June 2007 he withdrew \$500 cash from an ANZ ATM at 68 Pitt Street, Sydney.
352. As at 7 November 2011 the Wotif website identified that the rooms at the Radisson Blu Plaza Hotel, Sydney, ranged between \$250 and \$430 per night ([FWA.012.0059](#)).

Analysis

353. On the basis of this evidence it appears that Mr Thomson:
- a. on 13 June 2007, used his Diners Club card to pay \$493 to Qantas Holidays Domestic for accommodation at the Radisson Plaza Hotel in Sydney on 18 and possibly 19 June 2007.
 - b. on Monday 18 June 2007:
 - i. used his Diners Club card to pay \$23.60 at Café Bluestone;
 - ii. checked into the Radisson Plaza Hotel for that evening;
 - iii. caught a taxi from the city to Brighton-Le-Sands; and
 - iv. caught a taxi from the office to the hotel.
 - c. on Tuesday 19 June 2007:
 - i. checked out from the Radisson Plaza Hotel using his Diners Club card to pay \$93.45 for extras incurred during his stay;
 - ii. withdrew \$500 from an ANZ ATM at 69 Pitt Street, Sydney using his CBA Mastercard;
 - iii. drove to the Sydney airport;
 - iv. flew to Canberra; and
 - v. flew back from Canberra to Sydney later that day.
354. Mr Thomson may have stayed again at the Radisson Plaza Hotel on Tuesday 19 June 2007. However it is not possible on the evidence to state this conclusively.

Stay 17: 15 August 2007 Fraser Suites

Evidence

355. Mr Thomson's Diners Club statement dated 20 August 2007 ([HSUNO.005.0122](#)) discloses that he incurred the following charges:
- a. on 14 August 2007, \$212 at Flairview Travel Pty Ltd Sydney;
 - b. on 16 August 2007, \$47.50 at Fraser Suites Sydney; and
 - c. on 17 August 2007, \$66.77 at Coles Express 1553.

356. Mr Thomson's CBA Mastercard statement dated 28 August 2007 ([HSUNO.001.0094](#)) discloses that he:
- a. on 14 August 2007, withdrew \$500 cash from a CBA ATM at Bay Village NSW; and
 - b. on 16 August 2007, was charged for two separate transactions of \$385 each by Keywed Pty Ltd Restaurant, Surry Hills.
357. As at 8 November 2011 the Wotif website identified that the room rates at the Fraser Suites Sydney, for 10 November 2011 range between \$318 and \$398 per night ([FWA.012.0026](#)).

Analysis

358. On the basis of this evidence, and in the absence of any other explanation, it appears that Mr Thomson:
- a. on Tuesday 14 August 2007:
 - i. used his Diners Club card to pay Flairview \$212 for accommodation at the Fraser Suites Sydney on 15 August 2007.
 - ii. withdrew \$500 from the CBA ATM at Bay Village using his CBA Mastercard;
 - b. on Wednesday 15 August 2007:
 - i. checked in to the Fraser Suites Sydney where he stayed that evening; and
 - ii. used his CBA Mastercard to pay two amounts of \$385 at Keywed that evening.
 - c. on Thursday 16 August 2007, checked out of the Fraser Suites and used his Diners Club card to pay \$47.50 for extras incurred during his stay.

Stay 18: 13 September 2007 Four Seasons Hotel

Evidence

359. Mr Thomson's Diners Club statement dated 20 September 2007 ([HSUNO.005.0150](#)) discloses that he incurred the following charges:
- a. on 12 September 2007, \$355 to Qantas Holidays Domestic for accommodation on 13 September 2007.
 - b. on 14 September 2007:
 - i. \$53.52 at the BP Tumby Umbi; and
 - ii. \$100 at Four Seasons Hotel Sydney.
360. Mr Thomson's CBA Mastercard statement dated 26 September 2007 ([HSUNO.001.0090](#)) discloses that on 13 September 2007 he withdrew \$500 cash from a STG ATM at 182 George St, Sydney.

361. As at 8 November 2011 the Wotif website identified that the room rates at the Four Seasons Hotel Sydney, for 10 November 2011 range between \$395 and \$920 per night ([FWA.012.0025](#)).

Analysis

362. On the basis of this evidence and in the absence of any other explanation, it appears that Mr Thomson:
- a. on Tuesday 12 September 2007, used his Diners Club card to pay \$355 to Qantas Holidays Domestic for accommodation at the Four Seasons Sydney on 13 September 2007.
 - b. on Wednesday 13 September 2007:
 - i. withdrew \$500 from the St George ATM at 128 George St, Sydney using his CBA Mastercard; and
 - ii. checked in to the Four Seasons Hotel where he stayed that evening.
 - c. on Thursday 14 September 2006:
 - i. checked out of the Four Seasons Hotel and used his Diners Club card to pay \$100 for extras incurred during his stay the previous evening; and
 - ii. drove home to the Central Coast, filling up with petrol at the BP in Tumbi Umbi on the way.

Stay 19: 19 September 2007 Swissotel Sydney

Evidence

363. Mr Thomson's Diners Club statement dated 20 September 2007 ([HSUNO.015.0246](#)) discloses that he incurred the following charges:
- a. on 19 September 2007, \$50 at Four Seasons Hotel Sydney; and
 - b. on 20 September 2007, \$443.40 at Swissotel Sydney.
364. Mr Thomson's CBA Mastercard statement dated 26 September 2007 ([HSUNO.001.0090](#)) discloses that on 20 September 2007 he:
- a. withdrew \$500 cash from a CBA ATM at Wynyard NSW; and
 - b. withdrew \$300 cash from a STG ATM at St George ATM City Centre, Sydney.
365. Mr Thomson's Diners Club statement dated 20 October 2007 ([HSUNO.001.0208](#)) discloses that on 20 September 2007 he spent \$71.64 at Coles Express 1553.
366. As at 8 November 2011 the Wotif website identified that the room rates at the Four Seasons Hotel Sydney, for 10 November 2011 range between \$395 and \$920 per night ([FWA.012.0025](#)).
367. As at 7 November 2011 the Wotif website identified that the room rates at the Swissotel Sydney, range between \$269 and \$1,499 per night ([FWA.012.0082](#)).

Analysis

368. On the basis of this evidence and in the absence of any other explanation, it appears that Mr Thomson:
- a. on Wednesday 19 September 2007:
 - i. used his Diners Club card to pay \$50 at the Four Seasons Hotel, Sydney; and
 - ii. checked into the Swissotel for that evening.
 - b. on Thursday 20 September 2007:
 - i. withdrew \$500 from a CBA ATM on Wynyard using his CBA Mastercard;
 - ii. withdrew \$300 from a St George ATM in the city centre using his CBA Mastercard;
 - iii. checked out from the Swissotel using his Diners Club card to pay \$443.40 for the previous evening's accommodation; and
 - iv. spent \$49.18 at the Coles Express.

Stay 20: 7 December 2007 Swissotel

Evidence

369. Mr Thomson's Diners Club statement dated 20 December 2007 ([HSUNO.005.0229](#)) discloses that he incurred the following charges:
- a. on 27 November 2007, \$240 to Qantas Holidays Domestic for accommodation on 7 December 2007; and
 - b. on 8 December 2007 \$99.90 at Swissotel Sydney.
370. As at 7 November 2011 the Wotif website identified that the room rates at the Swissotel Sydney, range between \$269 and \$1,499 per night ([FWA.012.0082](#)).

Analysis

371. On the basis of this evidence and in the absence of any other explanation, it appears that
- a. the \$240 Qantas Domestic Holidays charge on Mr Thomson's Diners Club card incurred on 27 November 2007 related to accommodation at the Swissotel on Friday 7 December 2007; and
 - b. the \$99.90 Swissotel charge on Mr Thomson's Diners Club card incurred on Saturday 8 December 2007 was for extras incurred during his stay the previous evening.

Mr Thomson's submissions

372. With respect to findings 79 to 82, in their submissions of 2 March 2012 (FWA.024.0002) on behalf of Mr Thomson, Holding Redlich have submitted on behalf of Mr Thomson that:
- a. He denies that he has breached Sub-rule 36(b) of the Rules or any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule.
 - b. The expenses incurred by Mr Thomson on accommodation in Sydney were reasonable. Mr Thomson's presence in Sydney during 2006 and 2007 was for Union business and necessary to properly perform his duties as National Secretary. The expenses incurred by him on accommodation were expenditure for a purpose reasonably incidental to the general administration of the HSU and consistent with the informal travel policy of the HSU.
 - c. He denies that he gained any advantage by incurring the expenditure, as the expenditure was related to his role as National Secretary and had been accounted for in the budget for the calendar years 2006 and 2007, which had been approved by the National Executive.

Conclusions

373. The discussion at paragraphs 272 to 371 above of this chapter establishes that Mr Thomson used National Office funds to pay for accommodation in Sydney on 20 occasions in 2006 and 2007 after he had moved to live on the Central Coast of NSW, the costs of which are summarised in Annexure E.
374. Mr Thomson has submitted that the expenditure had been accounted for in the budget for the calendar years 2006 and 2007, which had been approved by the National Executive. For the reasons set out at paragraphs 154 to 156 of chapter 6, I am not persuaded by this argument.
375. There is no evidence before FWA which demonstrates that Mr Thomson ever sought the approval of either National Council or National Executive to use National Office funds to pay for accommodation in Sydney after he moved to live on the NSW Central Coast. Accordingly it appears that such expenditure was not authorised by either the National Council or the National Executive pursuant to Sub-rule 36(b).
376. I have already considered the absence of any formal travel policy while Mr Thomson was National Secretary at Findings 17 to 22 - Failure to prepare policies regarding travel related expenses in chapter 5.
377. The expenditure of National Office funds by Mr Thomson on accommodation in Sydney after he moved to live on the Central Coast was not expenditure on the general administration of the HSU, or on a purpose reasonably incidental to the general administration of the HSU. It is well known that many people commute from the Central Coast to work in Sydney. Indeed, NSW CityRail services several train stations on the Central Coast. In any event, Mr Thomson was entitled as National Secretary to (and did have) a fully maintained and fuelled, late model vehicle provided including for personal use ([HSUNO.023.0195](#)). Moreover it was

Mr Thomson's own decision to live on the Central Coast and he did so knowing that he was also opening an office in the Sydney CBD.

378. A reasonable person in Mr Thomson's position as National Secretary would not have spent any monies of the HSU on accommodation expenses in Sydney during 2006 and 2007 unless such expenditure had been authorised by either National Council or National Executive.
379. Mr Thomson could not have believed it was in the best interests of the HSU to incur such expenditure on accommodation expenses in Sydney during 2006 and 2007 when such expenditure had not been authorised by either National Council or National Executive.

Findings 79 to 82 - Expenditure on accommodation in Sydney after Mr Thomson moved to the Central Coast of NSW

79. Mr Thomson breached Sub-rule 36(b) by purporting to authorise the expenditure on accommodation for himself in Sydney set out in Annexure E in circumstances where:
- neither National Council nor National Executive had authorised such expenditure; and
 - such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
80. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring all of the expenditure set out in Annexure E on accommodation for himself in Sydney in circumstances where:
- neither National Council nor National Executive had authorised such expenditure; and
 - such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
81. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose by incurring all of the expenditure set out in Annexure E on accommodation for himself in Sydney in circumstances where:
- neither National Council nor National Executive had authorised such expenditure; and
 - such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.

- 82.** Mr Thomson contravened subsection 287(1) of the RAO Schedule in that he used his position as National Secretary to gain an advantage for himself or someone else (accommodation) by incurring all of the expenditure set out in Annexure E.

Alternative findings relating to Mr Thomson's expenditure on accommodation in Sydney - expenses were excessive

380. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to alternative Findings 83 to 85 - Alternative findings relating to Mr Thomson's expenditure on accommodation in Sydney - expenses were excessive, which are set out below at page 557.
381. Paragraphs 382 to 456 below, and findings 83 to 85 below, are premised on the assumption that, contrary to my conclusions above at paragraphs 373 to 379 of this chapter and to findings 79 to 82, it was appropriate for Mr Thomson to use HSU funds to pay for his own accommodation in Sydney during 2006 and 2007, provided that these expenses were reasonable.

What was Mr Thomson entitled to in relation to accommodation and other travel related expenses during Stays 1 to 20?

382. Much of the expenditure detailed in Annexure E appears to be expenditure on meals and incidentals associated with travel by Mr Thomson.
383. Even if Mr Thomson's expenditure on accommodation in Sydney during 2006 and 2007 was expenditure for the general administration of the Union or a purpose reasonably incidental to the general administration of the Union, I consider that such expenditure would still be excessive where the total expenditure related to accommodation and travel on a particular trip demonstrably exceeds the amounts provided by the 2007 Ruling, having regard to all of the available evidence.
384. Information regarding Mr Thomson's entitlements in relation to accommodation and other travel related expenses is set out at paragraphs 917 to 934 of chapter 5.
385. While Table 2 of the 2007 Ruling (which is discussed at paragraphs 917 to 923 of chapter 5) has also been applied in the analysis that follows in determining whether the expenditure in Stays 1 to 20 was excessive, it has not been applied using the same methodology as was applied in analysing Trips 1 to 36 in chapter 5 on the basis that Mr Thomson was incurring expenditure on meals and accommodation in his usual place of work (namely Sydney). As such, Mr Thomson was not travelling away from home during any of the 20 trips that are analysed below. On this basis, the methodology that was applied to analysing Trips 1 to 36 in chapter 5 has been altered as follows:
- a. Where Mr Thomson stayed in accommodation overnight for one night in Sydney, I have proceeded on the basis that it was reasonable for him to have incurred the amounts provided by the 2007 Ruling for dinner and accommodation on the night of his stay plus breakfast, lunch and incidentals on the following day;

- b. Where Mr Thomson has stayed for two or more nights, I have proceeded on the basis that it was reasonable for him to have incurred the amounts provided by the 2007 Ruling for:
- i. dinner and accommodation on the first night;
 - ii. three meals plus incidentals and accommodation for any full day on which he was 'away from home'; and
 - iii. breakfast, lunch and incidentals on the final day.

386. Table 2 of the 2007 Ruling (which is set out at paragraph 922 of chapter 5) provides \$200 for one night's accommodation in Sydney. The daily allowances for breakfast, lunch, dinner and incidentals are the same as set out with respect to Trips 1 to 36 in chapter 5, namely \$21.95 for breakfast, \$31.10 for lunch, \$43.55 for dinner and \$22.05 for incidentals.

Evidence

387. This table summarises Mr Thomson's expenditure on Stays 2 to 15 and 18 to 20, which is detailed in Annexure C:

Stay 2	\$606.35
Stay 3	\$412.45
Stay 4	\$363.00
Stay 5	\$350.95
Stay 6	\$348.35
Stay 7	\$1,333.45
Stay 8	\$421.65
Stay 9	\$351.30
Stay 10	\$601.25
Stay 11	\$411.45
Stay 12	\$349.40
Stay 13	\$750.20
Stay 14	\$2,643.60
Stay 15	\$444.90
Stay 18	\$455.00
Stay 19	\$443.40
Stay 20	\$339.90
TOTAL:	\$10,626.60

Stay 1 Radisson Plaza Hotel Sydney 19 and 20 February 2006

388. As the evidence is inconclusive (see paragraph 276 above of this chapter), I make no findings regarding this stay.

Stay 2 Star City Hotel Sydney 18 May 2006

389. As set out Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$306.35 in respect of his stay at the Star City Hotel Sydney on 18 May 2006. Item 355 of Annexure D indicates that on 18 May 2006 Mr Thomson also charged \$300 to his CBA Mastercard at Star Cistar City.

390. The total amount spent by Mr Thomson on meals and accommodation during Stay 2 was \$606.35.

391. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

392. I consider that the expenditure incurred by Mr Thomson during Stay 2 was excessive.

Stay 3 Accommodation at the Radisson Plaza Hotel Sydney on 28 June 2006

393. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$412.45 in respect of his stay at the Radisson Plaza Hotel Sydney on 28 June 2006. There were no other relevant charges incurred during this stay.

394. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

395. I consider that the expenditure incurred by Mr Thomson during Stay 3 was excessive.

Stay 4 Accommodation at the Shangri - La Hotel Sydney on 31 July 2006

396. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$363 in respect of his stay at the Shangri - La Hotel Sydney on 31 July 2006. There were no other relevant charges incurred during this stay.

397. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

398. I consider that the expenditure incurred by Mr Thomson during Stay 4 was excessive.

Stay 5 Accommodation at the Radisson Hotel Sydney on 7 September 2006

399. Mr Thomson's Diners Club statement dated 20 September 2006 (HSUNO.001.0476) discloses two charges to Wotif of \$271.85 and \$278.85. On the basis of information set out at paragraph 932 of chapter 5, FWA has used the lesser charge of \$271.85.

400. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$350.95 in respect of his stay at the Radisson Hotel Sydney on 7 September 2006.
401. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
402. I consider that the expenditure incurred by Mr Thomson during Stay 5 was excessive.

Stay 6 Accommodation at the Shangri - La Hotel Sydney on 9 September 2006

403. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$348.35 in respect of his stay at the Radisson Hotel Sydney on 7 September 2006.
404. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
405. I consider that the expenditure incurred by Mr Thomson during Stay 6 was excessive.

Stay 7 Accommodation in Sydney between 18 and 21 September 2006

406. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$2,531.05 between 16 and 22 September 2006, being:
- a. \$657.75 at Sydney Harbour Marriott on 16 September 2006;
 - b. \$539.85 at Wotif on 16 September 2006;
 - c. \$620.90 at Shangri-La Hotel on 19 September 2006;
 - d. \$230 at Wotif for accommodation on 20 September 2006;
 - e. Another \$230 at Wotif for accommodation on 21 September 2006; and
 - f. \$252.55 at Swissotel on 22 September 2006.
407. However, on the basis of information set out at paragraph 309 above, it is possible that the charge of \$657.75 at Sydney Harbour Marriott related to accommodation or facilities (such as a conference room) that were used by Ms Stevens at that hotel. On this basis, I have not included the charge of \$657.75 at Sydney Harbour Marriott in my analysis of Trip 7.
408. In addition, there is no information before FWA indicating where or when Mr Thomson stayed with respect to the charge of \$539.85 to Wotif on 16 September 2006. I therefore can make no findings regarding these charges.
409. In looking at the charges set out in paragraphs 406.c to 406.f above of this chapter, Mr Thomson charged \$620.90 to his Diners Club Card at Shangri-La Hotel Sydney on 19 September 2006, which suggests that this expenditure related to accommodation for Mr Thomson in Sydney on 18 September 2006 which was paid

for on check out the following morning. It appears as though Mr Thomson returned to the Central Coast of NSW on Tuesday, 19 September 2006, where he withdrew \$500 in cash at the CBA ATM in Bateau Bay. Mr Thomson then appears to have returned to Sydney on 20 September 2006, as evidenced by a \$230 charge by Qantas Domestic Holidays on his Diners Club card for accommodation on the evening of 20 September 2006. A further \$230 was charged to Mr Thomson's Diners Club card by Qantas Domestic Holidays for the evening on 21 September 2006. Mr Thomson charged \$252.55 to his Diners Club card at Swissotel on 22 September 2006, which was presumably charged upon his check out from the hotel that morning.

410. It therefore seems that Mr Thomson:
- a. Stayed at the Shangri-La Hotel Sydney at a cost of \$620.90 on 18 September 2006;
 - b. Returned to the Central Coast of NSW for the night of 19 September 2006; and
 - c. Stayed in Sydney (probably at the Swissotel) on 20 and 21 September 2006, incurring \$460 on accommodation and \$252.52 in extras, giving a total of \$892.55 over the two nights.
411. The total cost of this expenditure on accommodation between 18 and 21 September 2006, as set out in paragraphs 409 above, is \$1,333.45.
412. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for the stay from 18 to 21 September 2006, is \$955.95 including:
- a. Accommodation and an evening meal on 18 September 2006 and breakfast, lunch and incidentals on 19 September 2006 (\$318.65);
 - b. Accommodation and an evening meal on 20 September 2006 (\$243.55);
 - c. Accommodation, three meals and incidentals on 21 September 2006 (\$318.65); and
 - d. Breakfast, lunch and incidentals on 22 September 2006 (\$75.10).
413. I consider that the expenditure incurred by Mr Thomson during Stay 7 was excessive.

Stay 8 Accommodation at the Shangri - La Hotel on 20 November 2006

414. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$421.65 in respect of his stay at the Shangri - La Hotel Sydney on 20 November 2006.
415. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
416. I consider that the expenditure incurred by Mr Thomson during Stay 8 was excessive.

Stay 9 Accommodation at the Sheraton on the Park Sydney on 2 December 2006

417. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$351.30 in respect of his stay at the Sheraton on the Park Sydney on 2 December 2006.
418. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
419. I consider that the expenditure incurred by Mr Thomson during Stay 9 was excessive.

Stay 10 Accommodation at the Hilton International Hotel Sydney on 9 December 2006

420. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$601.25 in respect of his stay at the Hilton International Hotel Sydney on 9 December 2006.
421. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
422. I consider that the expenditure incurred by Mr Thomson during Stay 10 was excessive.

Stay 11 Accommodation at the Swissotel Sydney on 10 January 2007

423. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$411.45 in respect of his stay at the Swissotel Sydney on 10 January 2007.
424. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
425. I consider that the expenditure incurred by Mr Thomson during Stay 11 was excessive.

Stay 12 Accommodation at Quay West Sydney on 20 March 2007

426. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$349.40 in respect of his stay at Quay West Sydney on 20 March 2007.
427. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
428. I consider that the expenditure incurred by Mr Thomson during Stay 12 was excessive.

Stay 13 Accommodation at Radisson Plaza Hotel Sydney on 27 March 2007 and Swissotel Sydney on 28 March 2007

429. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$343.45 in respect of his stay at the Radisson Plaza Hotel Sydney on 27 March 2007 and also incurred charges for accommodation and extras totalling \$366.65 in respect of his stay at the Swissotel Sydney on 28 March 2007. Item 452 of Annexure D indicates that Mr Thomson charged \$40.10 to his Diners Club card at Café Bluestone on 28 March 2007.
430. The total amount spent by Mr Thomson during Stay 13 was \$750.20.
431. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for two nights' accommodation in Sydney, is \$637.30 including:
- a. an evening meal on the first night;
 - b. three meals and incidentals on the second day; and
 - c. breakfast, lunch and incidentals on the third day.
432. I consider that the expenditure incurred by Mr Thomson during Stay 13 was excessive.

Stay 14 Accommodation at the Shangri - La Hotel Sydney for four nights between 26 and 29 April 2007

433. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$2,123.60 in respect of his stay at the Shangri - La Hotel Sydney between 26 and 30 April 2007. Item 461 of Annexure D indicates that on 27 April 2007 Mr Thomson also charged \$520 to his Diners Club card at Aria Restaurant Sydney.
434. The total amount spent by Mr Thomson during Stay 14 was \$2,643.60.
435. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for four nights' accommodation in Sydney, is \$1,274.60 including:
- a. an evening meal on the first night;
 - b. three meals and incidentals on the second, third and fourth days; and
 - c. breakfast, lunch and incidentals on the fifth day.
436. I consider that the expenditure incurred by Mr Thomson during Stay 14 was excessive.

Stay 15 Accommodation at the Radisson Plaza Hotel on 13 June 2007

437. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$444.90 in respect of his stay at the Hilton International Sydney on 2 December 2006.

438. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

439. I consider that the expenditure incurred by Mr Thomson during Stay 15 was excessive.

Stay 16 Radisson Plaza Hotel on 18 and 19 June 2007

440. As the evidence is inconclusive (see paragraph 354 above of this chapter), I make no findings regarding this stay.

Stay 17 Fraser Suites 15 August 2007

441. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$259.50 in respect of his stay at Fraser Suites on 15 August 2007.

442. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

443. I do not consider that the expenditure incurred by Mr Thomson during Stay 17 was excessive.

Stay 18 Accommodation at the Four Seasons Hotel Sydney on 13 September 2007

444. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$455 in respect of his stay at the Four Seasons Hotel Sydney on 13 September 2007.

445. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

446. I consider that the expenditure incurred by Mr Thomson during Stay 18 was excessive.

Stay 19 Accommodation at the Swissotel Sydney on 19 September 2007

447. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$443.40 in respect of his stay at the Swissotel Sydney on 19 September 2007.

448. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.

449. I consider that the expenditure incurred by Mr Thomson during Stay 19 was excessive.

Stay 20 Accommodation at the Swissotel Sydney on 7 December 2007

450. As set out in Annexure E, Mr Thomson incurred charges for accommodation and extras totalling \$339.90 in respect of his stay at the Swissotel Sydney on 7 December 2007.
451. On the basis of the methodology discussed at paragraphs 384 to 386 above of this chapter, the amount provided by the 2007 Ruling for dinner and accommodation on the night of Mr Thomson's stay plus breakfast, lunch and incidentals on the following day is \$318.65.
452. I consider that the expenditure incurred by Mr Thomson during Stay 20 was excessive.

Mr Thomson's submissions

453. With respect to findings 83 to 85, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule. Further, it is unreasonable of me to conclude that the expenses incurred by him were excessive. Mr Thomson's presence in Sydney during 2006 and 2007 was necessary to properly perform his duties as National Secretary. The expenses incurred by him on accommodation were expenditure for a purpose reasonably incidental to the general administration of the HSU.

Conclusion

454. In the alternative to my conclusions at paragraphs 373 to 379 of this chapter, if, contrary to those conclusions, it was appropriate for Mr Thomson to use HSU funds to pay for his own accommodation in Sydney during 2006 and 2007 (provided that this expenditure was reasonable), I nevertheless consider that Mr Thomson's expenditure of National Office funds totalling \$10,626.60 on accommodation in the course of undertaking trips 2 to 15 inclusive and 18 to 20 inclusive as set out at paragraphs 389 to 439 and paragraphs 444 to 452 of this chapter was excessive.
455. A reasonable person in Mr Thomson's position as National Secretary would have ensured that any monies of the National Office that were expended in relation to his own accommodation were reasonable in all the circumstances.
456. Mr Thomson could not have considered that this expenditure was in the best interests of the Union.

Findings 83 to 85 - Alternative findings relating to Mr Thomson's expenditure on accommodation in Sydney - expenses were excessive

- 83.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure in relation to each of those stays which was unreasonable in all the circumstances by incurring expenditure of HSU funds totalling \$10,626.60 on accommodation for himself in Sydney in the course of undertaking trips 2 to 15 inclusive, and 18 to 20 inclusive as set out in paragraphs 389 to 439 and paragraphs 444 to 452 of this chapter.
- 84.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the National Office and for a proper purpose, by incurring expenditure of HSU funds totalling \$10,626.60 on accommodation for himself in Sydney in the course of undertaking trips 2 to 15 inclusive, and 18 to 20 inclusive as set out in paragraphs 389 to 439 and paragraphs 444 to 452 of this chapter, when he could not have believed that such expenditure was in the best interests of the National Office.
- 85.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely by enjoying the benefits of expenditure of HSU funds totalling \$10,626.60 on accommodation for himself in Sydney in relation to each of the trips which are numbered trips 2 to 15 inclusive, and 18 to 20 inclusive as set out in paragraphs 389 to 439 and paragraphs 444 to 452 of this chapter, which were excessive in all the circumstances.

Expenditure on accommodation on the Central Coast during 2006 and 2007

- 457.** In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 86 to 88 - Expenditure on accommodation on the Central Coast during 2006 and 2007, which are set out below at page 561.
- 458.** Mr Thomson appears to have used his credit cards on four occasions after he moved to live on the NSW Central Coast in late 2005 to pay for accommodation expenses on the NSW Central Coast.

Evidence

19 December 2006

459. Mr Thomson's Diners Club statement dated 20 December 2006 ([HSUNO.015.0139](#)) discloses that he incurred the following charges:
- a. on 18 December 2006:
 - i. \$23.69 at Secure Parking, Wynyard Lane; and
 - ii. \$470 at the Prime Restaurant & Bars.
 - b. on 19 December 2006:
 - i. \$200 at the Quay West Resort Magenta;
 - ii. \$310.97 Applecentre Central Coast; and
 - iii. \$65.84 at Coles Express 1553 Killarney Va [sic].
 - c. on 20 December 2006, \$70.97 at Vintage Cellars 3426.
460. Mr Thomson's CBA Mastercard statement dated 27 December 2006 ([HSUNO.014.0083](#)) discloses that he incurred the following charges:
- a. on 19 December 2006, \$21.30 at '99' The Entrance; and
 - b. on 20 December 2006, \$135.50 at the Devine Restaurant, Terrigal.
461. Mr Thomson's Diners Club statement dated 20 January 2007 ([HSUNO.015.0152](#)) discloses that on 19 December 2006 he paid for a taxi fare which was described as 'office to Forresters Bch'.
462. The Quay West Resort Magenta Shores website ([PUB.008.0164](#)) www.mirvachotels.com/quay-west-resort-magenta-shores/about-this-hotel describes the resort as follows:
- Quay West Resort Magenta Shores is a 5 star resort nestled between the pristine waters of the Pacific Ocean and Tuggerah Lake, just 90 minutes north of Sydney on the Central Coast.
- The Relaxed atmosphere is cleverly mirrored in the resort's design with each of the villas a short walk from the main building. Offering studio, 1, 2 and 3 bedroom villas which are built between the beach and golf course, there are also a variety of recreational facilities.
- Have a massage in the luxury day spa, a round of golf or a hit of tennis, or just simply relax by the pool.
- Quay West Resort Magenta Shores is an idyllic place to escape the city for a weekend of relaxation and rejuvenation.
463. As at 8 November 2011 the Wotif website identified that the room rates at the Quay West Resort, Magenta Shores, ranged between \$251 and \$485 ([FWA.012.0053](#)).
464. The website www.truelocal.com.au ([PUB.008.0166](#)) indicates that '99 The Entr', The Entrance, NSW 2261' is a café named 'Café La Soul' linked to a website www.cafelasoul.com.au.

Analysis

465. On the basis of the matters set out at paragraphs 459 to 464 of this chapter, it appears that on Monday 18 December 2006 or Tuesday 19 December 2006 Mr Thomson stayed at the 5 star resort, Quay West Magenta Shores, and charged the cost of \$200 to his Diners Club card.

31 May 2007

Evidence

466. Mr Thomson's Diners Club statement dated 20 June 2007 ([HSUNO.015.0212](#)) discloses that he incurred the following charges on 31 May 2007:
- a. \$200 at the Quay West Resort Magenta;
 - b. \$69 at the Caltex Startshop; and
 - c. \$97.92 at the Dick Smith 408 Bateau Bay.
467. Mr Thomson's CBA Mastercard statement dated 27 June 2007 ([HSUNO.001.0261](#)) discloses that he incurred the following charges:
- a. on 31 May 2007:
 - i. \$48.60 at the Coffee Club Tuggerah;
 - ii. \$821.70 at PK Printing Service, Tuggerah;
 - iii. \$2,623 at the Entrance Print, Long Jetty; and
 - iv. \$1,478.40 at LBH Promotions Kanwal.
 - b. on 1 June 2006, \$36.30 at Donnisons Restaurant, Gosford.

Analysis

468. On the basis of the matters set out at paragraphs 466 and 467 of this chapter, it appears that on either Thursday 30 May 2007 or Friday 31 May 2007 Mr Thomson stayed at the Quay West Resort Magenta Shores and charged the cost of doing so (which was \$200) to his Diners Club card.

14 July 2007

Evidence

469. Mr Thomson's Diners Club statement dated 20 July 2007 ([HSUNO.002.0316](#)) discloses that he incurred the following charges:
- a. on 13 July 2007, \$33.95 at the Dick Smith, Bateau Bay.
 - b. on 14 July 2007:
 - i. \$61.20 at the Caltex Starshop; and
 - ii. \$200 at the Quay West Resort Magenta.

Analysis

470. On the basis of the matters set out at paragraph 469 of this chapter, it appears that Mr Thomson stayed at the Quay West Resort Magenta Shores, on either Friday 13 July 2007 or Saturday 14 July 2007, and charged the cost of doing so (which was \$200) to his Diners Club card.

25 November 2007

Evidence

471. Mr Thomson's Diners Club statement dated 20 December 2007 ([HSUNO.005.0229](#)) discloses that on Sunday 25 November 2007, which was the day after the 2007 Federal Election, he incurred the following charges:
- a. \$160 at the Quay West Resort Magenta Shores; and
 - b. \$73.81 at Coles Express 1553.

Analysis

472. On the basis of the matters set out at paragraph 471 of this chapter, it appears that Mr Thomson stayed at the Quay West Resort Magenta Shores, either on the night of the Federal Election, or the next night, and charged the cost of doing so (which was \$160) to his Diners Club card.

Mr Thomson's submissions

473. With respect to findings 86 to 88, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies that he has contravened any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule. Expenditure incurred by Mr Thomson during this period was in relation to HSU business and Mr Thomson denies that it was not for a proper purpose.

Conclusions

474. I do not accept Mr Thomson's claim that his expenditure on accommodation on the Central Coast during this period was for a proper purpose. On the basis of evidence which is set out at paragraphs 465, 468, 470 and 472 above of this chapter, Mr Thomson spent a total of \$760 for his personal accommodation on the Central Coast of NSW between December 2006 and November 2007 at a time when he was living on the Central Coast of NSW.
475. A reasonable person in Mr Thomson's position would not have incurred these costs on behalf of the National Office when it was reasonably open to him to return to his home on the Central Coast each night.
476. Mr Thomson could not have considered that this expenditure was in the best interests of the Union.

Findings 86 to 88 - Expenditure on accommodation on the Central Coast during 2006 and 2007

86. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary by incurring expenditure which totalled \$760 for his personal accommodation on the NSW Central Coast on four occasions during 2006 and 2007 when such costs were not reasonably incurred, given that Mr Thomson lived on the NSW Central Coast.
87. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the National Office and for a proper purpose, when he incurred expenditure which totalled \$760 for his accommodation on the NSW Central Coast on four occasions when he could not have believed that such expenditure was in the best interests of the National Office.
88. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely by using funds of the National Office to enjoy the benefits of resort accommodation on the Central Coast during 2006 and 2007.

Hotel and accommodation expenses incurred by Mr Thomson during September and October 2005

Introduction

477. I have considered in this part of my report expenditure incurred by Mr Thomson:
- a. On travel to Sydney and Melbourne in September 2005; and
 - b. On travel in October 2005 to Perth, Melbourne and Sydney;
478. Mr Thomson was provided with these examples as being illustrative of expenditure which, on its face, did not appear to be for the general administration of the Union but rather for his personal benefit.

Travel between Sydney and Melbourne during September 2005

Evidence

479. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 89 to 92 - Travel between Sydney and Melbourne during September 2005, which are set out below at page 569.

480. Mr Thomson's Diners Club statement dated 20 September 2005 ([HSUNO.013.0309](#)) discloses that he incurred the following charges:
- a. on 13 September 2005, booked and paid Qantas \$1,086.16 for flights in the name of his wife, Mrs Christa Thomson, from Melbourne to Sydney on 16 September 2005, and return on unknown date; and
 - b. on 16 September 2005:
 - i. \$430.39 at Thrifty Rent a Car, Sydney airt [sic];
 - ii. \$16 at Kings V U T; and
 - iii. \$105 at Pymont's Restaurant.
 - c. on 17 September 2005, \$80 at Miro Tapas Bar.
 - d. on 18 September 2005, \$50.82 Quix Food Store S135 for 28.92 litres.
 - e. on 19 September 2005:
 - i. \$1,622.40 at the Westin Sydney;
 - ii. \$75.11 at 'BP Express the Tulla';
 - iii. \$57.91 at Coles Express 1702 Chatswood; and
 - iv. \$143 at Valet Parking, Tullamarine.
 - f. on 20 September 2005, paid \$1,557.85 to Wotif for accommodation.
481. Mr Thomson's Diners Club statement dated 20 October 2005 ([HSUNO.013.0322](#)) discloses that he incurred the following charges:
- a. on 21 September 2005
 - i. \$693.78 for a Qantas flight from Melbourne to Sydney on 25 September 2005, return on unknown date; and
 - ii. \$323.08 for a Qantas flight in name of Christa Thomson from Melbourne to Sydney on 26 September 2005, return on unknown date.
 - b. on 23 September 2005, \$1,262.58 for Qantas flight from Melbourne Perth on 12 October 2005, return on unknown date.
 - c. on 30 September 2005:
 - i. \$744.38 for a Qantas flight from Melbourne to Sydney on 5 October 2005, return on unknown date; and
 - ii. \$513.85 on Wotif for accommodation.
482. Additionally, the Diners Club statement dated 20 October 2005 discloses that on 7 October 2005 there is a \$75.90 charge to Qantas.
483. This Diners Club statement dated 20 October 2005 indicates this charge relates to the flight from Sydney to Melbourne on 28 September 2005, return on unknown date.
484. Mr Thomson's CBA Mastercard statement dated 28 September 2005 ([HSUNO.014.0048](#)) discloses that he:

- a. on 15 September 2005, withdrew \$500 from an ATM at 303 Collins St, Melbourne;
 - b. on 15 September 2003, purchased \$390 from Mail Order Software; and
 - c. on 26 September 2005:
 - i. withdrew \$500 from the CBA ATM at 385 Bourke St, Melbourne; and
 - ii. withdrew \$500 from an ATM at Redi Maritime Head Office, Sydney.
485. Mr Thomson's Diners Club statement dated 20 October 2005 also discloses that he incurred the following charges during September 2005:
- a. on 13 September 2005, taxi fare for 'Melbourne to Windsor'.
 - b. on 20 September 2005:
 - i. \$12.60 for Premier Parking; and
 - ii. \$16.65 Alex Taxis & Broker taxi fare for 'St Kilda to City (Vic) [sic]'.
 - c. on 21 September 2005, \$90 at The Trust.
 - d. on 25 September 2005:
 - i. \$45.84 taxi fare for 'Melbourne to Melbourne arpt [sic]'; and
 - ii. \$35.74 taxi fare for 'Airport to Museum Rstn [sic]'.
 - e. on 26 September 2005:
 - i. \$30 at Meriton Apartments (ABN 75000644888);
 - ii. \$18.54 taxi fare for 'suburbs to Museum rstn' [sic]; and
 - iii. \$220 at New Tai Yuen (ABN 50079510848).
 - f. on 27 September 2005:
 - i. \$49.74 at Calstores Pty Ltd - Randwick;
 - ii. \$17.76 taxi fare for 'office to Uni of NSW'; and
 - iii. \$16.10 taxi fare for 'office to Museum Rstn [sic]'.
 - g. on 28 September 2005:
 - i. \$21.61 at Meriton Apartments Pty Ltd;
 - ii. \$14 Secure Parking, Goulbourn;
 - iii. \$30.53 taxi fare for 'city to Syd Dom Arpt [sic]'; and
 - iv. \$46.95 taxi fare for 'Melbourne arpt to Melbourne [sic]'.
486. It is unclear why numerous charges that were incurred before 20 September 2005 appear on the Diners Club statement dated 20 October 2005, rather than the Diners Club statement dated 20 September 2005.
487. A National Executive meeting was held at the NSW Branch office in Sydney on 6 September 2005 at 3.30 pm (HSUNO.018.0286).

488. Mr Thomson took one leave day on Friday 16 September 2005 ([HSUNO.017.0009](#)). Information regarding the National Office leave records is set out at paragraphs 221 to 233 of this chapter - see, in particular, the table at paragraph 233 which summarises Mr Thomson's leave.
489. When interviewed by FWA, Mr Thomson answered questions about expenditure during September 2005 as follows (Thomson PN 1787 - 1796):
- MR NASSIOS: In 2005, 16 September, your wife flew from Melbourne to Sydney on return ticket at HSU expense. Now, on that particular day you took a single day's leave. Is there any - can you recall why you would have been there on that particular day?
- MR THOMSON: No, I can't.
- MR NASSIOS: Now, on that weekend you have also incurred the following expenses: a car from Thrifty for \$430.39.
- MR THOMSON: Yes.
- MR NASSIOS: \$80 at the Miro Tapas Bar; \$50.82 Quix; \$1622.40 at Westin Sydney and \$143 for valet parking.
- MR THOMSON: Yes.
- MR NASSIOS: It totals \$3517.
- MR THOMSON: I don't know what was on that day.
- MR NASSIOS: There would not have been any formal authorisation by the national executive of this expenditure?
- MR THOMSON: There was - as with the other there wasn't the formal authorisation of it specifically.
- MR NASSIOS: All right.
- MR THOMSON: Yes.
490. As at 8 November 2011 the Wotif website identified that the room rates at the Sydney Marriot Harbour Hotel for Monday 14 November 2011 ranged between \$309 and \$509 per night ([FWA.012.0042](#)).
491. As at 7 November 2011 the Wotif website identified that the room rates at the Westin Sydney for Monday 14 November 2011 ranged between \$270 and \$500 per night ([FWA.012.0086](#)).
492. As at 18 November 2011 the Meriton Apartments website identified that the room rates for the Meriton Apartments throughout Sydney ranged between \$165 and \$767 per night ([PUB.008.0197](#)).

Analaysis

Melbourne to Sydney - 16 to 19 September 2005

493. On the basis of the matters set out at paragraphs 480 to 492 of this chapter, it appears that Mr Thomson:
- a. on Thursday 15 September 2005:
 - i. withdrew \$500 cash from 'BBL' at 303 Collins St, Melbourne using his CBA Mastercard; and
 - ii. spent \$390 on software 'mail order' with his CBA Mastercard.
 - b. on Friday 16 September 2005, along with Christa Thomson:
 - i. took a days' annual leave;
 - ii. left his car at Valet Parking at Melbourne airport;
 - iii. boarded a flight to Sydney (for which he paid \$1,086.16 using his Diners Club card);
 - iv. used his Diners Club card to pay \$430.39 for a hire car from Thrifty Rent a Car at Sydney airport;
 - v. checked in to The Westin, Sydney for the following three nights;
 - vi. spent \$105 on dinner at Pymont's Restaurant using his Diners Club card; and
 - vii. spent \$16 at Kings V U T using his Diners Club card.
 - c. on Saturday 17 September 2005, spent \$80 on dinner at the Miro Tapas Bar using his Diners Club card.
 - d. on Sunday 18 September 2005, spent \$50.82 to fill the hire care with petrol using his Diners Club card.
 - e. on Monday 19 September 2005:
 - i. paid \$1,622.40 for accommodation and possibly extras incurred during his stay with Christa Thomson at the Westin using his Diners Club card;
 - ii. spent \$57.91 on petrol for the hire car at the Coles Express in Chatswood using his Diners Club card;
 - iii. returned the hire car to Thrifty Rent a Car at Sydney airport;
 - iv. flew back to Melbourne;
 - v. paid \$143 using his Diners Club card to collect his car from Valet Parking at Melbourne airport; and
 - vi. drove home from Melbourne airport, filling his car up with \$75.11 in petrol using his Diners Club card at the BP Express on the Tullamarine Highway on the way home.

Melbourne to Sydney - 25 to 28 September 2005

494. On the basis of the matters set out at paragraphs 480 to 492 of this chapter, it appears that Mr Thomson:
- a. on Sunday 25 September 2005:
 - i. presumably left his CBA Mastercard with another person, who used it on 26 September 2005 to withdraw \$500 cash from the ATM in Bourke Street, Melbourne;
 - ii. caught a taxi from the city to Melbourne airport for which he paid \$45.84 using his Diners Club card;
 - iii. boarded a flight to Sydney (Mr Thomson had paid Qantas \$693.78 for this flight on 21 September 2005 using his Diners Club card);
 - iv. caught a taxi from Sydney airport to Museum Railway station for which he paid \$35.74 using his Diners Club card; and
 - v. checked into the Meriton Apartments (for which he had paid Wotif \$1,577.85 using his Diners Club card for three nights' accommodation at Meriton Apartments on 20 September 2005).
 - b. on Monday 26 September 2005:
 - i. Mr Thomson used his Diners Club card on 21 September 2005 to pay \$323.08 for this flight;
 - ii. made a \$30 purchase at Meriton Apartments;
 - iii. caught a taxi for which he paid \$18.54 using his Diners Club card; and
 - iv. spent \$220 on dinner at New Tai Yuen.
 - c. on Tuesday 27 September 2005:
 - i. spent \$49.74 at Calstores in Randwick; and
 - ii. caught taxis to the University of NSW and back to the city for which he paid \$33.86 in total using his Diners Club card.
 - d. on Wednesday 28 September 2006:
 - i. checked out from the Meriton Apartments and paid \$21.61 for extras incurred during his stay;
 - ii. spent \$14 at Secure Parking on Goulburn street, Sydney;
 - iii. caught a taxi to the Sydney airport for which he paid \$30.53 using his Diners Club card;
 - iv. flew to Melbourne;
 - v. incurred a \$75.90 Qantas charge, possibly for a change to his flight or an upgrade or for a change to Mrs Thomson's flight; and
 - vi. caught a taxi from the Melbourne airport to the city for which he paid \$46.95 using his Diners Club card.

Mr Thomsons' submissions

495. With respect to findings 89 to 92, in their submissions of 2 March 2012 (FWA.024.0002) Holding Redlich has submitted on behalf of Mr Thomson that:
- a. He denies contravening Sub-rule 36(b) of the Rules or any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule. The trips taken by Mr Thomson and his wife in September 2005 were work related. As stated above at paragraphs 209 and 210 on pages 255 to 255 in chapter 5, the HSU did not have a formal written travel policy. However, there was an informal understanding that the National Secretary, and other members of the National Executive, could be accompanied by their partners on some HSU business. It was common that National Office staff were accompanied by their spouses at National Executive meetings.
 - b. He travelled often to Sydney for work, not just to attend National Executive or National Council meetings. It is of concern that I have accepted, despite having no evidence to make the conclusion, that trips undertaken between 16 and 19 September and 26 and 29 September 2005 were for personal reasons.
 - c. It is also of concern that I am relying on credit card statements which are not reliable evidence for the date on which activities occurred.

Conclusions

496. Mr Thomson made three trips from Melbourne to Sydney during September 2005.
497. The first of these trips was when he flew from Melbourne to Sydney on 6 September 2005, and returned to Melbourne on 9 September 2005. During this time Mr Thomson attended a National Executive meeting in Sydney on 6 September 2005. It can be accepted that this was a work-related trip.
498. However Mr Thomson made two further trips to Sydney in September 2005.
499. The first of these was when Mr Thomson flew to Sydney with his wife on Friday 16 September 2005 and returned to Melbourne on Monday 19 September 2005. Mr Thomson was on leave on Friday 16 September 2005. Moreover, when asked about this trip at interview, Mr Thomson was unable to identify why he had flown to Sydney on this occasion. In all the circumstances it seems most probable that this trip was a holiday, and was not work related.
500. The second of these trips was when Mr Thomson flew to Sydney on Sunday 25 September 2005 and returned on Wednesday 28 September 2005. On this occasion it seems that he was joined in Sydney by his wife, Christa Thomson, on the following day (a Monday). FWA has not been able to identify any work related purpose for this trip.
501. Mr Thomson's movements between Melbourne and Sydney at this time were so frequent that it is not entirely certain that he had not already moved to Sydney. However on balance it seems likely that he had not. In particular, it is clear that Mr Thomson spent two considerable sums of money on accommodation in Sydney for himself and his wife on his trips to Sydney between 16 and 19 September 2005

and 25 and 28 September 2005. There is no evidence that Mr Thomson was spending corresponding amounts of money on accommodation in Melbourne during this period.

502. However these trips occurred only about two months before Mr Thomson did move to live on the NSW Central Coast. In all the circumstances it seems that at least one of the possible explanations for his trips to Sydney with his wife:

- a. while on leave between 16 and 19 September 2005; and
- b. between 25 and 28 September 2005

was that they were undertaken as part of the process of preparing to move to live in NSW. In any event the first of these trips was not work-related and there is no evidence to suggest that the second of these trips was work-related.

503. Mr Thomson appears to have used his Diners Club card to incur the following expenses which appear to have been directly related to one of these two trips between 16 and 19 September 2005 and between 25 and 28 September 2005:

Date	Amount	Expenditure
16 September 2005	\$1,086.16	Flights from Melbourne to Sydney for Craig and Christa Thomson and return
	\$430.39	Car hire
18 September 2005	\$50.82	Petrol for hire car
19 September 2005	\$57.91	Petrol for hire car
	\$1,622.40	Accommodation at the Westin Sydney for three nights (16 to 18 September)
	\$143.00	Valet parking Melbourne Airport
25 September 2005	\$45.84	Taxi to Melbourne Airport
	\$35.74	Taxi from Melbourne Airport
	\$1,577.85	Accommodation at Meriton Apartments for three nights (25 - 27 September)
26 September 2005	\$18.54	Taxi fare in Sydney
	\$30.00	Accommodation related charges at Meriton Apartments
27 September 2005	\$33.86	Taxi fare in Sydney
28 September 2005	\$30.53	Taxi fare to Sydney Airport
	\$75.90	Payment to Qantas
	\$21.61	Accommodation related charges at Meriton Apartments
	\$46.95	Taxi fare from Melbourne Airport
Total	\$5,307.50	

504. Furthermore, Mr Thomson also used his Diners Club card to make the following purchases at restaurants and hotels in Sydney between 16 and 19 September 2005:

Date	Amount	Purchase
16 September 2005	\$105.00	Pymont's Restaurant
17 September 2005	\$80.00	Miro Tapas Bar
Total	\$185.00	

505. The amounts set out in the tables at paragraphs 503 and 504 of this chapter total \$5,492.50.
506. Mr Thomson was invited to provide an explanation for these trips by my letter dated 12 December 2011 (FWA.018.0001) but has not done so. Given:
- The fact that Mr Thomson took annual leave for part of the period of one trip;
 - The fact that one trip took all of one weekend while the other took part of one weekend;
 - The fact that Mrs Thomson accompanied Mr Thomson on both trips; and
 - The absence of any evidence that either trip was in any way related to Mr Thomson's work,

I find that:

- Mr Thomson used his Diners Club card to spend the sum of \$5,492.50 during two trips to Sydney with Mrs Thomson between 16 and 19 September and 26 and 29 September 2005; and
 - these were both personal trips, unrelated to Mr Thomson's duties as National Secretary.
507. A reasonable person in Mr Thomson's position would not have incurred the expenditure set out in the tables at paragraphs 503 and 504 of this chapter without first having obtained the approval of either National Council or National Executive to do so.
508. Mr Thomson could not have believed it was in the best interests of the HSU for him to expend the amounts set out in the tables at paragraphs 503 and 504 of this chapter; and it was not a proper purpose for him to spend those monies.

Findings 89 to 92 - Travel between Sydney and Melbourne during September 2005

- 89.** Mr Thomson contravened Sub-rule 36(b) by spending the amounts set out in the tables at paragraphs 503 and 504 of this chapter from the funds of the National Office on accommodation without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

90. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers or discharge his duties as National Secretary with the degree and care and diligence that a reasonable person would exercise if they were National Secretary by spending the amounts set out in the tables at paragraphs 503 and 504 of this chapter on travel and accommodation expenses without the approval of either National Council or National Executive to do so.
91. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by spending the amounts set out in the tables at paragraphs 503 and 504 of this chapter on travel and accommodation.
92. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself and/or Mrs Thomson, namely the enjoyment of accommodation and other travel related expenditure, by spending the amounts set out in the tables at paragraphs 503 and 504 of this chapter.

Accommodation expenses incurred by Mr Thomson during October 2005

Evidence

509. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 93 to 100 - Accommodation expenses incurred by Mr Thomson during October 2005, which are set out below at page 580.
510. Mr Thomson's Diners Club statement dated 20 October 2005 ([HSUNO.013.0322](#)) discloses that he:
- a. on 7 October 2005, booked and paid Qantas \$75.90 for a flight from Sydney to Melbourne on 28 September 2005; and
 - b. on 14 October 2005, incurred a \$40 Qantas charge.
511. This Diners Club statement also discloses that between 2 and 19 October 2005 Mr Thomson incurred the following charges:
- a. on 10 October 2005, \$55 at Premier parking.
 - b. on 11 October 2005, \$25.00 at Premier parking.
 - c. on 12 October 2005:
 - i. \$24.60 at Premier parking; and
 - ii. \$83.13 at BP Express 'The Tulla'.

- d. on 13 October 2005:
 - i. \$145 at Frasers Restaurant, West Perth;
 - ii. -\$40 at Thrifty Car Rental (credit); and
 - iii. \$387.82 at Thrifty Car Rental ($\$387.82 - \$40.00 = \$347.82$).
 - e. on 14 October 2005:
 - i. \$53.95 at Margaret River Service Stations; and
 - ii. \$142.90 at Hyatt Regency Perth.
 - f. on 15 October 2005, \$54.50 at Evans & Tate, WA.
 - g. on 16 October 2005:
 - i. \$49.79 at Karridale Liquor Store; and
 - ii. \$70.50 at Amberley Estate - Yallingup.
 - h. on 17 October 2005:
 - i. \$16 at Flutes Restaurant; and
 - ii. \$174 at Flutes Restaurant.
 - i. on 18 October 2005:
 - i. \$1,001 at Quay West Resort, Bunker Bay;
 - ii. \$50.18 at BP Redcliff; and
 - iii. \$293 at Valet Parking Tullamarine.
 - j. on 19 October 2005:
 - i. \$132 on 'Hotel Reservations';
 - ii. \$1,018.85 on Wotif.com;
 - iii. \$73.71 at Thrifty Car Rental;
 - iv. \$14.10 at Premier Parking;
 - v. \$70 at Arintji, Melbourne; and
 - vi. \$50 at Arintji, Melbourne.
512. Mr Thomson's CBA Mastercard statement ([HSUNO.014.0049](#)) dated 26 October 2005 discloses that he incurred the following charges from 12 October to 24 October 2005:
- a. on 5 October 2005 he withdrew \$300 from an ATM 'Westpacctl Plz 2 O/S', Sydney;
 - b. on 12 October 2005 he withdrew \$500 at an ANZ ATM, Qantas Melbourne Tullamarine;
 - c. on 22 October 2005, \$175 at Il Solito Posto Restaurant, Melbourne;

- d. on 23 October 2005, \$81.21 at United Conv, Wodonga Vic (United Convenience Store); and
 - e. on 24 October 2005 he withdrew \$300 at a CBA ATM, Eastern Branch, Melbourne.
513. Mr Thomson's Diners Club statement dated 20 November 2005 ([HSUNO.013.0336](#)) discloses that between 12 October and 30 October 2005 he also incurred the following charges:
- a. on 12 October 2005, \$19.54 for a taxi fare from 'suburbs to East Perth'.
 - b. on 21 October 2005, \$53.60 at Macs Hotel.
 - c. on 23 October 2005:
 - i. \$294.75 at Grand Hyatt on Collins; and
 - ii. \$85.41 at Caltex Star Mart Mascot.
 - d. on 24 October 2005:
 - i. \$476.05 at The Westin, Sydney; and
 - ii. \$85 at Dekk Restaurant and Bar, Central Coast.
 - e. on 25 October 2005, \$398.37 at Dick Smith, Erina.
 - f. on 27 October 2005:
 - i. \$13.32 taxi fare from 'office to central'; and
 - ii. \$169 at Fairfax Newspaper Subs (subscription).
 - g. on 28 October 2005:
 - i. \$180.70 at Nationwide News; and
 - ii. \$180.70 at Nationwide News (two charges on same day for same amount).
 - h. on 30 October 2005, \$94.55 at Burmah Tumbi Umbi, petrol station on Central Coast.
 - i. on 31 October 2005, \$17 at Mirvac Parking, Greenwood.
514. Mr Thomson's CBA Mastercard statement ([HSUNO.014.0050](#)) dated 26 November 2005 discloses that he incurred the following charges from 28 October to 31 October 2005:
- a. on 28 October 2005, he withdrew \$200 at CBA ATM, Eddy Avenue, NSW; and
 - b. on 31 October 2005, he withdrew \$200 at CBA ATM, Greenwood Op, NSW.
515. Mr Thomson's Diners Club statement ([HSUNO.013.0349](#)) dated 20 December 2005 discloses that on 27 October 2005 he incurred a charge of \$35.52 for a taxi fare for 'Fallesters (sic) Beach to Gosford'.
516. Mr Thomson was asked by FWA at interview about his trip to Western Australia in October 2005 (Thomson PN 1854 - 1873):

- MR NASSIOS: In October 2005, 12 October particularly, you flew from Melbourne to Perth. Now, a national executive meeting was certainly held in Perth the following day. Your credit cards show that you've charged a number of transactions on Friday, 14 October.
- MR THOMSON: Yes.
- MR NASSIOS: \$53.95 at the Margaret River service station; Saturday, 15 October, \$54.50 at Evans and Tate Margaret River winery; Sunday, 16 October, \$70.50 at the Amberley Estate, another Margaret River winery; and 49.79 for the Karridale liquor store.
- MR THOMSON: And Quay West Resort Bunker Bay.
- MS CARRUTHERS: Yes.
- MR NASSIOS: I think that's a bit further. Yes, that's correct.
- MS CARRUTHERS: That's the accommodation.
- MR NASSIOS: That's correct, yes.
- MR THOMSON: I was with the Western Australian branch. I was the guest speaker at the Western Australian Industrial Relations Society. Again it was well publicised - known what we were doing - where we were.
- MR RAWSON: Where was that?
- MR THOMSON: Bunker Bay - Quay West Resort Bunker Bay.
- MR RAWSON: All right.
- MR NASSIOS: All right.
- MR RAWSON: That was on the Tuesday, was it?
- MR THOMSON: The conference was for that whole - for a number of days that we were there.
- MR RAWSON: I see, so it was for several days.
- MR NASSIOS: Okay .
- MR THOMSON: Yes.
- MR NASSIOS: All right, thank you.
- MR THOMSON: Andrew Robb and I were speaking about industrial relations and how we saw the new world.

517. The Industrial Relations Society of WA held its 2005 conference at Bunker Bay on Friday 14 and Saturday 15 October 2005 ([PUB.003.0001](#)). Mr Thomson was advertised in the program for this conference as speaking for 45 minutes on Saturday, 15 October 2005 ([PUB.003.0001](#)). Mr Thomson did give a presentation to the WA Industrial Relations Society at its 2005 conference ([PUB.003.0005](#)). According to the conference program, registration for the conference opened at 1.00pm on Friday, 14 October 2005 and the conference closed with a Dinner on the evening of Saturday, 15 October 2005.

518. As at 8 November 2011 the Wotif website identified that the room rates at the Grand Hyatt, Collins street Melbourne, ranged between \$290 and \$730 per night ([FWA.012.0030](#)).
519. As at 15 November 2011 the Wotif website identified that the room rates at the Grand Hotel MGallery Collection for Tuesday 22 November 2011 ranged between \$295 and \$329 per night ([PUB.008.0204](#))

Analysis

12 to 18 October 2005 - Melbourne to Perth

520. Based on the matters set out above at paragraphs 510 to 519 of this chapter, it appears that Mr Thomson:
- a. on Wednesday 12 October 2005:
 - i. drove to Melbourne airport, spending \$83.13 at the BP Express, on the way;
 - ii. left his car with Valet Parking at Tullamarine;
 - iii. withdrew \$500 from the ANZ ATM at the Qantas domestic lounge at Tullamarine airport;
 - iv. flew to Perth (using his Diners Club card to pay);
 - v. spent \$19.54 on a taxi from the airport to East Perth; and
 - vi. possibly stayed at the Hyatt Regency Perth that evening.
 - b. on Thursday 13 October 2005:
 - i. participated in a National Executive teleconference while in Perth ([HSUNO.018.0281](#));
 - ii. spent \$387.82 and \$40 at Thrifty Car Rental for a hire car using his Diners Club card;
 - iii. spent \$145 at Frasers Restaurant using his Diners Club card; and
 - iv. stayed at the Hyatt Regency Perth that evening.
 - c. on Friday, 14 October 2005:
 - i. incurred a \$40 Qantas charge using his Diners Club card;
 - ii. upon check out at the Hyatt Regency, Perth, paid \$142.90 for extras incurred during his stay;
 - iii. drove to Margaret River, using his Diners Club card to pay \$53.95 at the Margaret River Service Stations; and
 - iv. checked in to the Quay West Resort Bunker Bay, where he stayed for the next four nights.
 - d. on Saturday, 15 October 2005, used his Diners Club card to spend \$54.50 at Evans & Tate (Margaret River winery).

- e. on Sunday, 16 October 2005:
 - i. used his Diners Club card to pay \$70.50 at Amberley Estate, Yallingup; and
 - ii. used his Diners Club card to pay \$49.79 at Karridale Liquor Store.
- f. on Monday, 17 October 2005, spent \$16 and \$174 at Flutes Restaurant, Wilyabrup, Margaret River.
- g. on Tuesday, 18 October 2005:
 - i. checked out of the Quay West Resort Bunker Bay, using his Diners Club card to pay \$1,001 for the previous four night's accommodation, and possibly also extras incurred during his stay;
 - ii. drove back to Perth, using his Diners Club card to spend \$50.18 at the BP in Redcliff on the way;
 - iii. returned the hire car in Perth; and
 - iv. flew back to Melbourne, collected his car and using his Diners Club card to pay \$293 at the Valet Parking for the weekend.
- h. on 19 October 2003, incurred an additional \$73.21 charge on his Diners Club card by Thrifty Care Hire in respect of car hire in Perth on the previous weekend.

Melbourne - Wednesday 19 to 23 October 2005

521. Based on the matters set out above at paragraphs 510 to 519 of this chapter, it appears that Mr Thomson:
- a. on Wednesday 19 October 2005:
 - i. used his Diners Club card to pay \$1,078.85 on Wotif for accommodation in Melbourne and/or Sydney for approximately four nights at some point over the following 10 days;
 - ii. used his Diners Club card to pay \$132 to Hotel Reservations for accommodation in Melbourne that evening;
 - iii. used his Diners Club card to pay \$14.10 at Premier Parking;
 - iv. spent \$70 and \$50 at Arintji restaurant, Federation Square; and
 - v. stayed at an unknown hotel that evening (paid for on Hotel Reservations using his Diners Club card to pay earlier that day, as set out above at paragraph 511.j.i of this chapter).
 - b. on Friday 21 October 2005, spent \$53.60 at Macs Hotel using his Diners Club card .
 - c. on Saturday 22 October 2005:
 - i. checked in to the Grand Hyatt on Collins; and
 - ii. spent \$175 at Il Solito Posto, Collins Street.

- d. on Sunday 23 October 2005:
 - i. checked out of the Grand Hyatt on Collins, using his Diners Club card to pay \$294.75 for extras incurred during his stay;
 - ii. drove to Sydney, spending \$81.21 at the United Convenience Store at Wodonga using his CBA Mastercard along the way;
 - iii. spent \$85.41 at the Caltex Star Mart Mascot; and
 - iv. checked in at The Westin.
 - e. on Monday 24 October 2004:
 - i. checked out of the Westin Sydney using his Diners Club card to pay \$476.05 for the previous night's accommodation and possibly also extras incurred during his stay; and
 - ii. spent \$85 at the Dekk Restaurant and Bar in Terrigal using his Diners Club card.
 - f. on Tuesday 25 October 2005:
 - i. possibly drove up to the Central Coast;
 - ii. spent \$398.37 at the Dick Smith in Erina using his Diners Club card; and
 - iii. may have stayed in the Central Coast until 27 October 2005.
 - g. on Thursday 27 October 2005:
 - i. spent \$35.52 on a taxi from Forresters Beach to Gosford using his Diners Club card;
 - ii. drove to Sydney; and
 - iii. incurred \$169 on a Fairfax Newspaper subscription.
 - h. on Friday 28 October 2005:
 - i. incurred two charges of \$180.70 from Nationwide News;
 - ii. withdrew \$200 from the Central Station, Sydney using his CBA Mastercard; and
 - iii. spent \$13.32 on a taxi fare from the office to within the city using his Diners Club card.
522. It is not clear how Mr Thomson's CBA Mastercard statement dated 26 October 2005 came to record a cash withdrawal of \$300 in Melbourne on 24 October 2005 as there is no evidence that Mr Thomson was in Melbourne on this day.

Mr Thomson's submissions

523. With respect to findings 93 to 100, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) or any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule.
 - b. I have no grounds for these allegations. Mr Thomson was in Western Australia between 12 and 18 October 2005 on HSU business. He was required to attend membership meetings and Western Australian branch meetings. The costs incurred in relation to this trip were costs reasonably incidental to the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU. The expenses incurred had been budgeted for and approved by the National Executive. As the expenses had been approved and were for a purpose reasonably incidental to the general administration of the HSU no express approval was required from the National Council or National Executive.
 - c. He denies using his position as National Secretary to gain an advantage and denies gaining any advantage from the expenditure relating to his business trip to Western Australia in October 2005.

Conclusions

524. Mr Thomson has submitted that the expenses incurred had been budgeted for and approved by the National Executive. The expenses incurred had been budgeted for and approved by the National Executive. For the reasons set out at paragraphs 154 to 156 of chapter 6, I am not persuaded by this argument.

Melbourne to Perth return between 12 to 18 October 2005

525. There is no evidence that either the National Executive or the National Council authorised any of the expenditure incurred by Mr Thomson during, or in relation to, his trip to Western Australia between 12 and 18 October 2005.
526. Nevertheless, Mr Thomson's attendance at the Industrial Relations Society of WA conference in Bunker Bay, as a speaker at that conference, was consistent with the business of the HSU, and accordingly I consider that costs reasonably associated with this attendance were costs associated with the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
527. Mr Thomson attended the Industrial Relations Society of WA conference in Bunker Bay on 14 and 15 October 2005. Given that the conference started at lunchtime on Friday 14 February and concluded in the evening on Saturday 15 February 2005 it would have been reasonable for Mr Thomson to have stayed for two nights at the conference venue. However, Mr Thomson in fact continued to stay at the Bunker Bay resort for two further nights after the conference concluded. During this time he appears to have driven around the Margaret River region in a hire car which he paid for using his Diners Club card, and paid for meals or wines from several wineries in the region, again using his Diners Club card.

528. In all the circumstances, I consider that the following costs incurred by Mr Thomson associated with his trip to Western Australia between 12 and 18 October 2005 were not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU:

Amount	Purpose
\$173.91	Half of the hire car costs spent by Mr Thomson on 13 October 2005
\$36.85	Half of the hire car costs spent by Mr Thomson on 19 October 2005
\$500.50	Half of the costs of four nights' accommodation at the Bunker Bay Resort
\$70.50	Money spent at Amberley Estate on 16 October 2005 after the IR Conference had finished
\$49.79	Money spent at Karridale Liquor Store on 16 October 2005 after the IR Conference had finished
\$190.00	Money spent at Flutes Restaurant on 17 October 2005, two days after the IR Conference had finished
\$146.50	Half of the cost of valet parking at Melbourne Airport between 12 and 18 October 2005
\$1,207.20	Total

529. I consider that Mr Thomson used his Diners Club card and CBA Mastercard to spend the sum of \$1,207.20 while in Western Australia between 16 and 18 October 2005 which was personal expenditure, unrelated to his duties as National Secretary.

530. A reasonable person in Mr Thomson's position as National Secretary would not have incurred the expenditure set out in the table at paragraph 528 of this chapter without first having obtained the approval of either National Council or National Executive to do so.

531. Mr Thomson could not have believed that it was in the best interests of the HSU for him to spend the monies set out in the table at paragraph 528 of this chapter, and it was not a proper purpose for him to spend those monies.

Hotel accommodation between 19 and 23 October 2005

532. The evidence establishes that Mr Thomson spent the following sums on hotel accommodation between 19 and 23 October 2005:

Amount	Details
\$1,078.85	Expenditure on 19 October 2005 on unknown accommodation
\$294.75	Expenditure on Sunday 22 October 2005 for accommodation at the Grand Hyatt Hotel in Melbourne for the previous evening
\$476.05	Expenditure at the Westin Hotel Sydney on Tuesday 24 October 2005 for accommodation the previous evening
\$1,849.65	Total

533. There are no records which explain this expenditure. Indeed, the records produced by the HSU do not even establish the city or cities in which the accommodation purchased on 19 October 2005 were located.
534. In particular it is not clear why Mr Thomson paid for accommodation at hotels in Melbourne and Sydney just two days apart. It seems at least possible that Mr Thomson was in the process of moving to NSW between 22 and 24 October 2005 but this cannot be established on the material available to FWA. Regardless of whether or not Mr Thomson had moved by this time, at least one of the costs set out in the table at paragraph 532 above was incurred in, or near, his city of residence.
535. There is no evidence that any of the expenditure set out in the table at paragraph 532 above was approved by either National Council or National Executive.
536. Mr Thomson was invited to provide an explanation for this trip by my letter dated 12 December 2011 (FWA.018.0001) and has not done so. Given:
- The fact that, if Mr Thomson was not living in Melbourne when he stayed at the Grand Hyatt Hotel in Melbourne on 21 October 2005, he must have been living in Sydney or on the Central Coast of NSW when he stayed at the Westin Hotel in Sydney on 23 October 2005;
 - The absence of any evidence that this stay was in any way related to Mr Thomson's work; and
 - The proximity of both of these stays to Mr Thomson's move to live in NSW,
- in all the circumstances I consider that at least some part of the expenditure set out in the table at paragraph 532 above, could not have been, and was not, expenditure on the general administration of the HSU, or for a purpose reasonably incidental to the general administration of the HSU. While it is possible that either the expenditure on accommodation in Melbourne on 21 October 2005 or on accommodation in Sydney on 23 October 2005 could have been for work related interstate travel, it is not possible that both expenses were. If Mr Thomson had moved to NSW by 22 October 2005 then he was still living in NSW on 24 October 2005.

537. A reasonable person in Mr Thomson's position would not have incurred the expenditure set out in the table at paragraph 532 above without first having obtained the approval of either National Council or National Executive to do so.
538. Mr Thomson could not have believed it was in the best interests of the HSU for him to spend the monies set out in the table at paragraph 532 above; and it was not a proper purpose for him to spend these monies.

Findings 93 to 100 - Accommodation expenses incurred by Mr Thomson during October 2005

93. Mr Thomson contravened Sub-rule 36(b) by spending the monies set out in the table at paragraph 528 of this chapter from the funds of the National Office on accommodation and travel without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
94. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers or discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending the monies set out in the table paragraph 528 of this chapter on accommodation and travel.
95. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by spending the monies set out in the table at paragraph 528 of this chapter on accommodation and travel.
96. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself and/or Mrs Christa Thomson, namely the enjoyment of accommodation and other travel related expenditure, by spending the monies set out in the table at paragraph 528 of this chapter.
97. Mr Thomson contravened Sub-rule 36(b) by expending monies from the funds of the National Office on accommodation without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU, by incurring at least some part of the expenditure on accommodation set out in the table at paragraph 532 of this chapter.

98. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers or discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending at least some part of the expenditure set out in the table at paragraph 532 of this chapter without the approval of either National Council or National Executive to do so.
99. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by spending at least some part of the expenditure set out in the table at paragraph 532 of this chapter on accommodation.
100. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself and/or Mrs Thomson, namely the enjoyment of accommodation and other travel related expenditure, by spending at least some part of the expenditure set out in the table at paragraph 532 of this chapter.

Expenditure by Mr Thomson on travel by his wife, Mrs Christa Thomson

539. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 101 to 104 - Expenditure by Mr Thomson on travel for his wife, Mrs Christa Thomson, which are set out below at page 595.
540. I have made findings regarding the lack of a policy regarding spousal travel at Findings 23 and 24 - Failure to prepare policies regarding spousal travel on page 265 in chapter 5.

Evidence

541. Below is a table of spousal travel charged to Mr Thomson's Diners Club card between 2003 and 2007 for his wife, Mrs Christa Thomson, as recorded in Mr Thomson's Diners Club statements:

Trip	Date of travel	Name of ticket holder	Destination	Amount	Doc ID
A	21 February 2003	Christa Thomson	Mel-Perth-Mel	\$856.62	HSUNO.013.0034
B	16 September 2005	Christa Thomson	Mel-Syd-Mel	\$1,086.16	HSUNO.013.0309

Chapter 6 - Expenditure of National Office funds for Mr Thomson's personal benefit
Expenditure by Mr Thomson on travel for his wife, Mrs Christa Thomson

Trip	Date of travel	Name of ticket holder	Destination	Amount	Doc ID
C	26 September 2005	Christa Thomson	Mel-Syd-Mel	\$323.08	HSUNO.013.0322
D	6 December 2005	Christa Thomson	Syd-Mel-Syd	\$664.64	HSUNO.013.0349
E	14 February 2006	Christa Thomson	Syd-Mel-Syd	422.81	HSUNO.015.0012
F	25 April 2006	Christa Thomson	Syd-Mel-Syd	\$38.50	HSUNO.002.0075
F	26 April 2006	Christa Thomson	Syd-Mel-Syd	\$561.82	HSUNO.002.0333
F	28 April 2006	Christa Thomson	Mel-Syd	\$38.50	HSUNO.002.0075
G	20 June 2006	Christa Thomson	Syd-Adl-Syd	\$806.46	HSUNO.002.0188
H	27 August 2006	Christa Thomson	Syd-Mel-Syd	\$548.82	HSUNO.001.0467
I	27 October 2006	Christa Thomson	Syd-Pth-Syd	\$1,228.78	HSUNO.001.0476
J	11 January 2007	Christa Thomson	Syd-Mel-Syd	\$283.39	HSUNO.015.0152
K	14 February 2007	Christa Thomson	Syd-Mel-Syd	\$1,038.78	HSUNO.015.0162
L	5 March 2007	Christa Thomson	Syd-Adl-Syd	\$1,448.78	HSUNO.015.0174
M	17 May 2007	Christa Thomson	Syd-Adl-Syd	\$688.78	HSUNO.015.0198
M	17 May 2007	Christa Thomson	Syd-Adl-Syd	\$693.49	HSUNO.015.0212
N	21 August 2007	Christa Thomson	Syd-Mel-Syd	\$696.78	HSUNO.005.0122
Total:				\$11,426.19	

542. On 17 May 2007, Mr Thomson charged his Diners Club card twice for the same airfare for Mrs Christa Thomson to travel from Sydney to Melbourne. When asked in interview (Thomson PN 1819 - 1823), Mr Thomson could not explain why this was so.

Trip A Travel from Melbourne to Perth on 21 February 2003

Evidence

543. Mr Thomson's Diners Club statement dated 20 February 2003 ([HSUNO.013.0034](#)) discloses that on 28 January 2003 he booked and paid:
- a. \$856.52 for a Qantas Airways return flight from Melbourne to Perth on 21 February 2003;
 - b. \$856.52 for a Qantas Airways return flight from Melbourne to Perth on 21 February 2003 in the name of Christa Thomson; and
 - c. \$856.52 for a Qantas Airways return flight from Melbourne to Perth on 21 February 2003 in the name of Karene Walton.
544. A National Executive meeting occurred in Perth from 25 February 2003 to 26 February 2003 ([WIT.WIL.001.0104](#)).
545. Mr Thomson's Diners Club statement dated 20 March 2003 ([HSUNO.013.0043](#)) discloses that he incurred the following expenses:
- a. On 21 February 2003:
 - i. \$50.16 Taxi Brokers Pty Ltd for 'city to airport'; and
 - ii. \$41.85 taxi fare for 'suburbs to suburbs'.
 - b. On 22 February 2003, \$120.90 at Sail & Anchor Fremantle WA.
 - c. On 23 February 2003:
 - i. \$67.50 at Madonnas; and
 - ii. \$44.96 taxi fare for 'home to hotel'.
 - d. On 24 February 2003:
 - i. \$40.74 taxi fare for 'suburbs to city'; and
 - ii. \$40.18 taxi fare for 'hotel to home'.
 - e. On 26 February 2003:
 - i. \$494.35 at Esplanade Hotel Fremantle WA;
 - ii. \$39.29 taxi fare for 'hotel to office'; and
 - iii. \$28.42 taxi fare for 'hotel to city'.
 - f. On 27 February 2003:
 - i. \$782.90 at Esplanade Hotel Fremantle WA; and
 - ii. \$32.30 taxi fare for 'hotel to city'
546. Mr Thomson's CBA Mastercard statement dated 25 February 2003 ([HSUNO.014.0006](#)) discloses that on 24 February 2003 he withdrew \$300 from a Westpac ATM at Fremantle Market WA.

547. Mr Thomson's CBA Mastercard statement dated 26 March 2003 ([HSUNO.014.0007](#)) discloses that he incurred the following expenses on 26 February 2003:
- a. \$110 at Little Creatures Fremantle WA;
 - b. \$330 at Aboutoun Catering North Sydney;
 - c. \$169.50 at Sandrino Café Fremantle WA; and
 - d. \$85 at Sala Thai Restaurant Fremantle WA.
548. As at 18 November 2011 the Esplanade Hotel website ([PUB.008.0202](#)) identified the room rates at the Hotel range between \$235 and \$578 per night.
549. Mr Thomson was asked about this trip at interview (Thomson PN 1799 - 1782):
- MR NASSIOS: On 26 and 28 April 2006 you and your wife flew from Sydney to Melbourne on return airmiles. You stayed two nights, 26 and 27 April, at Langhams Hotel at \$235 a night.
- MR THOMSON: Yes.
- MR NASSIOS: Can you recall what that trip may have been for?
- MR THOMSON: No. The only reason I can remember the Western Australian one was because it was more unusual and it was early on so I remember that one.

Analysis

550. On the basis of the matters set out at paragraphs 543 to 549 above, it appears that Mr Thomson:
- a. on 28 January 2003 booked and used his Diners Club card to pay:
 - i. \$856.52 for a Qantas Airways return flight from Melbourne to Perth on 21 February 2003;
 - ii. \$856.52 for a Qantas Airways return flight from Melbourne to Perth on 21 February 2003 in the name of Christa Thomson; and
 - iii. \$856.52 for a Qantas Airways return flight from Melbourne to Perth on 21 February 2003 in the name of Karene Walton.
 - b. on 21 February 2003 with Christa Thomson:
 - i. caught a taxi from 'city to airport' for which he paid \$50.16 using his Diners Club card; and
 - ii. flew to Perth.
 - c. on 22 February 2003, dined at Sail & Anchor Fremantle WA where he paid \$120.90 using his Diners Club card.
 - d. on 23 February 2003, dined at Madonnas where he paid \$67.50 using his Diners Club card.
 - e. on 24 February 2003, withdrew \$300 from a Westpac ATM at Fremantle Market WA using his CBA Mastercard.

- f. on 25 and 26 February 2003, attended the National Executive meeting in Perth.
- g. on 26 February 2003:
 - i. used his Diners Club card to pay \$494.35 at Esplanade Hotel Fremantle WA. It is possible that Mr Thomson dined at the Esplanade Hotel and paid for dinner for others attending the National Executive meeting. In the alternative, it is also possible that this payment was for two nights' accommodation at the Esplanade;
 - ii. dined at Little Creatures Fremantle WA where he paid \$110 using his CBA Mastercard;
 - iii. dined at Sandrino Café Fremantle WA where he paid \$169.50 using his CBA Mastercard; and
 - iv. dined at Sala Thai Restaurant Fremantle WA where he paid \$85 using his CBA Mastercard.
- h. on 27 February 2003:
 - i. checked out of the Esplanade Hotel Fremantle using his Diners Club card to pay \$782.90 for accommodation and/or extras incurred during his stay between 21 February 2003 and 27 February 2003; and
 - ii. flew home to Sydney.

551. The documents do not disclose the date on which Mrs Christa Thomson returned to Melbourne.

552. The \$330 which was charged by Aboutoun to Mr Thomson's CBA Mastercard has already been discussed at paragraphs 39 to 67 of this chapter.

Trip B to Sydney on 16 September 2005

553. This trip has already been discussed at paragraph 493 of this chapter.

Trip C to Sydney on 26 September 2005

554. This trip has already been discussed at paragraph 494 of this chapter.

Trip D Travel from Sydney to Melbourne on 6 December 2005

Evidence

555. Mr Thomson's Diners Club statement dated 20 December 2005 ([HSUNO.013.0349](#)) discloses that he incurred the following charges:
- a. on 3 December 2005 booked and paid
 - i. Qantas \$664.64 for a flight from Sydney to Melbourne on 6 December 2005 for Christa Thomson;
 - ii. Wotif \$623.85; and
 - iii. Wotif \$273.85.

- b. on 6 December 2005:
 - i. \$750 at Café D'Orsay; and
 - ii. \$61.16 taxi fare for 'Melbourne airport to Melbourne'.
 - c. on 7 December 2005:
 - i. \$204 at The Westin Melbourne; and
 - ii. \$11.43 taxi fare for 'city to city'.
 - d. on 8 December 2005:
 - i. \$322.50 at Langham Hotel Melbourne;
 - ii. \$39.28 at Caltex Starshop;
 - iii. \$14.10 taxi fare for 'hotel to city'; and
 - iv. \$49.95 taxi fare for 'city to Melbourne airport'.
556. Mr Thomson's CBA Mastercard dated 29 December 2005 ([HSUNO.014.0052](#)) discloses that on 7 December 2005 he withdrew \$200 from a CBA ATM at RMIT Victoria.
557. As at 8 November 2011 the Wotif website identified that the room rates at the Langham Hotel, Melbourne, ranged between \$277 and \$695 per night ([FWA.012.0038](#)).

Analysis

558. There appears to be no booking for Mr Thomson's return flight to Melbourne for this trip. However, in some instances when identical flights are booked for Mr Thomson and Mrs Christa Thomson simultaneously, this appears as only one charge on the Diners Club statement.
559. Additionally, the numerous credit card transactions on Mr Thomson's Diners Club card and CBA Mastercard which appear to have been incurred in Melbourne between 6 and 8 December 2005 suggest that he flew to Melbourne on 6 December 2005 and returned 8 December 2005. Therefore, it is likely that the \$664.64 Qantas charge on 3 December 2005 was for flights for both Mr and Mrs Thomson.
560. On the basis of the matters set out at paragraphs 555 to 557 of this chapter, it appears that Mr Thomson:
- a. on 3 December 2005 used his Diners Club card to pay:
 - i. \$664.64 for a Qantas flight from Sydney to Melbourne on 6 December 2005 for Christa Thomson; and
 - ii. \$623.85 and \$273.85 to Wotif for accommodation.
 - b. on 6 December 2005 with Christa Thomson:
 - i. flew from Sydney to Melbourne;
 - ii. caught a taxi from Melbourne airport to Melbourne;

- iii. checked into the Langham Hotel Melbourne; and
 - iv. dined at Café D'Orsay.
- c. on 7 December 2006:
- i. withdrew \$200 cash using his CBA Mastercard; and
 - ii. dined at The Westin Melbourne.
- d. on 8 December 2006:
- i. checked out from the Langham and used his Diners Club card to pay \$322.50 for extras incurred by himself and Christa Thomson, during their stay at the Langham;
 - ii. caught a taxi to Melbourne airport and flew back to Sydney; and
 - iii. drove home paying for petrol at Caltex Starshop on the way.
561. It is therefore possible that the \$623.85 payment to Wotif related to two nights' accommodation at the Langham Hotel for both Mr and Mrs Thomson on 6 December 2005 to 7 December 2005.

Trip E Travel to Melbourne on 14 February 2006

562. This trip has already been discussed at paragraphs 685 to 690 of chapter 4.

Trip F Travel to Melbourne on 25 or 26 April 2006

563. This trip has already been discussed at paragraphs 746 to 763 of chapter 4.

Trip G 20 June 2006 travel to Adelaide

Evidence

564. Mr Thomson's Diners Club statement dated 20 June 2006 ([HSUNO.021.0295](#)) discloses that on 15 June 2006 he booked and paid \$806.46 for a Qantas flight for Christa Thomson from Sydney to Adelaide on 20 June 2006, returning on an unknown date.
565. Two Qantas E-Ticket Itinerary, Receipt and Tax Invoices disclose the following:
- a. \$403.23 paid by 'Diners' on 15 June 2006 for Qantas flight for Craig Thomson on 20 June 2006, departing Sydney at 4:20pm, and returning Adelaide to Sydney on 22 June 2006, departing Adelaide at 4:50pm ([HSUNO.002.0186](#))
 - b. \$403.23 paid by 'Diners' on 15 June 2006 for Qantas flight for Christa Thomson on 20 June 2006, departing Sydney at 4:20pm, and returning Adelaide to Sydney on 22 June 2006, departing Adelaide at 4:50pm ([HSUNO.002.0187](#)).
566. Mr Thomson's Diners Club statement dated 20 July 2006 ([HSUNO.015.0077](#)) discloses that on 16 June he booked and paid \$565 for accommodation on 20 June 2006 through Qantas Holidays Domestic.

567. The Diners Club statement dated 20 July 2006 also discloses that between 20 June 2006 and 22 June 2006 Mr Thomson incurred the following charges:
- a. on 20 June 2006:
 - i. \$53.59 at Woolworths Petrol 1715, Gosford;
 - ii. \$77.19 at the Mobil, Killara;
 - iii. \$50.47 at Secure Parking, Wynyard Lane;
 - iv. \$17.21 taxi fare for 'airport to city'; and
 - v. \$16.65 taxi fare for 'city to Croydon Park'.
 - b. on 21 June 2006, \$500 at La Trattoria Restaurant (ABN 190 077 779 24).
 - c. on 22 June 2006:
 - i. \$26 at the Hyatt Regency, Adelaide;
 - ii. \$26 at the Hyatt Regency, Adelaide;
 - iii. \$25.31 taxi fare for 'suburbs to Adelaide arprt'; and
 - iv. \$184 at Valet Parking, Sydney airport
568. Mr Thomson's CBA Mastercard statement dated 26 July 2006 ([HSUNO.021.0663](#)) discloses that on 21 June 2006 he withdrew \$500 in cash from an ATM at Adelaide airport.
569. As ASIC search on the ABN listed as that for La Trattoria Restaurant discloses that the name is related to the company 'La Trattoria Restaurant & Pizza Bar Pty Ltd' (ACN 007 777 924). The registered office for this is located at Unley, South Australia 5061 ([PUB.008.0101](#)).
570. A Qantas e-ticket receipt and tax invoice dated 1 June 2006 ([HSUNO.002.0152](#)) discloses that a flight was booked for Ms Karinda Flavell departing Melbourne to Adelaide at 09:00AM on 21 June 2006 return Adelaide to Melbourne at 09:05PM on 25 June 2006. There was a handwritten note on the e-ticket that said 'health prof forum'.

Analysis

571. On the basis of the matters set out above at paragraphs 565 to 570 of this chapter, it appears that Mr Thomson:
- a. on 15 June 2006 used his Diners Club card to book and pay Qantas \$806.46 for two flights for himself and Christa Thomson from Sydney to Adelaide on 20 June 2006 and return on 22 June 2006.
 - b. on 16 June 2006 booked and used his Diners Club card to pay \$565.00 for two nights' accommodation at the Hyatt Regency Adelaide on 20 and 21 June 2006.
 - c. on 20 June 2006 with Christa Thomson:
 - i. left his car with Valet parking at Sydney airport in the afternoon before boarding a flight to Adelaide; and

- ii. caught a taxi from Adelaide airport possibly to check in at the Hyatt Regency Adelaide where he stayed that evening and the following night.
- d. on 21 June 2006:
 - i. withdrew \$500 cash at the Adelaide airport and spent \$500 on lunch or dinner at La Trattoria Restaurant, possibly with others who attended the Health Professionals' Forum; and
 - ii. Karinda Flavell (a research officer employed by the National Office) flew from Melbourne to Adelaide for the Health Professionals' Forum ([HSUNO.002.0152](#)). It is possible that Mr Thomson attended the Health Professionals' Forum while in Adelaide. It is also possible that Mr Thomson was at the Adelaide airport on this day to meet others for the forum.
- e. on 22 June 2006 with Ms Thomson:
 - i. checked out of the Hyatt Regency Adelaide, using his Diners Club card to pay \$52 for extras incurred during their stay;
 - ii. caught a taxi to the Adelaide airport before boarding a flight to Sydney;
 - iii. used his Diners Club card to pay \$184 for Valet Parking on Sydney airport during this trip and collected his car from Valet parking; and
 - iv. drove home to the Central Coast, stopping for petrol at the Mobil in Killara on the way.

Trip H 27 August 2006 Mr and Mrs Thomson

572. This trip has already been discussed at paragraphs 802 to 808 of chapter 4.

Trip I 27 October 2006 - Sydney to Perth for Mrs Thomson

Evidence

573. Mr Thomson's Diners Club statement dated 20 September 2006 ([HSUNO.015.0100](#)) discloses that on 29 August 2006 he booked and paid \$1,228.78 for a Qantas return flight from Sydney to Perth on 27 October 2006 for Christa Thomson.
574. Mr Thomson's Diners Club statement dated 20 November 2006 ([HSUNO.015.0126](#)) discloses that on 27 October 2006 he paid \$55 at AAA Aero Link Airport Cars.
575. The AAA Aero Link Airport Cars charge on 27 October 2006 includes ABN 18785220020. An ASIC search undertaken on 17 November 2006 identifies this ABN as relating to the individual sole trader 'Darryl Arthur Smale' trading under the name 'AAA Aerolink Airport Cars' and indicates that the main business location is Victoria 3152.

Analysis

576. On the basis of the matters set out at paragraphs 573 to 575 of this chapter, it appears that:
- a. On 29 August 2006 Mr Thomson used his Diners Club card to pay \$1,228.78 for a Qantas flight for Christa Thomson to Perth on 27 October 2006.

- b. Mrs Thomson travelled on her own given that:
 - i. there is no evidence that any flights were purchased for Mr Thomson
 - ii. there is no evidence that Mr Thomson spent any money on his credit cards in Perth in, or at any time around, 27 October 2006; and
 - iii. there is no evidence that there was any HSU related reason for Mr Thomson to travel to Perth at this time.
- c. on 27 October 2006 Mr Thomson used his Diners Club card to pay \$55 at AAA Aerolink Airport Cars. This company appears to be based in Melbourne. There is no evidence that either Mr or Mrs Thomson was in Melbourne on 27 October 2006. This transaction is accordingly of little assistance in resolving whether or not Mr Thomson travelled to Perth with his wife.

Trip J Travel to Melbourne on 11 January 2007

577. This trip has already been discussed at paragraphs 844 to 848 of chapter 4.

Trip K Travel to Melbourne on 14 February 2007

578. This trip has already been discussed at paragraphs 857 to 865 of chapter 4.

Trip L 5 March 2007 - Travel to Adelaide

Evidence

579. Mr Thomson's Diners Club statement dated 20 March 2007 ([HSUNO.015.0174](#)) discloses that on 2 March 2007 he made the following bookings:
- a. \$1,448.78 for a Qantas flight for Christa Thomson from Sydney to Adelaide on 5 March 2007, return on unknown date; and
 - b. \$265 on Qantas Holidays Domestic for accommodation on 5 March 2007.
580. This Diners Club statement dated 20 March 2007 further discloses that between 5 March 2007 and 7 March 2007 Mr Thomson incurred the following charges:
- a. on 5 March 2007:
 - i. \$25.60 at Café Bluestone;
 - ii. \$52.53 at Secure Parking, Wynyard Lane;
 - iii. \$100 at Valet Parking, Sydney airport;
 - iv. \$20.76 taxi fare for 'airport to Adelaide'; and
 - v. \$33.70 at Richmond Hotel - Adelaide SA.
 - b. on 6 March 2007:
 - i. \$300 cash withdrawal at a CBA ATM at Rundle Mall, SA;
 - ii. \$20.50 at the Pacific International Suites, Adelaide;
 - iii. \$44 at the Pacific International Suites, Adelaide; and
 - iv. \$57.58 at the Mobil, Killara for 35.22 litres.

581. Mr Thomson's CBA Mastercard statement dated 27 March 2007 ([HSUNO.014.0088](#)) discloses that on 6 March 2007 he withdrew \$500 at an ATM at CBA Rundle Mall, South Australia.
582. Mr Thomson's Diners Club statement dated 20 April 2007 ([HSUNO.015.0184](#)) discloses that on 6 March 2007 he incurred a \$99.90 taxi fare for 'Royal Adel to Airport'.

Analysis

583. On the basis of the matters set out at paragraphs 579 to 582 of this chapter, it appears that Mr Thomson:
- a. on 2 March 2007 booked and used his Diners Club card to pay Qantas \$1,448.78 for two flights for Christa Thomson and himself to fly from Sydney to Adelaide on 5 March 2007 and return on 7 March 2007. This charge appears on the Diners Club statement as a flight for Christa Thomson only. However, in some instances where identical flights are booked for two people this charge appears on the Diners Club statement as for one person only.
 - b. on 5 March 2007 with Christa Thomson:
 - i. left his car at Valet Parking at the Sydney airport before boarding a flight to Adelaide;
 - ii. caught a taxi from the Adelaide airport to the Pacific International Suites to check in; and
 - iii. attended the Richmond Hotel at some stage.
 - c. on 6 March 2007 with Christa Thomson:
 - i. used his Diners Club card to pay \$20.50 and \$44 upon check out at the Pacific International Suites for extras incurred during his stay;
 - ii. withdrew \$300 cash from the ATM at CBA in Rundle Mall using his CBA Mastercard;
 - iii. attended the Royal Adelaide Hotel before catching a taxi to the Adelaide airport and boarding a flight to Sydney;
 - iv. collected his car from Valet Parking at the Sydney airport and drove back to the Central Coast, stopping at the Mobil in Kilara on his way home; and
 - v. used his Diners Club card to pay \$100 for Valet Parking at Sydney airport during this trip.

Trip M 17 May 2007 Travel to Adelaide for Mr and Mrs Thomson

Evidence

584. Mr Thomson's Diners Club statement dated 20 May 2007 ([HSUNO.015.0198](#)) discloses that on 15 May 2007 he made the following bookings:
- a. \$688.78 for a Qantas flight for Christa Thomson from Sydney to Adelaide on 17 May 2007, return on unknown date; and

- b. \$255 on Qantas Holidays Domestic for accommodation on 17 May 2007.
585. Mr Thomson's Diners Club statement dated 20 June 2007 ([HSUNO.015.0212](#)) discloses that on 25 May 2007 the following additional bookings were charged to the card:
- a. \$693.49 for a Qantas flight for Christa Thomson from Sydney to Adelaide on 17 May 2007, return on unknown date; and
 - b. \$693.49 for a Qantas flight for Mr Thomson from Sydney to Adelaide on 17 May 2007, return on unknown date.
586. Mr Thomson's Diners Club statement dated 20 May 2007 also discloses that on 17 and 18 May 2007 he incurred the following charges:
- a. on 17 May 2007, \$100 at Valet Parking, Sydney airport; and
 - b. on 18 May 2006, \$26.40 at the Medina Grand, Adelaide airport.
587. Mr Thomson's Diners Club statement dated 20 June 2007 also discloses that on 17 and 18 May 2007 he incurred the following charges :
- a. on 17 May 2007:
 - i. \$19.87 taxi fare for 'Airport to Adelaide';
 - ii. \$28.08 taxi fare for 'city to office'; and
 - iii. \$27.75 taxi fare with Taxi Docket Exchange Cowandilla.
 - b. on 18 May 2007, \$16.87 taxi fare for 'city to Adelaide arpt'.
588. Mr Thomson was asked about this transaction at interview (Thomson PN 1817 - 1827):
- MR NASSIOS: 17 May 2007. Again, we're looking at your Diner's Club card statements.
- MR THOMSON: Yes.
- MR NASSIOS: It seems as though you have purchased two sets of return tickets for your wife to fly between Sydney and Adelaide.
- MS CARRUTHERS: I'll just show you the statements.
- MR THOMSON: Yes.
- MS CARRUTHERS: The charges have been made on two separate Diner's statements a period apart but they seem to relate to flights on the same day.
- MR THOMSON: I don't know. They're also different amounts as well. I don't know.
- MR NASSIOS: Do you recall the trip to Adelaide at all?
- MR THOMSON: Again, Adelaide was one of those that we went to reasonably frequently.
- MR NASSIOS: All right.

MR THOMSON: Well, more frequently than Western Australia and Tasmania.

Analysis

589. Based on the matters set out at paragraphs 579 to 588 of this chapter, it appears that Mr Thomson:
- a. on 15 May 2007:
 - i. booked and used his Diners Club card to pay \$688.78 for a flight for Christa Thomson from Sydney to Adelaide on 17 May 2007 and return the next day; and
 - ii. booked and used his Diners Club card to pay \$255 for accommodation at the Medina Grand Adelaide on 17 May 2007.
 - b. on 17 May 2007 with Christa Thomson
 - i. left his car at Valet Parking before boarding a flight to Adelaide;
 - ii. caught a taxi from the Adelaide airport to Medina Grand to check in; and
 - iii. caught a taxi to and from an unknown location, possibly for dinner.
 - c. on 18 May 2007 with Christa Thomson:
 - i. used his Diners Club card to pay \$26.40 upon check out at the Medina Grand, Adelaide;
 - ii. caught a taxi to the Adelaide airport before boarding a flight to Sydney;
 - iii. collected his car from Valet Parking at Sydney airport and drove home to the Central Coast; and
 - iv. used his Diners Club card to pay \$100 to Valet Parking at Sydney airport in respect of this trip.
590. It is unclear why on 25 May 2007, 10 days after the first two Qantas flight bookings, two more Qantas flights for Christa and Craig Thomson from Sydney to Adelaide and return on 17 May 2007 were charged to the Diners Club card. Mr Thomson had already paid for these flights on 15 May 2007. It is possible that the additional \$11.00 Qantas charge on Mr Thomson's Diners Club card on 16 May 2007 was incurred due to a change to these flights. However, this does not explain why Mr Thomson was charged the full cost of both flights a second time.

Trip N Travel to Melbourne on 21 August 2007

591. This trip has already been discussed at paragraphs 893 to 901 of Chapter 4.

Mr Thomson's submissions

592. With respect to findings 101 to 104, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules or any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule.

- b. The HSU did not have a formal written travel policy. However there was an informal understanding that the National Secretary's partner could accompany the National Secretary on business trips, including travelling interstate to attend National Executive Meetings and when the National Secretary was attending significant HSU and industry functions. Each of the occasions listed in the table at paragraph 541 of this chapter where Mrs Thomson travelled at the expense of the HSU was consistent with this informal understanding. Further, it should be noted that trips "A", "E" and "N" contained in the table at paragraph 541 of this chapter relate to occasions when Mrs Thomson accompanied Mr Thomson to National Executive meetings.

Conclusions

593. On the basis of the matters set out at paragraphs 543 to 591 of this chapter, it appears that Mr Thomson has used HSU funds to pay for air travel for his wife, Christa Thomson, on 14 separate occasions between 21 February 2003 and 21 August 2007.
594. It appears likely that Mr Thomson travelled with his wife on 13 of those occasions.
595. However it appears that:
 - a. On one occasion (Trip B on 16 September 2005) Mrs Thomson travelled to Sydney with Mr Thomson at HSU expense while Mr Thomson was on annual leave. It seems that Mrs Thomson's trip on this occasion had no relationship to any activities of the National Office This trip is considered at paragraphs 480 to 508 of this chapter.
 - b. on one occasion (Trip I on 27 October 2006) Mrs Thomson travelled to Perth without Mr Thomson. It seems that Mrs Thomson's trip on this occasion also had no relationship to any activities of the National Office.
596. In addition, as discussed at paragraphs 493 and 494 of this chapter, it appears that Mrs Thomson's trips to Sydney which are Trips B and C in the table set out at paragraph 541 of this chapter had no relationship to any activities of the National Office.
597. The total cost to the National Office of airline tickets purchased by Mr Thomson for Mrs Thomson was \$11,426.19. However, it appears probable that on several of these occasions the amount which is recorded in Mr Thomson's Diners Club card statements as being the cost of aeroplane tickets for Mrs Thomson was actually the total cost of separate plane tickets for both Mr and Mrs Thomson.
598. At no time while Mr Thomson was National Secretary did the National Office have any policy which permitted officials or employees of the National Office to use HSU funds to pay for travel by their partners. I have considered the failure of the National Office to have any formal policy regarding spousal travel at paragraphs 226 to 242 of chapter 5.
599. It was not part of Mr Thomson's conditions of employment as National Secretary as determined by the National Council on 23 July 2002 that he would be entitled to use National Office funds to purchase airline travel for his partner.

600. I consider that the money used by Mr Thomson to pay for tickets for airline travel for his wife, Mrs Christa Thomson, on 14 occasions was not approved by National Council or National Executive and was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
601. A reasonable person in Mr Thomson's position would not have incurred this expenditure referred to in paragraph 541 of this chapter without either:
- a. obtaining the authority of either National Council or National Executive for him to do so;
 - b. submitting a policy regarding appropriate expenditure on travel for spouses of officials and employees of the National Office to either National Council or National Executive for approval, and obtaining that approval, and ensuring that any such expenditure was in accordance with any policy approved by either National Council or National Executive.
602. Mr Thomson could not have believed that it was in the best interests of the HSU to use funds of the National Office to pay the amounts referred to in paragraph 541 of this chapter for travel by his wife. Mr Thomson did not act for a proper purpose when he used funds of the National Office to pay for this travel.

Findings 101 to 104 - Expenditure by Mr Thomson on travel for his wife, Mrs Christa Thomson

- 101.** Mr Thomson breached Sub-rule 36(b) by incurring the expenditure of National Office funds referred to in paragraph 541 of this chapter on travel for his wife, Mrs Christa Thomson, without the authority of either National Council or National Executive to do so.
- 102.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by using HSU funds to pay for the travel by his wife, Mrs Christa Thomson, referred to in paragraph 541 of this chapter when such expenditure:
- had not been authorised by either National Council or National Executive;
 - was not in accordance with any policy approved by either National Council or National Executive; and
- was not an entitlement of his employment as National Secretary.

- 103.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the organisation and for a proper purpose by using HSU funds to pay for the travel of his wife, Mrs Christa Thomson, referred to in paragraph 541 of this chapter when such expenditure:
- had not been authorised by either National Council or National Executive;
 - was not in accordance with any policy approved by either National Council or National Executive; and
- was not an entitlement of his employment as National Secretary.
- 104.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for another (namely his wife) by using National Office funds to pay for the travel referred to in paragraph 541 of this chapter.

Dining and entertainment

603. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 105 to 112 - Expenditure on dining and entertainment when Mr Thomson was not travelling, which are set out at page 603.

Evidence

604. A very large number of transactions on Mr Thomson's Diners Club statements and CBA Mastercard statements (**the credit card statements**) appear to be purchases of dining or entertainment expenses totalling \$73,849.88 between 16 August 2002 and 14 December 2007 (as set out in the table at paragraph 610 below).
605. Dining and entertainment expenses cover a wide range of purchases. The majority of the expenses on Mr Thomson's credit card statements appear to relate to the following categories:
- a. hotel extras, such as mini-bar and in-house entertainment; and
 - b. food and beverages from restaurants and cafés.
606. Most of this expenditure is unsubstantiated by any documents provided by the National Office to FWA. The total value of this expenditure is significant for an organisation the size of the National Office, which had a turnover of up to \$2 million per year during the period that Mr Thomson was National Secretary. These expenses also need to be considered against the fact that Mr Thomson also withdrew \$103,338.07 in cash from HSU bank accounts between 2002 and 2007. The use by Mr Thomson of his CBA mastercard to make cash withdrawals is considered at paragraphs 283 to 328 of chapter 5.
607. Annexure D lists all charges which appear on Mr Thomson's credit card statements which appear likely to have been for dining and entertainment expenses. There are

498 such instances which have been identified. The information contained in Annexure D is as follows:

- a. the first column lists an item number for each transaction;
 - b. the second column identifies the date on which each transaction is recorded in the relevant credit card statement;
 - c. the third column identifies the payee in relation to each transaction;
 - d. the fourth column identifies the amount of each transaction;
 - e. the fifth column identifies the particular credit card statement on which the transaction appears, including the date of the statement, and whether the statement is a Diners Club statement (**DC**) or a CBA Mastercard statement (**MC**) as well as the document ID for that statement. In a small number of cases this column also identifies a receipt or invoice which has been identified as supporting the transaction;
 - f. the sixth column identifies any known HSU event which occurred on the date of the transaction, or a day earlier or later than the transaction; and
 - g. the seventh column contains any comments about other information that has been identified in relation to the transaction.
608. It appears from an analysis of the locations where Mr Thomson was incurring expenditure on his credit cards that he moved from Melbourne to live on the NSW Central Coast at about the end of November 2005. This is consistent with his statement to FWA at interview that he thought he moved to the NSW Central Coast in late 2005 (Thomson PN 53).
609. On the basis that Mr Thomson moved from Melbourne to the Central Coast in November 2005, it is possible to group all of the expenditure which appears on Mr Thomson's credit card statements that appears likely to be dining or entertainment expenses as follows:
- a. expenditure by Mr Thomson in Melbourne while he lived in Victoria between 2002 and November 2005;
 - b. expenditure by Mr Thomson which was not in Melbourne while he lived in Victoria between 2002 and November 2005;
 - c. expenditure by Mr Thomson in Sydney or on the Central Coast while he lived on the Central Coast from December 2005 onwards;
 - d. expenditure by Mr Thomson which was not in Sydney or the Central Coast while he lived on the Central Coast from December 2005 onwards; and
 - e. expenditure where the location of that expenditure cannot be identified.

610. Annexure D identifies the total of these categories of expenditure on dining and entertainment as follows:

Expenditure incurred on your credit cards which appears to be related to dining or entertainment	
Category of expenditure	Amount
Expenditure by Mr Thomson in Melbourne while he lived in Victoria between 2002 and November 2005	\$30,903.61
Expenditure by Mr Thomson which was not in Melbourne while he lived in Victoria between 2002 and November 2005	\$14,891.18
Expenditure by Mr Thomson in Sydney or on the Central Coast while he lived on the Central Coast from December 2005 onward	\$13,946.31
Expenditure by Mr Thomson which was not in Sydney or the Central Coast while he lived on the Central Coast from December 2005 onward	\$13,547.77
Expenditure where the location of that expenditure cannot be identified	\$561.01
Total expenditure which appears to be related to dining or entertainment	\$73,849.88

611. On the basis of the information set out in Annexure D it appears that:

- a. Mr Thomson spent \$30,903.61 on his credit cards on dining and entertainment expenses in Melbourne, while he lived in Melbourne between 2002 and November 2005; and
- b. Mr Thomson spent \$13,946.31 on his credit cards on dining and entertainment expenses in Sydney and the Central Coast, while he lived on the Central Coast, from December 2005 until his resignation as National Secretary on 14 December 2007.

612. These amounts total \$44,849.92 in expenditure by Mr Thomson using his Diners Club cards on dining and entertainment expenses which do not appear to be related to any travel being undertaken by Mr Thomson.

Illustrative examples of expenditure on dining and entertainment

613. The following analysis consider illustrative examples of expenditure by Mr Thomson on dining and entertainment which I have divided up into two categories:

- a. Expenditure on 14 large transactions of \$500 or more whilst Mr Thomson was not travelling; and
- b. Expenditure on 8 large travel transactions of \$500 or more while Mr Thomson was travelling interstate.

Expenditure while not travelling - the 14 large transactions

614. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 105 to 112 - Expenditure on dining and entertainment when Mr Thomson was not travelling, which are set out below at page 603.
615. FWA has identified 14 transactions which:
- a. each appear to relate to expenditure on dining and entertainment expenses;
 - b. do not appear to coincide with any HSU events;
 - c. do not appear to have been incurred while Mr Thomson was travelling interstate; and
 - d. are each for an amount which is, or is in excess of, \$500.
616. These 14 transactions (**the 14 large transactions**) are:
- a. \$560 to Mecca Restaurant and Bar, Melbourne on 5 December 2002 (see item 16 of Annexure D);
 - b. \$1,106 at Langton's Restaurant, Melbourne, on Sunday 15 December 2002 (see item 19 of Annexure D);
 - c. \$630 at Langton's Restaurant, Melbourne on Saturday 5 April 2003 (see item 41 of Annexure D);
 - d. \$530 at Sarti Restaurant, Melbourne, on Tuesday 15 April 2003 (see item 42 of Annexure D);
 - e. \$579.75 at Crown Entertainment Complex, Melbourne, on Saturday 3 May 2003 (see item 44 of Annexure D);
 - f. \$1,790.14 at 'Melbourne, Melbourne' on 30 September 2004 (see item 145 of Annexure D);
 - g. \$2,688.06 at 'Melbourne Melbourne' on Wednesday 13 October 2004 (see item 149 of Annexure D);
 - h. \$800 at Cecconi's at Crown Casino, Melbourne, on Tuesday 2 November 2004 (Melbourne Cup Day) (see item 157 of Annexure D);
 - i. \$1,300 at Sarti Restaurant, Melbourne, on Saturday 19 May 2005 (see item 222 of Annexure D);
 - j. \$590 at House of Guangzhou Restaurant, Sydney, on Thursday 2 February 2006 (see items 321 and 322 of Annexure D);
 - k. \$600 at Kingsley's Steak and Crabhouse on Tuesday 5 September 2006 (see item 385 of Annexure D);
 - l. \$520 at Aria Restaurant, Sydney, on Friday 27 April 2007 (see item 461 of Annexure D);
 - m. \$581.10 at The Entrance Hotel, Central Coast NSW, on Saturday 17 November 2007 (see item 493 of Annexure D); and

- n. \$550 at Forty One Restaurant, Sydney, on Thursday 20 December 2007 (see item 498 of Annexure D).

Evidence in relation to the 14 large transactions

Payment of \$560 to Mecca Restaurant Bar on 5 December 2002

617. This transaction appears at item 16 of Annexure D.
618. No minutes of the National Executive meeting held on 5 December 2002 have been provided to FWA. However there were 17 members of the National Executive at that time. Assuming that each of these persons attended the National Executive meeting on this date, and the dinner on that date, the expenditure on this dinner amounted to \$32.94 per person. This amount is well within the amount set out in the 2007 Ruling for an evening meal. Having regard to the circumstances which included that it occurred at the end of the first day of a two-day National Executive meeting, and that more than half of the members of the National Executive would have been staying away from home, I consider that Mr Thomson did not breach subsections 285(1), 286(1) or 287(1) of the RAO Schedule in relation to this transaction. However, for the reasons set out at paragraphs 626 to 633 below of this chapter, I do not accept that such expenditure was within Mr Thomson's power to authorise under Sub-rule 32(n).

Payments to 'Melbourne Melbourne' of \$1,790.14 on 30 September 2004 and \$2,688.06 on 13 October 2004

619. These transactions appear at items 145 and 149 of Annexure D.
620. The CBA Mastercard statement issued in relation to Mr Thomson's CBA Mastercard for the period ending 27 October 2004 records two entries with transaction details 'Melbourne Melbourne' on 30 September 2004 for \$1,790.14 and 13 October 2004 for \$2,688.06. [HSUNO.014.0032](#)
621. No documents have been produced by the HSU to FWA evidencing that the National Council and the National Executive authorised Mr Thomson to transact with and pay to a credit card merchant known as 'Melbourne Melbourne' in or about September and October 2004 sums totalling \$4,478.20.
622. No evidence has been produced by HSU to FWA substantiating that the transactions with and payments made in connection with 'Melbourne Melbourne' were for the purpose of carrying out the objects of the Union.
623. Mr Thomson was asked by FWA what the payments related to. He stated that he did not recall. He gave the following evidence about the matter (Thomson PN 1513 - 1516):

MR NASSIOS: Yes, I thought I'd come across it. There's something on 30 September 2004, a figure of \$1790.14. There's a further figure on 13 October 2004 of \$2688.06. The payee is Melbourne.

MR THOMSON: I don't know.

MR NASSIOS: There were no national conferences or anything around that time?

MR THOMSON: September 2004, I don't - October. I don't recall.

Other payments

624. There is no evidence that any of the remainder of the 14 large transactions were:
- a. Authorised by the National Executive or National Council; or
 - b. Expenditure on the general administration of the Union or for a purpose reasonably incidental to the general administration of the Union.

Mr Thomson's submissions

625. With respect to findings 105 to 112, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening the provisions referred to in findings 105 to 112. Mr Thomson denies contravening Sub-rule 36(b) of the Rules and any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule. All expenditure incurred in relation to dining and entertainment while not travelling interstate was authorised through the HSU budget, which was approved by the National Executive.
 - b. All expenditure on dining and entertainment was work related and therefore incidental to the administration of the HSU. Further, to the extent that expenditure was incurred it was posted to the accounts which were provided to the National Finance Committee and the National Executive. All expenditure was transparent.

Conclusions

626. Mr Thomson has submitted that all expenditure incurred in relation to dining and entertainment while not travelling interstate was authorised through the HSU budget, which was approved by the National Executive. As set out at paragraph 1109 of chapter 5, budgets and financial reports which were periodically approved by the finance committee or the National Executive did not make any specific provision for the expenditure of National Office funds on hospitality. Budgets which were submitted to various committee meetings did include provision for what was described as 'Meeting, Travel and General Exp' (see for example HSUNO.018.0190). However the National Office's annual financial statements merely itemised expenditure on 'travelling and accommodation' (see for example HSUNO.020.0102) and did not specifically account for any item of expenditure that could reasonably embrace hospitality expenditure of the type described by Mr Thomson. In those circumstances I do not accept as a general proposition that it was within Mr Thomson's authority to expend monies of the National Office on the general administration of the Union or for purposes reasonably incidental thereto for him to spend monies on meals he may have enjoyed with other union officials and members of the HSU. In addition, for the reasons set out at paragraphs 154 to 156 of chapter 5 and at paragraphs 631 and 637 of this chapter below, approval of a projected budget by National Executive is a separate process to the authorisation of individual items of expenditure.

627. Mr Thomson has also submitted that all of the expenditure was work related and therefore incidental to the administration of the Union. There is no evidence before me that indicates whether or not the expenditure by Mr Thomson on dining and entertainment while not travelling interstate was work related.
628. Moreover, it would not be sufficient merely to establish that the expenditure was 'work related'. The authority of the National Secretary to authorise expenditure does not depend upon whether the expenditure was 'work related'. I have set out at paragraphs 14 to 26 of chapter 5 on pages 210 and 211 my view that, while the Rules permit the National Secretary to expend funds of the HSU on its general administration, the Rules do not go so far as to allow the National Secretary to expend HSU funds on matters that fall outside the 'general administration of the Union' or 'purposes reasonably incidental' thereto without seeking the prior authority of National Council or National Executive. I have also discussed in chapter 2 what would constitute the 'general administration' of the Union under the heading 'What is the 'general administration of the Union'?' on page 103.
629. I have specifically considered the question of whether expenditure by Mr Thomson on meals which he shared with other persons while travelling interstate could be expenditure on the general administration of the Union or reasonably incidental thereto at paragraphs 1098 to 1110 of chapter 5.
630. Neither the HSU nor Mr Thomson has produced any evidence to suggest that expenditure was on the general administration of the Union. Nor has Mr Thomson done so when specifically invited to by my letter of 12 December 2011 (FWA.018.0001).
631. In my view, expenditure on each of the 14 large transactions (except the expenditure discussed at paragraphs 617 to 618 of this chapter) was not expenditure on the general administration of the Union or for purposes reasonably incidental thereto.
632. There is no evidence that any of the expenditure incurred by Mr Thomson using his credit cards on dining and entertainment expenses:
- a. in Melbourne while he was living in Melbourne; or
 - b. in Sydney or on the Central Coast while he was living on the Central Coast, was:
 - c. authorised by National Council or National Executive; or
 - d. expenditure on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
633. Having regard to the matters set out at paragraphs 626 to 632 above of this chapter, I consider that it was not authorised.

634. A reasonable person in Mr Thomson's position as National Secretary would not have spent any monies of the HSU on dining and entertainment expenses identified in paragraphs 611 and 612 of this chapter (except the expenditure discussed at paragraphs 617 to 618) unless:
- a. such expenditure had been authorised by either National Council or National Executive; or
 - b. such expenditure was reasonably incurred for meals or incidentals while travelling on HSU business.
635. Alternatively, a reasonable person would not have incurred expenditure on each of the 14 large transactions (except the expenditure discussed at paragraphs 617 to 618 of this chapter) without having sought the authorisation of either National Council or National Executive to do so.
636. Mr Thomson could not have believed it was in the best interests of the HSU to incur the expenditure identified in paragraphs 611 and 612 of this chapter (except the expenditure discussed at paragraphs 617 to 618 of this chapter) on dining and entertainment expenses unless:
- a. such expenditure had been authorised by either National Council or National Executive; or
 - b. such expenditure was reasonably incurred for meals or incidentals while travelling on HSU business.
637. Alternatively, Mr Thomson could not have considered that it was in the best interests of the HSU to incur payments for each of the 14 large transactions (except the expenditure discussed at paragraphs 617 to 618 of this chapter).

Findings 105 to 112 - Expenditure on dining and entertainment when Mr Thomson was not travelling

- 105.** Mr Thomson contravened Sub-rule 36(b) by incurring the expenditure on dining and entertainment expenses referred to at paragraphs 611 and 612 of this chapter:
- in Melbourne while he was living in Melbourne; or
 - in Sydney or on the Central Coast while he was living on the Central Coast, without the authority of either National Council or National Executive to do so.

- 106.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring all of the expenditure identified in paragraphs 611 and 612 of this chapter (except the expenditure discussed at paragraphs 617 to 618) on dining and entertainment in circumstances where such expenditure was not authorised by National Council or the National Executive and was not expenditure on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU..
- 107.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers or discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose by incurring all of the expenditure identified in paragraphs 611 and 612 of this chapter (except the expenditure discussed at paragraphs 617 to 618) on dining and entertainment in circumstances where such expenditure was not authorised by National Council or the National Executive and was not expenditure on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU.
- 108.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself or someone else by incurring all of the expenditure identified in paragraphs 611 and 612 of this chapter (except the expenditure discussed at paragraphs 617 to 618 of this chapter) on dining and entertainment expenses for either or both of his own benefit or the benefit of others.
- 109.** Mr Thomson breached Sub-rule 36(b) of the Rules by purporting to authorise the expenditure of National Office funds on each of the 14 large transactions on dining and entertainment which could not have been expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration.
- 110.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would have exercised if they were National Secretary in the HSU's circumstances by making payments for each of the 14 large transactions (except for the transactions discussed at paragraphs 617 and 618 of this chapter) on dining and entertainment.

111. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the HSU and for a proper purpose by making payments for each of the 14 large transactions (except for the transactions discussed at paragraphs 617 and 618 of this chapter) on dining and entertainment without having been authorised by either National Council or National Executive to do so.
112. Mr Thomson contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself, or someone else by making, and purporting to authorise, payments for each of the 14 large transactions (except for the transaction discussed at paragraphs 617 and 618 of this chapter), namely the benefit of highly priced hospitality at the expense of the HSU.

Expenditure while travelling interstate - the 8 large travel transactions

638. In addition to the matters set out at paragraphs 4 to 67 of chapter 5, the following matters are relevant to Findings 113 to 116 - Expenditure using Mr Thomson's credit cards on dining and entertainment while he was travelling interstate, which are set out below at page 609.

Large transactions

639. FWA has identified eight transactions that:
- a. each appear to relate to expenditure on dining and entertainment expenses;
 - b. do not appear to coincide with any HSU events;
 - c. appear to have been incurred while Mr Thomson was travelling interstate; and
 - d. are each for an amount which is, or is in excess of, \$500.
640. These eight transactions (**the eight large travel transactions**) are:
- a. \$1,500 at Beppis Restaurant on 6 September 2005 (see item 275 of Annexure D)
 - b. \$750 at Café D'Orsay, Melbourne, on Tuesday 6 December 2005 (see item 309 of Annexure D)
 - c. \$500 at La Tratoria Restaurant, Adelaide, on Wednesday 21 June 2006 (see item 361 of Annexure D)
 - d. \$500 at Bosari Ristorante, Carlton, on Wednesday 4 October 2006 (see item 393 of Annexure D)
 - e. \$960 at The European/The Melbourne Supper Club, Melbourne on Monday 4 December 2006 (see item 414 of Annexure D)
 - f. \$700 at the Courgette Restaurant, Canberra, on Wednesday 31 January 2007 (see item 430 of Annexure D)

- g. \$1,200 at the Hotel Lincoln, Carlton, on Thursday 15 February 2007 (see item 434 of Annexure D)
- h. \$600 at The Meat and Wine Co (Melb) P/L, Melbourne, on Thursday 15 February 2007 (see item 435 of Annexure D).

Evidence in relation to the eight large travel transactions

Payment of \$1,500 to Beppis Restaurant on 6 September 2005

- 641. This transaction appears at item 275 of Annexure D.
- 642. The minutes of the National Executive meeting held in Sydney on 6 September 2005 record that this was a short meeting that commenced at 3.30pm the day before a meeting of National Council. The minutes record that 15 members of National Executive and one observer were present at this meeting. Assuming all of these 16 persons attended the dinner at Beppis then expenditure on this dinner amounted to \$93.75 per person. This amount is well in excess of the amount set out in the 2007 Ruling in respect of an evening meal. I consider that this expenditure was excessive in all the circumstances. Accordingly, it appears that this transaction could not have been expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration.

Hotel Lincoln and The Meat and Wine Co (Melb) P/L on 15 February 2007

- 643. These two transactions appear at items 434 and 435 of Annexure D.
- 644. Mr Thomson incurred two large charges on his Diners Club card on 15 February 2007:
 - a. a charge of \$1,200.00 from the Lincoln Hotel, Carlton; and
 - b. a charge of \$600.00 at the Meat and Wine Co (Melb) Pty Ltd).
- 645. Mr Thomson was asked about these two transactions at interview (Thomson PN 1805 - 1816):
 - MR NASSIOS: Now, it may be totally unrelated that 14 February is Valentine's Day but the following day \$1,200 was charged to your Diner's Club at the Hotel Lincoln in Carlton.
 - MR THOMSON: What date was it?
 - MS CARRUTHERS: Do you want me to tell you what day of the week it was?
 - MR THOMSON: No, it's all right. The Hotel Lincoln is a pub.
 - MS CARRUTHERS: Yes.
 - MR THOMSON: Around the corner from [where] the union office in Victoria was. I'm thinking there was obviously a variety of things that were there but I'm thinking that that date is - and given that location, I think there was a farewell for Struan Robertson, that may - and you would know, from your records, probably better than me, as to when he left or resigned but I think that may have - I'm trying to fit something there but that may be around that time.

MR NASSIOS: There was also \$600 on that same day charged to your Diner's Card at the Meet and Wine Company in Southbank.

MR THOMSON: Yes.

MR NASSIOS: The next day \$880 from the Grand Hyatt on Collins Street.

MR THOMSON: Yes. We were there for a variety of days and I'm not sure what all of those were for. The Hotel Lincoln - I'm speculating because of where it is and the kind of um - - -

MR NASSIOS: Now, are you able to in any way explain how that is appropriate expenditure for the national office?

MR THOMSON: Well, when you have someone who has worked there for a while - clearly there were a lot of people who - both from industry - wanted to see him off. So if that's what it is and I'm not sure that that is what it is, but if that's what it is I don't think that's inappropriate.

646. There is no evidence that either of these expenses were authorised by the National Executive or National Council. There was no meeting of National Executive or National Council on or about 15 February 2007. In all the circumstances I consider that this expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.

The remaining five of the eight large travel transactions

647. There is no evidence that any of the remaining five of the eight large transactions set out at paragraph 640 of this chapter (**the five remaining travel transactions**) were:
- a. authorised by the National Executive or National Council; or
 - b. expenditure on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU
648. The five remaining travel transactions are for amounts that are well beyond anything which could have been a reasonable travelling expense of Mr Thomson.

Mr Thomson's submissions

649. With respect to findings 113 to 116, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules and any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule in respect of expenditure on dining and entertainment while travelling interstate on HSU business. All expenditure incurred in relation to dining and entertainment while travelling interstate was authorised through the budget, which was approved by the National Executive.
 - b. All expenditure on dining and entertainment was related to the HSU and therefore incidental to the administration of the HSU. I have also identified eight large transactions which Mr Thomson denies were excessive. Further, the expenditure was in respect of the general administration of the HSU and Mr Thomson had the power, as submitted at paragraphs 115, 121 and 133 of

chapter 3, to pay for and authorise the payment of the expenditure. As stated in Mr Thomson's interview, it was common for the HSU to pay for dinner expenditure for the National Executive members.

- c. Further, the dinner on 6 September 2005 at Beppis was attended by the National Executive members, and the National Executive members had knowledge that Mr Thomson paid for the dinner on his HSU credit card and did not object to Mr Thomson paying for the dinner on his HSU credit card. In addition, it was usual for the HSU to host functions, or drinks when an employee left the HSU.
- d. While Mr Thomson cannot recall the exact details of the expenses incurred and detailed at paragraph 640 above, he notes that the HSU did hold a farewell function for Struan Robertson at the beginning of 2007 and authorising the expenditure in relation to this farewell was within the power and delegated authority of the National Secretary.
- e. Further, to the extent that expenditure was incurred it was posted to the accounts which were provided to the National Finance Committee and the National Executive. All expenditure was transparent.

Conclusions

650. Mr Thomson has submitted that all expenditure incurred in relation to dining and entertainment while travelling interstate was authorised through the budget, which was approved by the National Executive. For the reasons set out at paragraphs 154 to 156 of chapter 5 and at paragraphs 626 and 1109 of this chapter, I am not persuaded by this argument.
651. Mr Thomson has also submitted that the expenditure which was incurred was posted to the accounts which were provided to the National Finance Committee and the National Executive. For the reasons set out at paragraphs 157 to 162 of chapter 5 and at paragraph 1109 of this chapter, I am not persuaded by this argument.
652. Mr Thomson has submitted that all expenditure on dining and entertainment was related to the HSU and therefore incidental to the administration of the HSU. I have set out at paragraphs 14 to 26 of chapter 5 on pages 210 and 211 my view that, while the Rules permit the National Secretary to expend funds of the HSU on its general administration, the Rules do not go so far as to allow the National Secretary to expend HSU funds on matters that fall outside the 'general administration of the Union' or 'purposes reasonably incidental' thereto without seeking the prior authority of National Council or National Executive. I have also discussed in chapter 2 what would constitute the 'general administration' of the Union under the heading 'What is the 'general administration of the Union'?' on page 103. I have specifically considered the question of whether expenditure by Mr Thomson on meals which he shared with other persons while travelling interstate could be expenditure on the general administration of the Union or reasonably incidental thereto at paragraphs 1098 to 1110 of chapter 5. Neither the HSU nor Mr Thomson has produced any evidence to suggest that expenditure on any of the eight large travel transactions was expenditure on the general administration of the Union. Nor has Mr Thomson done so when specifically invited to by my letter of 12 December 2011.

In my view, expenditure on each of the eight large travel transactions was not expenditure on the general administration of the Union or for purposes reasonably incidental thereto.

653. I acknowledge that the expenditure incurred at Beppis Restaurant was likely to have related to at least some, if not most, National Executive members. Whether or not any National Executive members acquiesced in that expenditure, in all the circumstances, including the significant cost of the meal, as well as the matters set out at paragraph 627 to 632 of this chapter, I consider that Mr Thomson contravened Sub-rule 36(b) by incurring expenditure on each of the eight large travel transactions without the authority of National Council or National Executive to do so.
654. Similarly, a reasonable person in Mr Thomson's position would not have incurred expenditure on each of the eight large travel transactions without having sought the authorisation of either National Council or National Executive to do so.
655. Mr Thomson could not have considered it was in the best interests of the HSU to incur the payments on each of the eight large travel transactions.

Findings 113 to 116 - Expenditure using Mr Thomson's credit cards on dining and entertainment while he was travelling interstate

- 113.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise expenditure:
- of \$1,500 at Beppis Restaurant on 6 September 2005;
 - totalling \$1,800 at the Hotel Lincoln and the Meat and Wine Co (Melb) on 15 February 2007; and
 - on each of the five remaining travel transactions referred to at paragraph 647 of this chapter

which could not have been expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration, without the authority of National Council or National Executive to do so.

- 114.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would have exercised if they were National Secretary in the HSU's circumstances by making payments for each of the eight large travel transactions discussed at paragraph 640 of this chapter.
- 115.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the HSU and for a proper purpose by making payments for each of the eight large travel transactions discussed at paragraph 640 of this chapter without having been authorised by either National Council or National Executive to do so.

- 116.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself, or someone else to make, and purport to authorise, each of these payments for each of the eight large travel transactions discussed at paragraph 640 of this chapter, namely the benefit of highly priced hospitality at the expense of the HSU.

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell

1. Information regarding the legislative scheme and the HSU Rules is set out in chapter 2.
2. This chapter concerns expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell. This chapter is divided into several parts.
3. The first part of this chapter discusses the background to Mr Thomson's expenditure of National Office funds for the purpose of assisting his election to Parliament for the seat of Dobell, by reference to the decisions taken by the National Executive in relation to Work Choices and the 2007 federal election campaign.
4. The chapter then raises issues relating to the following specific areas:
 - a. the Dobell campaign;
 - b. Criselee Stevens;
 - c. Coastal Voice;
 - d. Matthew Burke;
 - e. Central Coast Rugby League;
 - f. Dads in Education Fathers Day Breakfast;
 - g. Golden Years Collectables;
 - h. Central Coast Convoy for Kids; and
 - i. The requirements of section 237 of Schedule 1 to the *Workplace Relations Act 1996* in relation to donations.
5. Specific findings of contravention are listed within each of the sections described above in paragraphs 4a to i.

Background: Decisions taken by the National Executive in relation to Work Choices and the 2007 general federal election campaign

6. The passing of the *Workplace Relations Amendment (Work Choices) Act 2005 (Work Choices)*, most of which commenced on 26 March 2006, brought about substantial changes in industrial relations in both the federal and state spheres in Australia.
7. The first formal occasion on which the Howard government's reform agenda was made public was in an address to Parliament by the Prime Minister on 26 May 2005.

8. From early 2005 minutes of National Executive meetings frequently record discussion of federal industrial relations and, in particular, issues related to the Work Choices legislation. Probably the most notable observation about minutes of these meetings, however, is the absence of resolutions in general and, in particular, of resolutions regarding expenditure by HSU as a result of the HSU's 'responses' to the Work Choices legislation. This is particularly notable given that it is clear that many meetings (some of which were over two days) devoted substantial amounts of time to this issue.
9. The amount of time devoted to the Work Choices legislation at National Executive meetings (see the discussion at paragraphs 10 to 45 of this chapter) suggests that it is likely that the HSU was using a reasonable amount of its resources in both the National Office and the various State Branches in responding to that legislation. What is less clear is how those resources were being sourced. Some, and perhaps many, of those resources may well have been pre-existing resources that would not have required any additional expenditure.

National Executive meeting 28 February and 1 March 2005

10. The first occasion on which minutes record discussions regarding Work Choices was at a National Executive meeting on 28 February and 1 March 2005 ([HSUNO.018.0335](#)):

John Howard IR and our response

A preliminary discussion on John Howard IR and our response was held with a view to having a more in depth strategic planning day set for 7 April in Sydney.

A key area was ensuring there was no loss of income as this will have a direct impact on the capacity of the union to organise.

Much of the discussion centred on common law deeds and their ability to fill gaps left by legislation like the governments (sic) right of entry amendments and decisions like Electrolux. The National Secretary informed the Executive that he had taken advice from senior council (sic) in relation to what can be put into a deed and the enforceability of the deed.

The types of things deeds can be used to secure include:-

- Unfair Right of Entry to the workplace
- Unfair dismissal
- Payroll deductions

It was asked that the National Secretary prepare a framework to stimulate discussion for Executive prior to the meeting of 7 April.

11. The minutes do not record any resolution or even any discussion about expenditure of any National Office funds or a campaign against the Work Choices legislation.

Special National Executive meeting 7 April 2005

12. A special meeting of the National Executive was held on 7 April 2005 at the Swissotel in Sydney to discuss the HSU's response to the Howard government's industrial relations proposals. The minutes of that meeting ([HSUNO.018.0322](#)) record that at

this meeting Mr Stephen Smith, the (then) Opposition Spokesman on Industrial Relations, joined the HSU National Executive to discuss the Federal Opposition's reaction and approach to the government's proposal as well as the likely success of such legislation. The minutes record that a general discussion followed with Stephen Smith fielding a variety of questions from National Executive members.

13. The minutes also record that Mr Thomson gave a report to the meeting on the ACTU Executive and on the ACTU Industrial Relations Campaign Committee that had met the previous day. According to the minutes, Mr Thomson reported on the key outcomes of this meeting. The minutes record three references to a paid media campaign (against the proposed Work Choices legislation), which are bolded in the extract set out below:

- i. Broad long term campaign objectives to build union organisation and community support for union goals were reaffirmed;
- ii. Two short term campaign aims were also discussed and agreed:
 - To protect as many employees as possible and particularly state public sector employees in the state systems where they exist;
 - To force the Howard government to improve and modify the proposed legislation as much as possible.

iii. It was agreed that leverage necessary to achieve these aims must be built through;

- Union industrial and political campaign activity
- **A paid and free media strategy**
- Cooperation with the State and Territory Governments

iv. It was recognised that the achievement of our aims and objectives will involve engagement with the Howard Government over the IR legislation if sufficient leverage can be built

v. It was agreed that National and State level cooperation amongst unions and peak councils was critical to success. In particular that this will require:

- Consensus concerning the timing and nature of industrial and other campaign activities.
- **A National approach to the funding and conduct of paid media.**
- Agreed approaches between the ACTU and the Trades and Labour Councils to the State Governments.

vi. A National week of action be endorsed for the week 27 June to 3 July.

vii. A detailed presentation was given concerning focus group research results dealing with knowledge and attitudes to IR reforms and the testing of key messages and a campaign slogan.

viii. ACTU will have some campaign material available for unions shortly.

ix. Slogan for the campaign was agreed as Your Rights at Work - Worth Fighting For.

x. The Campaign Committee resolved to recommend to unions the establishment of a \$6 million campaign fund for the purpose of running a paid advertising campaign.

14. The minutes record that it was generally agreed that the issues confronting the HSU were more than just a campaign but were a fundamental change in the environment in which it would operate. The minutes record that it was also agreed that it is unlikely that such an environment will change in the short term, and that the National Executive divided the HSU's response into two major chronological areas -
- before the enactment of the legislation; and
 - post the enactment leading up to the next federal election.
15. The minutes record that within these two areas the National Executive looked at a number of key areas in which the HSU would need to respond, which were set out in a table attached to the minutes. While Mr Thomson's report to the National Executive referred to outcomes from the ACTU campaign committee which would require the expenditure of funds by unions (most notably the establishment of a \$6 million campaign fund for the purposes of running a paid advertising campaign) the minutes do not record any resolution about whether the National Office would contribute funds to such initiatives.
16. However the minutes do record that: (emphasis added)

It was agreed that an overall HSU campaign committee of Michael Williamson, Craig Thomson, Jeff Jackson, Lloyd Williams, Chris Brown, Dan Hill and Rosemary Kelly be established to meet at least monthly over the coming year.

In relation to the communication issues it was agreed that Mark Robinson, Shannon Rees, Natalie Bradbury, Richard Barlow and a nominee from either or both the HACSU branches (suggestion about Joe Taylor)

The education committee already exists and should meet ASAP.

There was discussion about budget for this issue. The National Secretary indicated that he would not be seeking a rise in capitation fees this year but rather the establishment of a National fighting fund in relation to this issue. He indicated the National union in addition to providing a large part of its printing and stationary budget it would contribute the order of \$50,000 and was looking to have around 10 cents per week per member contributed from the branches. This would cover costs in terms of internal union issues as well as make sure that the HSU contributes its share towards the ACTU paid media campaign.

Some discussion occurred and **it was agreed the matter would firstly be referred to the finance committee for discussion and recommendation.**

The Executive agreed to pass a resolution on the issues spoken about over the day which is attached.

17. The attached resolution ([HSUNO.026.0070](#)) was in the following terms: (emphasis added)

Resolution:

The HSU Executive opposes the Howard government's attempts to irrevocably alter Australia's industrial relations system to deny workers their basic rights.

The HSU is committed to mounting a strong campaign against attempts by the Howard government to:

- Abolish the role of the AIRC as the body setting the minimum wages;
- Reduce the number of allowable matters in awards;
- Arbitrarily override the state IR systems that have demonstrated that they deliver fair results for workers and employers;
- Place constraints upon the right to collectively bargain;
- Promote the role and use of individual contracts;
- Constrain the rights of employees to join and take part in the activities of unions.

These changes if enacted will place unfair powers in the hands of employers and reduce the rights of employees across Australia.

The HSU Executive resolves that defending workers rights is the number one priority for all officers and staff of the union.

To this end the HSU Executive today laid out a plan of action that will see the HSU at the forefront of defending its member's (sic) rights from these government attacks.

National Executive authorises the officers of the union to conduct and coordinate a National campaign in conjunction with the ACTU and the state trades and labour councils.

As part of that campaign the union will keep members across the country informed of the proposed changes and organise workplace meetings and activities to allow them to get involved in protecting their rights.

The union will also target federal politicians in marginal seats and build community support for retaining fair rights at work.

18. While the minutes of the Special National Executive meeting held on 7 April 2005 record (albeit in general terms) that Mr Thomson spoke about recommendations that he would propose to expend funds of the National Office on the ACTU campaign, the minutes make it clear that it was agreed that the material would firstly be referred to the Finance Committee for discussion and recommendation.
19. The resolution passed and attached to the minutes (see above at paragraph 17 of this chapter) is arguably broader. It establishes that the National Executive authorised 'the officers' (including Mr Thomson) of the HSU to conduct and co-ordinate a National campaign in conjunction with the ACTU and the State Trades and Labour Councils.
20. A table attached to minutes of the special National Executive meeting on 7 April 2005 also included the following 'Agreed HSU Action' concerning 'Research':
- National Office to commence with cost and budgeting for survey and focus groups to test message, etc research on deed with Lawyers.

21. It seems likely that this resolution was intended to authorise the National Office to take steps to prepare budgets for several discrete actions associated with the campaign against Work Choices, namely for survey and focus groups (presumably to help formulate campaign messages); and for (presumably legal) 'research'.

National Executive meeting held on 6 September 2005

22. At the next meeting of National Executive on 6 September 2005 ([HSUNO.024.0132](#)) the following 'National IR Campaign Update' is recorded in the minutes:
- The National Secretary gave an updated report on the IR campaign and the day of action set down for the 15th November 2005. Discussion occurred about possible brochures etc. There was also discussion and agreement in relation to the ACTU request for raising an additional \$5.50 per member in 2006 and the same again in 2007.
23. The minutes do not make any other reference to the campaign against the government's Work Choices amendments. It appears that this was a short meeting held on the eve of National Council.
24. Presumably the statement that, 'there was ... agreement in relation to the ACTU request for raising additional \$5.50 per member in 2006 and the same again in 2007' was intended to authorise the payment of a levy by the National Office to the ACTU in that amount in each of 2006 and 2007.

National Executive meeting held on 7 and 8 November 2005

25. The minutes of this meeting ([HSUNO.024.0132](#) at p134) record a report from Mr Thomson about the 'initial reading' of the Government's Work Choices bill. The minutes reveal that much of this discussion focussed on the implications of the bill for the HSU, rather than on whether the HSU would campaign against the bill, or commit funds to any such campaign (although the minutes record a resolution calling upon the ACTU and the ALP to take certain actions). Under the heading 'ACTU Campaign Committee Update' appears the following statement:
- The National Secretary gave a short report on the deliberations of the ACTU campaign committee focusing on the new ads? and research done on effects of the current campaign. He also raised the issue of funding of the campaign and circulated a request from the ACTU. It was requested that Branches respond to the National Secretary in December with a timetable for invoicing and payment.
26. The minutes also record that the National Executive passed the following resolution:
- That this National Executive deplores the Federal Governments attack on working people in Australia with the recently introduced Workchoices Bill. The Bill when enacted will affect all levels of Australian society by shifting power unfairly into the hands of employers.
- The HSU National Executive resolves to use all resources available to fight the effects of this bill in an effort to protect working people in the health industry.
27. It is not clear from the minutes what 'the issue of funding of the campaign' was that was raised by Mr Thomson, nor what 'the request from the ACTU' was.

28. The recording of a request from Mr Thomson that the Branches respond to him in December with a timetable for invoicing and payment is unexplained in the minutes. However it seems likely that this request is based on an implied agreement that the National Office will invoice the Branches for the costs of the \$5.50 per member levy to the ACTU which the National Office had agreed to pay in its September meeting. Given that the size of this levy amounts to approximately 20% of the annual turnover of the National Office it seems probable that it must always have been the intention of the National Office that it would pass on the cost of this levy to its Branches. But this statement in the minutes is the closest the National Executive appears to have come to reducing this understanding to writing.
29. Although there was no resolution passed regarding the issue, minutes of 7 and 8 November 2005 include among the list of 'Actions Arising from Executive Meeting' that:
- b. National President to seek legal advise (sic) in relation to the need [to] transfer assets from individual officers to other entities to protect them from possible fines and tort damages under the new act.

National Executive meeting held on 15 and 16 February 2006

30. The minutes of the National Executive meeting held on 15 and 16 February 2006 ([HSUNO.018.0259](#)) record various actions taken in response to the IR Legislation Report given at the previous National Executive meeting. Nothing in the minutes of this discussion identifies any expenditure by the National Office on the campaign against the Work Choices legislation.
31. The minutes also record the following under the heading 'Rights at Work Campaign - Where to Now?'
- George Wright from the ACTU gave the National Executive an extensive briefing on the next stages of the campaign. George indicated that there would be a lengthy ACTU IR campaign committee meeting on Tuesday 21st which would further determine the ACTU direction. The National Secretary is a member of that committee. General discussion occurred and when George left, the Executive discussed what this means for the HSU and what we should be doing ourselves to participate.
- Action: HSU IR Committee to be reconvened in first week of March to examine ACTU proposal and explore options for HSU.

National Executive meeting held on 15 and 16 May 2006

32. The minutes of the National Executive meeting held on 15 and 16 May 2006 ([HSUNO.018.0241](#)) record, under the heading of items arising from the last meeting:
- i. The HSU IR committee to be reconvened in the first week of March. Amongst agenda items are:
 - i. Recommendations arising from Liability advise (sic) on Workchoices legislation;
 - ii. HSU action for campaign over next 6 months;
- Update: Meeting held - see agenda item.

33. The minutes also contain the following statement under the heading 'Matters Arising from IR Campaign Committee Meeting not Dealt with on Agenda':

No items raised by Executive that have not already being dealt with in agenda.

34. The minutes also contain the following statement under the heading 'Howard IR Legislation':

a. Update on ACTU Focus groups

National Secretary gave a report on the focus groups conducted by the ACTU and the findings held within them. It is clear that IR is a key vote changing issue and that the ACTU message is successfully getting through.

b. Discussion on Responses

i. Unfair dismissals

Discussion was had on what is the union's response to members and potential members who are dismissed. Discussion ranged from the possibility of providing counselling through to providing wages or part of wages for a period of time.

Action: National President and National Secretary to investigate options to present to a future Executive meeting o (sic) this matter.

ii. Bargaining Company

Discussion occurred on the value of either the union becoming a bargaining agent under the act or creating a separate company to become a bargaining agent. It was agreed that branches would consider their positions on this issue and we would discuss it at the next Executive.

Action: Discuss further at next Executive.

c. Production of Material

The National Secretary spoke about the need to continual (sic) produce more material and that a draft journal had been circulated.

Action: Branches to get back to National Secretary in relation to requirements and this matter should be on every agenda for future Executive meetings.

d. Seconded Employee

Discussion occurred around this issue.

Action: That the National Secretary informs the ACTU that Katie Hall was the nominee from the HSU for a Victorian seat. The HSU if funding was difficult to attract in Tasmania would half fund a Tasmanian seat and half fund Katie Hall with the ACTU to find other unions to make up the shortfall.

e. Case Studies

Discussion occurred on ACTU request for case studies.

Action: Any examples of case studies of how the new laws are adversely affecting employees should be notified to the National Office so that the ACTU can be informed. To this end Struan Robertson is the unions contact for the ACTU and branches should

advise of a similar contact for Struan to liaise with about potential abuses of members under Work choices.

35. It is not clear what the discussion under the heading 'Production of Material' is about. But it does not suggest that the National Executive has authorised the expenditure of any National Office funds on this issue.
36. It is probably implicit in the discussion and action item under the heading 'seconded employee' that the National Executive authorised the employment of Katie Hall to work on campaigns against the Work Choices legislation in a Victorian seat.
37. At interview (Jackson (1) PN 177 - 180) Ms Jackson told FWA that she had no recollection of this meeting discussing campaign funding for the federal election.

National Executive meeting held on 7 December 2006

38. The minutes of the National Executive meeting held on 7 December 2006 ([HSUNO.018.0192](#)) contain the following statement under the heading 'National Day of Action report':

Extensive discussion occurred around the day of action and the turn out achieved. Overall Executive was very pleased with the HSU turnout but a little disappointed with overall union turnout particularly at the MCG.

Executive agreed that over the next twelve months there is nothing more important to our members and working families than removing the Howard government and that this union is prepared to commit whatever resources it has to see it removed.

It was the feeling of the meeting that in the next twelve months most attention should be spent on winning the marginal seats and that is where resources should go.

The National Secretary went through the ACTU plan for the next twelve months and it was agreed that he would write to branches who would indicate what there (sic) plans are so that a National picture of action can be developed.

39. At interview with FWA Mr Brown said he understood that this resolution authorised two separate things (Brown PN 136 - 136):

There were two things. One was for the marginal seat campaign itself and that was clearly costed. What the wages would be. You know, some of the infrastructure costs had been running and that each of the branches would then contribute to that specific campaign in that specific seat. There was also other moneys that were agreed in a campaign fund. In fact I'm not quite sure whether it was structured in this way but this is my understanding of it. Basically there were three lots of moneys, if you like, that were contributed to the Your Rights At Work campaign. One was for the marginal seat campaign and it was for that specific seat that the HSU agreed that it would support and fund.

There was a sum of money which basically was a levy to the ACTU to support the central campaign and particularly the media campaign and that there was another fairly small sum of money which the branches contributed to the National Office for the cost of an internal HSU campaign if you like. Now, that moneys, as I understand it, was for things like - and we did get it - some paraphernalia like badges being made up, or particular

booklets being printed up so that we could send them out to our members, and a few other activities like that.

40. The first two things mentioned by Mr Brown - the marginal seat campaign (insofar as it included the employment of Ms Hall) and the ACTU (IR Levy) - had in fact already been authorised by the National Executive prior to this meeting. The minutes of the National Executive meetings up to and including the meeting held on 7 December 2008 do not record any specific authorisation or expenditure on the third thing mentioned by Mr Brown (a small sum of money contributed by the Branches to the National Office for the costs of running an internal HSU campaign). Nor do transaction records held by the National Officer disclose payments from the Branches to the National Office for this third purpose.

41. Dr Kelly told FWA at interview (Kelly PN 309) that:

That was part of an ACTU marginal seats campaign. The context to that was that the ACTU had the Your Rights at Work campaign already on foot or was basically gearing up for that, and during that year there would be union sponsored Your Rights at Work campaigners in marginal seats. So this was a general view and there was some discussion, although it doesn't appear in the minutes, about, 'Well, let's identify the marginal seats in each state and let's think about whether the HSU would be contributing to the employment by the ACTU of these Your Rights at Work campaigners.' So that's the context of it. It was this general issue around, if we were going to knock off the Howard government, then we need to be resourcing our campaigns in marginal seats across Australia.

42. When asked whether she regarded the National Office's resolution as authorising a general ACTU campaign, Dr Kelly replied (Kelly PN 315):

Yes, that was what I regarded it as, a general ACTU campaign, I was never told that Mr Thomson was a candidate for Dobell. I don't know whether he was preselected then, I have no idea. Our branch is not affiliated to the ALP so any knowledge that I have of what goes on the ALP is sort of filtered because we are not affiliated so we don't know. That was never declared at National Executive then, there was no conflict of interest declared and my view of it was - and there was some discussion, you know, 'These are marginal seats in Tasmania, these are the marginal seats in Victoria, and in Western Australia.' It may not have been at this meeting, but those were the general contexts of our discussions at National Executive. It was never put that we would put any resources into a seat for which the National Secretary was a candidate, never.

National Executive meeting 2 February 2007

43. Minutes of the National Executive meeting on 2 February 2007 ([HSUNO.018.0170](#)) also record a proposal by Mr Thomson that the HSU raise \$200,000:

h. Election resources and funding

The National Secretary spoke about the need to raise resources for the dental campaign and associated federal election issues dealing with production of common material. He outlined that the union needed to look at raising \$200,000 to properly run the campaigns.

It was agreed this money needed to be looked at and that this matter would be discussed further on the 7th February 2007.

National Executive meeting 28 and 29 March 2007

44. The National Executive did not meet on 7 February 2007. The next meeting of the National Executive occurred on 28 and 29 March 2007. The minutes of that meeting ([HSUNO.018.0151](#)) contains the following under the heading 'Political Report':

Mark McLeay gave a report on the activities of the Political Committee. Enquires into supplying a 'bargaining calendar' and 'campaign calendar' to be hosted by the National Office's website are progressing with an expected rollout by the end of April.

The Committee noted that Branches were continuing to work with their local Trades and Labor Council's marginal seat campaigns and upcoming May Day activities.

Natalie Bradbury reported on the activities of the Nepean YR@W committee and their activism in fund raising for the purchase of a bill board and presenting NSW Premier with a 5000 signature petition and how Mike O'Donnell is rolling out of this model in Gosford and Wyong Hospitals.

The Committee shall continue to look at ways to involve members and produce new materials to be used in developing members.

The National Secretary reported on the use of the 'Rocking for Rights' promotion on Sea FM and continuing to broaden the campaign beyond union activists.

45. The Political Committee recommended that Aged Care be identified as the area to roll out the first HSU National Industry Plan.

Was expenditure in relation to the Your Rights at Work campaign and the 2007 federal general election authorised?

46. The fundamental question is whether expenditure that was used by the HSU in opposing the Work Choices legislation and in campaigning for the 2007 Federal General Election was authorised by National Executive. This raises a number of questions for consideration:
- a. Were general resolutions that were passed by National Executive regarding use of HSU resources in opposing Work Choices sufficient to authorise particular expenditure?
 - b. Is it possible to classify at least some of the expenditure related to the Work Choices campaign and the 2007 election as being part of the 'general administration of the Union', particularly at a time where responding to that legislation was a central theme of so many National Executive meetings?
 - c. If the National Office was using pre-existing resources to respond to the Work Choices legislation and the 2007 election, was it necessary that National Executive authorise any 're-allocation' of the use of pre-existing resources?
 - d. Could funds which had been budgeted for general purposes (such as printing or stationary) be used for campaign activities which were consistent with these purposes?

- e. Is it sufficient that, for at least some expenditure, members of National Executive knew that it had been incurred?
- f. Is it sufficient to authorise expenditure if members of National Executive are of the view that, had a specific resolution been put to National Executive regarding authorisation of the particular expenditure in question, National Executive would have passed such a resolution?

Could general resolutions of National Executive give 'prior authority'?

47. Although very general in nature, a number of resolutions may indicate that National Executive approved the use of HSU 'resources' in responding to the Work Choices legislation:
- a. The meeting on 7 April 2005 resolved that 'National Executive authorises the officers of the HSU to conduct and coordinate a National campaign in conjunction with the ACTU and the state trades and labour councils' ([HSUNO.018.0322](#)) and, a similar authority is probably implicit in a later resolution passed by the National Executive on 7 December 2006 ([HSUNO.018.0192](#));
 - b. The resolution attached to the minutes of the National Executive meeting held on 7 April 2005 ([HSUNO.026.0070](#)) does not authorise the expenditure of National Office funds on a National campaign in conjunction with the ACTU and state trades and labor councils. Nor does it authorise the National Secretary to conduct a general campaign without reference to the ACTU campaign which the resolution is clearly premised on.
 - c. A resolution was passed by the meeting on 7 and 8 November 2005 (HSUNO.018.0272) that 'The HSU National Executive resolves to use all resources available to fight the effects of this bill in an effort to protect working people in the health industry.' This resolution does not however refer to defeating the legislation, or to campaigning for a change of government. Rather it speaks of fighting 'the effects' of the Bill'. The resolution does not appear to authorise any expenditure on the campaign against Work Choices by the National Office;
 - d. the National Executive at least implicitly authorised the raising of a levy of \$5.50 per member in each of 2006 and 2007 in response to the request from the ACTU that it do so, by resolution passed at the National Executive meeting held on 6 September 2006 ([HSUNO.024.0132](#)), and appears to have also authorised (albeit implicitly) the charging by the National Office of individual Branches of the HSU to recover the costs of this levy;
 - e. the National Executive authorised the employment of Katie Hall to work on the Your Rights at Work campaign in the federal electorate of La Trobe as part of the ACTU marginal seats campaign ([HSUNO.018.0241](#));
 - f. Nothing in the minutes of the National Executive meeting held on 15 and 16 May 2006 ([HSUNO.018.0241](#)) suggests that during that meeting the National

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell

Background: Decisions taken by the National Executive in relation to Work Choices and the 2007 general federal election campaign

(b) to regulate and protect the conditions of labour and relations between workers and employers, and between workers and workers;

(c) to uphold the rights of combination of labour, and to improve, protect and foster the best interests of the members;

...

(e) to take the necessary steps and actions under ... or otherwise, for the purpose of securing satisfactory industrial conditions in respect of the remuneration of labour, the hours of labour, the age of employees and other conditions in or about their employment;

...

(g) to protect such rights that have already been gained by association of employees in collective bargaining and to lawfully initiate or further any steps that will give the Union the fullest power in arranging the terms and mode of employment of persons engaged in the callings referred to in Rule 3;

...

(k) to establish and maintain such publications as may be in the interests of the Union;

...

(x) to do all such things as the Union may from time to time deem incidental or conducive to the attainment of the above objects or any of them.

49. Ms Jackson agreed at interview that the National Executive had approved funds for the Your Rights at Work Campaign in the following exchange (Jackson (1) PN 179 - 184):

MR NASSIOS: Your Rights at Work Campaign, were any funds approved for use in that campaign?

MS JACKSON: Yes. There were funds approved. I know that we had, the union were part - I just don't know what the correct term, part sponsoring the Latrobe Campaign and I know this because Katie Hall was the person that the union was allocated and she'd come to National Executive and report on her activities, but that was in Melbourne, Latrobe in - - -

MR NASSIOS: Somewhere east.

MS JACKSON: At Ringwood, wherever, out that way.

MR NASSIOS: Yes, yes. And were there any limits placed on the funds for that?

MS JACKSON: No, other than it was her wage and I can't remember what that was. It was like \$20,000 or whatever, 25. It's probably more than that. So we funded her position for the duration of that Rights at Work Campaign.

50. Ms Jackson agreed at a further interview that discussions about the need to raise money to fund the dental campaign regularly occurred 'post the Work Choices stuff' (Jackson (2) PN 222).

51. While they may reflect a goal or philosophy that was the subject of much discussion, the resolutions discussed above are, in my view, unable to authorise any particular expenditure because they are so vague and lacking in detail regarding the substance of what was being 'authorised' as to be almost meaningless in determining whether they authorise particular expenditure and, if so, what amount of expenditure.
52. It is not clear, for instance, whether the 'resources' that are referred to in the resolutions are only existing resources or whether it is intended to raise new resources. And if the intention was to raise new resources, then it is not clear how those resources were to be raised or the amount that was to be raised.
53. As set out below at paragraph 64 and following of this chapter, Mr Thomson also told FWA in interview that, while National Executive may have passed resolutions regarding resourcing the campaign in opposition to the Work Choices legislation, the practical result of those resolutions did not extend to the raising of extra funds as sought by Mr Thomson in discussions that were minuted at National Executive meetings on 7 April 2005 and 2 February 2007. Indeed, when asked at interview if he could recall any National Executive meeting which approved the expenditure of National Office funds on federal election issues, Mr Thomson told FWA (Thomson PN 305) that:

I don't recall specifically, there may have been specific issues that were approved or discussed, and so forth but there was a combination of the branches agreeing what they would do from their resources, what the National Office would do from its resources, and trying to coalesce those so that it looked like a single kind of campaign with issues. So, to that extent, it was relatively fluid and quite frankly sometimes moved and changed. But I can't recall immediately any specific budgets that were there. But there were particular items that were reported from time to time.

54. Despite this, Mr Thomson also claimed (Thomson PN 331):

Every proposition about expenditure was reported to them in terms of where we were spending money, but my particular election campaign - the material and the money that was spent by the union was on either Your Rights at Work or the dental program, so they provided me with lots of toothbrushes to hand out, which wasn't actually ALP policy, and those sorts of issues. So it was in kind things that weren't directly about the ALP or my candidature. I wasn't a candidate until March of 2007 either obviously.

55. The following exchange then took place (Thomson PN 332 - 343):

MR NASSIOS: Can I ask, were they aware that you were standing for election in Dobell?

MR THOMSON: Yes.

MR NASSIOS: Do you know when they became aware of that?

MR THOMSON: They knew well before I was a candidate that I was going to contest the preselection there.

MR NASSIOS: How did they know that?

MR THOMSON: Because I told them.

- MR NASSIOS: Do you know when that may have been?
- MR THOMSON: I don't recall the specific dates or times.
- MR NASSIOS: Can I ask when you personally first decided to contest the seat, or at least the preselection?
- MR THOMSON: I don't have a particular date or time in mind in terms of - not that I can recall.
- MR NASSIOS: I guess - roughly. I don't know when preselection was called so - - -
- MR THOMSON: Yes, preselection was called in March. I was the only nominee, so you know, there's consideration always right up to that point as to whether you are or you're not. I had told the Executive and I think I even told the council meeting that that was something that I was considering, but you know, an actual decision really depended on who else, how many were standing and all of those sorts of issues. I wasn't guaranteed a position or a nomination for that seat.

56. The extent to which the resolutions that were passed were even intended to authorise expenditure on opposing the Work Choices legislation is unclear. In such a situation, it cannot be concluded that the resolutions authorised any particular items of expenditure.

Expenditure on the 'general administration of the Union'?

57. Information regarding the capacity of the National Secretary to expend National Office funds on the general administration of the Union without prior authority of National Council or National Executive is set out at paragraphs 14 to 26 of chapter 5 on pages 210 and 211.
58. In the context of the campaign to 'defeat' the Work Choices legislation, however, what constitutes the HSU's 'general administration'? Had the goals of the HSU shifted to such an extent that the defeat of the Work Choices legislation became, in effect, the 'day to day' work of the HSU?
59. The answer to this question centres upon whether the 'shift' in the HSU's stated goals (as reflected in National Executive resolutions) was of a temporary or permanent nature. Further, whether or not this shift is permanent may not be apparent in the short term or, indeed, for a number of years and may depend upon factors which are yet to be determined, such as whether a change of government would occur at the next federal election. If a change of government did occur and legislative amendments removed some (or most) of the legislation to which the union movement was opposed, the 'crisis' may have come to an end and the HSU could return to 'business as usual'. If, however, the Work Choices legislation became entrenched in the long term, a shift in HSU policy to adopt longer term strategies in opposing that legislation may have occurred.

60. Wording of various resolutions that were passed by National Executive gives the flavour of a 'crisis response' to the Work Choices legislation:
- a. The resolution passed on 7 April 2005 by National Executive speaks of 'defending its member's (sic) rights from these government attacks';
 - b. The National Executive resolution on 7 and 8 November 2005 similarly states 'That this National Executive deplores the Federal Governments (sic) attack on working people in Australia with the recently introduced Workchoices Bill'.
61. In the course of answering a question about persons he had thanked in his maiden speech to Parliament for helping him with his campaign, Mr Thomson said (Thomson PN 524 - 525):
- Look, you're talking about a maiden speech by an ex-union official on an election that we won on the back of Your Rights at Work. ... As you've raised with me with some of the minutes before, you know, our union was no different from any other unions seeing this as the most important issue that was there.
- ... I don't think that will happen again and I don't think it has probably happened before, sort of thing, but there was - that was that type of election.
62. Expenditure needs to be considered on a case by case basis in order to determine whether it is part of the 'general administration of the union'. That said, however, as a general principle costs associated with the 'general administration' are characterised as being regularly incurred, incurred at predictable times (and often in a regular pattern, such as weekly, monthly or annually) or on predictable occasions, and are predictable as to dollar amount. With some notable exceptions for matters such as rent/mortgage payments and wages, the dollar amount of costs associated with the 'general administration' will usually be relatively low. The category of expenses that would fall within the notion of the 'general administration of the Union' is relatively small.
63. The use of HSU funds in opposing the Work Choices legislation does not fall within the 'general administration' of the HSU (or purposes reasonably incidental thereto). Far from these costs being 'regular' and 'predictable', funds were devoted by the HSU to 'defeating' Work Choices in what could only be considered, at that time, as a short term 'crisis' situation. Funds were being used to meet a novel situation and not as part of a pattern of expenditure that was regular or predictable, either as to cost or timeframes.

Reallocation of existing resources to the Work Choices campaign

64. While National Executive may have passed resolutions directly opposing the Work Choices legislation, Mr Thomson told FWA in interview (Thomson PN 352) that this opposition did not extend to the raising of extra funds as sought by him.
65. The resolution passed at the Special National Executive meeting held on 7 April 2005 and attached to the minutes (see above at paragraph 17 of this chapter) does establish that the National Executive authorised 'the officers' of the HSU to conduct and co-ordinate a National campaign in conjunction with the ACT and the State

- Trades and Labour Councils. That resolution did authorise officers of the National Office (including Mr Thomson) to conduct and co-ordinate a campaign 'in conjunction' with those bodies. But the resolution does not authorise the expenditure of National Office funds on such a campaign. Nor does it authorise Mr Thomson to conduct a general campaign (such as a campaign to become a member for Dobell) without reference to the ACTU campaign which the resolution is clearly premised on.
66. At least insofar as officers of the HSU took steps to conduct and co-ordinate a campaign which was 'in conjunction' with the ACTU and the state trades and labour councils these officers would have been acting in accordance with the resolution passed by the National Executive at its Special Meeting on 7 April 2005.
67. At interview with FWA Mr McLeay (who commenced employment with the HSU National Office in January 2007) told FWA that:
- a. he had carriage of the Your Rights at Work campaign for the National Office, and it was his responsibility to let the National Executive know what was going on at ACTU meetings by reporting back to the National Executive and to industrial officers of the HSU (McLeay PN 53);
 - b. his duties as a part of the Your Rights at Work campaign did extend to federal election campaigning in Dobell, as changing the government was 'absolutely' part of the HSU's role in bringing about better wages and conditions and structures that make it easy to progress the rights of workers (McLeay PN 82);
 - c. he spent about 10 days in Dobell and he understood that Ms Flavell and Ms Kershaw spent about 10 days in La Trobe (McLeay PN 82);
 - d. he spent this time in Dobell because 'It was a targeted seat for the ALP and it was a seat where my employer, my direct employer, was running so that's what I did.' (McLeay PN 88);
68. On the other hand, Mr McLeay also told FWA that his role (McLeay PN 102):
- ... essentially was to follow what was the - to interact with the ACTU, follow that, provide our input into that campaign at the peak level, and then bring it back to the National Executive and the branches. Branches ran their local campaigns and their targeted stuff, so when I say I had carriage that's what my role was. I didn't - if you're asking me did I direct people to do certain things, no, that wasn't in my role. My role essentially was to make sure that we provided advocacy for our membership, our union and that we were at the table and that we got all the information, could feed it back to our branches, so that that would feed into the different state-based campaigns that were being run.
69. Mr Thomson told FWA at interview (Thomson PN 745) that he would regard the work which he did on the Your Rights at Work campaign as HSU business.
70. It is therefore necessary to consider whether reallocation of resources in this manner required the prior authority of National Council or National Executive. The answer must lie in whether these processes met the requirements of the Rules. The National Secretary is empowered by Sub-rule 32(n) between meetings of the National Executive to control and conduct the business of the HSU. Unless the allocation of existing HSU resources to the 2007 election campaign was part of the business of

the HSU it would have been necessary to obtain the 'prior authority' of National Council or National Executive before those resources were reallocated.

Could funds which had been budgeted for general purposes (such as printing or stationary) be used for campaign activities?

71. When he was asked in interview about his proposal on 7 April 2005 for raising additional funds through a 10 cent per member per week levy, Mr Thomson stated that (Thomson PN 281):

MR THOMSON: ...there was no resolution in the affirmative to it as I recall but it kind of got overtaken by the ACTU imposing a levy. In any event this was attempting to actually raise slightly more money than was going to happen through the levy.

MR NASSIOS: Okay...did the finance committee actually discuss this issue?

MR THOMSON: I can't specifically recall but I do recall that there was no agreement to increase or have a one-off increase in fees.

72. In other words, it appears as though (for at least some of the HSU's responses to Work Choices) the National Office resourced its responses by reallocation of existing resources from other categories in the projected budget. When asked about his proposal of 2 February 2007 to raise \$200,000, Mr Thomson stated that (Thomson PN 291):

We didn't again raise that money. There was no agreement to do that. The - what there was agreement to do in terms of that was to use existing resources within the National Office for that campaign, which we did and we distributed material to all the branches.

73. Mr Thomson continued (Thomson PN 295 - 297):

MR THOMSON: It came out of existing resources. So we had our budget lines that we were there and we just redirected money that would have been used for other campaigns into that one.

MR NASSIOS: All right. Now, just to clarify for me - was there any billing to the branches in terms of what you're describing?

MR THOMSON: I don't recall any billing in relation to those issues at all. I think the - and I think they left it to the - in the National Office there was a preparedness to cooperate with a National campaign on that issue, but not a preparedness to pay for that campaign.

74. Mr Thomson also told FWA in interview that it was not necessary for National Executive to approve individual items of expenditure provided they fell within the 'original budgets' that were approved at the beginning of the year (Thomson PN 149):

The Executive were approving the budget and all that that entailed in terms of its expenditure. The original budgets were done on - again, on a consensus basis. If there were to be substantial changes in the budgets, they would be raised as to why and where, but essentially once that first budget was spent - was set and approved, the concerns were about whether we exceeded those budgets or there were to be changes to them. There were - you know, Rosemary Kelly would ask questions all the time about particular issues, both at the finance committee meeting and at the Executive. But they

were small questions and they weren't to the heart of the expenditure because that had been dealt with by that process of the budget.

75. It is therefore necessary to consider whether the use of funds, which had already been budgeted for general purposes, for campaigning activities which were consistent with those general purposes required the prior authority of National Council or National Executive. An example may be resources that had already been allocated in the budget for printing and stationery. Can funds allocated to printing and stationery be used for printing associated with Mr Thomson's campaign? The answer must lie in whether these processes met the requirements of the Rules. 'Prior authority' of National Council or National Executive must be given for expenditure that is not part of the 'general administration' or for 'purposes reasonably incidental to the general administration' of the HSU. In applying this analysis to the use of funds already budgeted to general purposes the same considerations must apply. Matters that fall within the notion of the 'general administration of the Union' or for purposes reasonably incidental thereto are very limited. No expenditure on campaigning could fall within the general administration of the HSU.

Did knowledge of expenditure by National Executive members authorise it?

76. There can be little doubt that members of National Executive knew, or must have known, that the National Office was incurring additional expenditure in response to Work Choices. National Executive members must have known that legal advice had been sought (and presumably had to be paid for by the National Office). Quite apart from action items recording that the National Secretary is to seek legal advice, the presence of both Mr Bromberg SC and Mr Moore of counsel at a meeting could have left National Executive members in no doubt that legal advice had been sought and given.
77. Ms Jackson has also told FWA that it became known that the National Office had employed staff who were working on the Work Choices campaign. Ms Jackson stated in interview that 'over time [Criselee Stevens and Matthew Burke] were names that were associated with the National Office. There were emails. They had email accounts, they had credit cards so they were sort of - they became employees by default I suppose' (Jackson (1) PN 194).
78. It is not possible, however, to sustain the argument that National Council or National Executive as a body has authorised expenditure simply because some (or possibly even most) of its members knew that expenditure had been incurred. There is a distinction between the individuals who make up National Executive or National Council and the formal meeting of those bodies in properly constituted meetings for which notice has been given under the Rules, a quorum has been present and at which resolutions have been passed.
79. Dr Kelly noted this distinction during interview (Kelly PN 149):

I mean, there were things that clearly were done without the knowledge of National Executive – well, when I say National – as a body...They might have been done with the knowledge of members of National Executive, but not National Executive as a body. For

example, it came out after the event that there was sponsorship provided to a rugby league club on the north coast...That never went to National Executive'.

Is it relevant that National Executive members would have authorised the expenditure had they known about it?

80. When she was asked in interview whether National Executive approved the use of HSU funds towards Mr Thomson's election campaign, Ms Jackson stated (Jackson (1) PN 176):

It did but I don't know which part of it it did. It did approve. The National Executive were fully aware that Craig Thomson at some point became pre-selected member for Dobell but I don't know how much we approved and/or even whether it would [have] approved all of it...I know that if he had come to us wanting approval for X, Y and Z in relation to the Dobell campaign or the Rights at Work Campaign he would have got approval...'

81. For the same reasoning as set out at paragraphs 78 and 79 of this chapter, the view of individual members that they would have voted in favour of a resolution authorising expenditure had it been put to a National Executive meeting at which they were in attendance is not relevant to whether that body has actually passed a resolution in favour of expenditure. The view of one person cannot be said to constitute the decision of a collective body, particularly where that one person has only one vote among many on that body.

Conclusions about decisions taken by the National Executive in relation to Work Choices and the 2007 Election Campaign

82. On the basis of the matters set out above in paragraphs 10 to 45 of this chapter, I consider that:
- a. the National Executive authorised officers of the National Office (including Mr Thomson) to conduct and coordinate a National campaign against the proposed Work Choices legislation, in conjunction with the ACTU and state Trades and Labour councils, by resolution passed at the National Executive meeting held on 7 April 2005, and (at least implicitly) by resolution passed at the National Executive meeting held on 7 December 2006, however neither of these resolutions authorised the expenditure of funds of the National Office on such a campaign;
 - b. the effect of the resolutions described at a. was to empower Mr Thomson to allocate existing resources of the National Office to conducting and coordinating a campaign against the Work Choices legislation, or in relation to the 2007 federal election, insofar as this was done in conjunction with the ACTU or state Trades and Labour councils, however neither of these resolutions authorised the expenditure of funds of the National Office for this purpose;
 - c. the National Executive authorised the taking of steps to prepare budgets for several discrete actions associated with the campaign against Work Choices, by resolution passed at the National Executive meeting held on 7 April 2005, however (except as set out at d. and e. below), no subsequent resolutions were passed by the National Executive which authorised any such expenditure;

- d. the National Executive at least implicitly authorised the raising of a levy of \$5.50 per member in each of 2006 and 2007 in response to the request from the ACTU that it do so, by resolution passed at the National Executive meeting held on 6 September 2006, and appears to have also authorised (albeit implicitly) the charging by the National Office of individual Branches of the HSU to recover the costs of this levy;
 - e. the National Executive authorised the employment of Katie Hall to work on the Your Rights at Work campaign in the federal electorate of La Trobe as part of the ACTU marginal seats campaign;
 - f. during all of 2007 up until the federal election on 24 November 2007 the National Office did not pass any resolution to authorise any expenditure on the 2007 federal election campaign (apart from in relation to the Dental Campaign).
83. I consider that the allocation of Mr McLeay, Ms Flavell and Ms Kershaw to a Federal campaign in a marginal seat which had been specifically targeted as part of an ACTU campaign which had been endorsed by the National Executive was within the business of the HSU - particularly having regard to the terms of the resolution passed by the National Executive on 7 April 2005. Such a commitment of resources would have been very short term, and consistent with the National Executive resolution. On this basis, the allocation of those resources to campaigning in the electorates of La Trobe would have been within Mr Thomson's power as National Secretary to conduct the business of the HSU.

The Dobell campaign

Expenditure of National Office funds on Mr Thomson's Dobell Campaign

84. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 117 to 124 - Expenditure of National Office funds on Mr Thomson's Dobell Campaign, which are set out below at page 653.

Mr Thomson's decision to stand for election in Dobell

85. Mr Thomson told FWA that he became a candidate for the Dobell electorate in March 2007 (Thomson PN 331). Preselection occurred in March 2007 and Mr Thomson was the only nominee (Thomson PN 343). Mr Thomson could not say when he first decided to stand for preselection (Thomson PN 341).

Knowledge of Mr Thomson's decision among the National Executive

86. Mr Thomson said that the National Executive knew well before he became a candidate that he was going to contest the pre-selection for Dobell, because he told them so, although he could not say when he told them Thomson (PN 332 - 337).

Decisions of National Executive about whether to support Mr Thomson's campaign

87. The resolution attached to the minutes of the Special National Executive meeting on 7 April 2005 ([HSUNO.018.0322](#)) does not authorise the expenditure of National Office funds on a campaign in relation to the electorate of Dobell, without reference to the ACTU campaign which the resolution is clearly premised on.
88. Nothing in the minutes of the National Executive meeting held on 15 and 16 May 2006 ([HSUNO.018.0241](#)) suggests that during that meeting the National Executive authorised the expenditure of any monies in relation to the campaign for Dobell.
89. Dr Kelly stated she was not aware at the time that the National Executive passed the motion referred to at paragraph 38 of this chapter during its meeting of 7 December 2006 ([HSUNO.018.0192](#)) that Mr Thomson was contesting the seat of Dobell (Kelly PN 311), and that he did not declare a conflict of interest in relation to the motion (Kelly PN 314).
90. Mr Thomson agreed (Thomson PN 352) that the minutes of the National Executive meeting held on 7 December 2006 ([HSUNO.018.0192](#)) do not record a 'direct, specific resolution' which authorised any expenditure in Dobell but said:

... but what was implicit throughout this period, not specific to Dobell but specifically, was that the HSU pull its weight in relation to the National campaign in any of and all, if possible, of those marginal targeted seats that were there. And clearly there were some that were of more interest to the HSU than others.
91. While the discussion in the minutes of the National Executive meeting held on 2 February 2007 ([HSUNO.018.0170](#)) referred to in paragraph 43 above describes some activities which presumably formed part of the marginal seat campaign it does not report on, far less record the authorisation of, any expenditure by the National Office. In fact nothing in the minutes of this meeting suggests that the National Office authorised any expenditure on the campaign for Dobell during this meeting. The minutes do not even suggest that any such expenditure was reported to the National Executive.
92. The only other meeting of National Executive that was held in 2007 before the federal election in November was the meeting on 28 and 29 March 2007. The minutes of that meeting did not indicate that it passed any resolution, or even held a discussion, about funding any activities in relation to the Dobell campaign.
93. From the minutes of the only two National Executive meetings held during 2007, the National Executive did not pass any resolution, or even hold a discussion, about funding any activities in relation to the Dobell campaign.
94. Mr Brown told FWA that the National Executive authorised the funding of a Victorian seat as part of the ACTU marginal seat campaign, but that he had been particularly interested in supporting the campaign for the Bass electorate in Tasmania (Brown PN 131).
95. Mr Brown agreed that he was probably aware that Mr Thomson was contesting the seat of Dobell when the National Executive passed its motion in support of the

marginal seat campaign on 7 December 2006 (Brown PN 138). He said that Mr Thomson did not declare any conflict of interest in relation to that motion (Thomson PN 139).

96. Mr Brown said (Brown PN 202) that up until March 2008:

...it was my understanding, perhaps naively, that no National Office moneys had been expended on any electoral activities in the seat of Dobell. In fact I specifically remember having a conversation with Mr Thomson in Hobart where I made the point to him that if he needed funding for his campaign he should be approaching branches or unions in New South Wales to fund that as we as a branch in Tasmania funded some candidates, you know, from branch funds, but it shouldn't be out of the National Union funds because of the way it would have been perceived.

97. Mr Brown believes this was probably before Mr Thomson had been formally preselected for the seat of Dobell (Brown PN 206). When asked whether he could remember what Mr Thomson said to him when he said this, Mr Brown answered (Brown PN 208):

I don't recall there being a specific 'yes' or a specific 'no' to it, or there certainly wasn't a, 'No, I think there should be the National Office funds expended on it'. It was more me making a very clear point to him that in my view that should not be the case. Now, if, you know - I guess probably at that stage what I was expecting was that he would have - or was planning to or it wasn't out of the question that he would ask the National Union for a donation or contribution towards his campaign. Now, I probably would have opposed it at the time for the reasons I just gave, but had the National Executive authorised that, then it would have been clear and above board and, you know, it would have been a decision of the National Executive whether I supported it or opposed it, and it would have been quite clear, but there was no request and there was no discussion or decision made about union resources being made available to him to use.

98. Ms Jackson told FWA at interview (Jackson (1) PN 219) that the National Executive would have specifically authorised some expenditure in Dobell, such as the expenditure which was authorised on the Dental Campaign.

99. As set out in paragraph 92 above, no minutes of any meeting of National Executive which have been provided to FWA ever refers to Mr Thomson's campaign for Dobell, far less authorises expenditure or the allocation of resources to that campaign.

100. Mr Thomson told FWA that the ACTU allocated seats to particular unions to outrightly fund. But Mr Thomson added (Thomson PN 320):

Then of course unions were also funding a variety of other seats as well, above and beyond, in addition to, but pretty much I think all from that list of targeted seats that had been identified.

101. There is no reference in any minutes of any National Executive meeting to any consideration being given to the National Office funding campaigning in a seat other than La Trobe apart from the reference to a possible commitment to funding half the campaign for a Tasmanian seat which appears in the minutes of the National Executive meeting held on 15 and 16 May 2006 ([HSUNO.018.0241](#)).

102. In relation to Dobell Mr Thomson said (Thomson PN 322):

Well, there were contributions in the electorate that I represent both from the National Office and from the New South Wales office. I know the New South Wales branch also contributed to the seat of Paterson, Lindsay, there may have been others. I know that the Tasmanian branch contributed to two seats, Bass and Braddon, I think they contributed to both of those. I don't think the Western Australian branch did anything. I'm unaware of what the Victorian branches did but I presume that they - I know the number 2 branch was doing more work in La Trobe than we said but they may have been - and I think they were also contributing to Deakin from memory and I'm not sure what the Victoria number 1 and 3 branch were doing but I am sure that they were also contributing above and beyond in some of those seats. But again they were all the seats that were on the list of targeted seats. I don't think any branch, or the National Office, contributed outside the list of agreed seats.

103. Asked specifically at interview whether the National Executive approved the use of HSU funds in Dobell Mr Thomson stated (Thomson PN 326):

There was the issue of the sponsorship of the Rugby League which - there had been - first of all - my aim with that had been to have the New South Wales branch pay it if they could. We were in the situation on the Central Coast and throughout the country that unions were paying for different sporting opportunities where they arose. The Electrical Trades Union, for example, sponsored all the junior soccer on the Central Coast with Your Rights at Work. We - yes, the CFMEU of course quite famously and still to this day sponsor the Canberra Raiders, but that arose out of that campaign as well too. We sponsored the Central Coast Rugby League and they had the union's logo on every football team's jersey and they had a program they produced for every match which said, 'Your Rights at Work: worth fighting and voting for,' and they agreed to have Your Rights at Work signs around all the rugby league grounds in relation to the matches that they played.

104. The following exchange then took place (Thomson PN 332 - 343):

MR NASSIOS: Did the National Executive approve the use of any funds directly for your election campaign?

MR THOMSON: Every proposition about expenditure was reported to them in terms of where we were spending money, but my particular election campaign - the material and the money that was spent by the union was on either Your Rights at Work or the dental program, so they provided me with lots of toothbrushes to hand out, which wasn't actually ALP policy, and those sorts of issues. So it was in kind things that weren't directly about the ALP or my candidature. I wasn't a candidate until March of 2007 either obviously.

MR NASSIOS: Can I ask, were they aware that you were standing for election in Dobell?

MR THOMSON: Yes.

MR NASSIOS: Do you know when they became aware of that?

MR THOMSON: They knew well before I was a candidate that I was going into contest the preselection there.

MR NASSIOS: How did they know that?

- MR THOSMON: Because I told them.
- MR NASSIOS: Do you know when that may have been?
- MR THOMSON: I don't recall the specific dates or times.
- MR NASSIOS: Can I ask when you personally first decided to contest the seat, or at least the preselection?
- MR THOMSON: I don't have a particular date or time in mind in terms of - not that I can recall.
- MR NASSIOS: I guess - roughly. I don't know when preselection was called so - - -
- MR THOMSON: Yes, preselection was called in March. I was the only nominee, so you know, there's consideration always right up to that point as to whether you are or you're not. I had told the Executive and I think I even told the council meeting that that was something that I was considering, but you know, an actual decision really depended on who else, how many were standing and all of those sorts of issues. I wasn't guaranteed a position or a nomination for that seat.

105. Although he claimed that expenditure was 'reported' to the National Executive Mr Thomson did not suggest, even when invited to do so, that the National Executive had authorised that expenditure.

106. Ms Jackson told FWA (Jackson (2) PN 115) that she could recall discussions regarding Ms Hall's employment by the HSU as part of the Your Rights at Work campaign, and that she could recall Ms Hall speaking at National Executive about what she was up to (Jackson (2) PN 188). However Ms Jackson could not recall any similar reports from anyone in relation to the Dobell campaign (Jackson (2) PN 194), although she later said that Mr Thomson would have given brief reports on the Dobell campaign (Jackson (2) PN 290). In response to a question about what Mr Thomson would have said at National Executive meetings about the Dobell campaign Ms Jackson said (Jackson (2) PN 293):

So he would have said something like 'They were in Dobell'. I don't know. 'There was a street stall in Dobell and they would have had, I don't know, 400 people for that - a petition or something like that. Or there was a bus' - the what-d'ye-m'-call-it, the Trades and Labor Council in New South Wales had a bus or something that used to go around during the campaign. Maybe it wasn't a bus. It was a thing that had a big billboard that they would share amongst the electorates. So he would report on things like that, you know, the activities that were planned with the ACTU and the local candidate.

107. Ms Jackson also said that she could recall a National Executive meeting held in Melbourne in 2007 which coincided with a farewell dinner for Greg Combet (which was held in Collins Street, Melbourne on 21 August 2007 ([HSUNO.010.0152](#))). Ms Jackson said she could recall that Dobell was discussed at that meeting (Jackson (2) PN 302). As the HSU has not produced any minutes of National Executive meetings held in Melbourne during 2007, it seems likely that Ms Jackson is referring to some meeting or discussion which was not a formal meeting of the National Executive.

108. Given that the last meeting of the National Executive before the 2007 election was held on 28 and 29 March 2007 and no minutes of any National Executive meeting held in 2007 record any discussion about funding a campaign against the Work Choices Legislation, Mr Thomson's claim that every proposition about expenditure on his campaign for Dobell was reported to National Executive simply cannot be accepted.

The Campaign Office

109. In the lead up to the 2007 federal election Mr Thomson established a campaign office at 3/322 The Entrance Road Long Jetty ([WIT.THO.002.0015](#)). It is not clear when this office was established.
110. Mr Thomson was unable to say when the lease on the Long Jetty campaign office commenced, but said it was also an office for the TWU, and for NSW Union (Thomson PN 398). Mr Thomson could not say whether a payment of \$7,906.80 made on 16 May 2007 to Impact Signs was for the erection of signs at his campaign office (Thomson PN 399 - 407).
111. On the basis that most of the expenditure which appears to have been related to the establishment of the Campaign Office in Long Jetty appears to have occurred in April and May 2007 (see below at paragraphs 115 and 116 of this chapter) it appears probable that Mr Thomson established the campaign office in Long Jetty at about this time. This is also generally consistent with the statements made to FWA by Ms Stevens and Mr Burke (see below at paragraphs 119 and 120 of this chapter).

Payments for phone and fax lines for the Campaign Office

112. Mr Thomson agreed that costs of the telephone line and fax lines for the campaign office were paid for by the National Office, and said that this was because he was increasingly working out of that office and doing less of the commuting to the Sydney office (Thomson PN 409 - 412). When asked if these payments were approved by anyone in particular, Mr Thomson said that 'there wasn't a specific approval for that expenditure' (Thomson PN 413 - 414).
113. An internet search on the question 'What is the contact address for the Australian Electorate of Dobell Labor Party candidate?' discloses the following telephone numbers:
- a. telephone: 02 4332 4048
 - b. fax: 02 4332 8012.
114. Both of these numbers appear on invoices from Telstra to the National Office between July and November 2007 as follows:

Invoice Date	Reference	Charges to 02 4332 4048	Charges for 02 4332 8012	Total
1 July 2007	HSUNO.006.0006	\$113.18	\$52.38	\$165.56
30 July 2007	HSUNO.006.0019	\$119.42	\$7.26	\$206.68

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell
Expenditure of National Office funds on Mr Thomson's Dobell Campaign

Invoice Date	Reference	Charges to 02 4332 4048	Charges for 02 4332 8012	Total
30 August 2007	HSUNO.006.0047	\$97.06	\$98.20	\$195.26
1 October 2007	HSUNO.006.0082	\$97.38	\$65.08	\$162.46
30 October 2007	HSUNO.001.0217	\$86.13	\$44.55	\$130.68
Total		\$513.17	\$267.47	\$860.64

Cost of the fit out of the campaign office

115. Mr Thomson said that there was no real fit out of the Long Jetty office as 'it was a very basic office. There was I think a couple of desks bought. It was a very small office that was there' (Thomson PN 423). Mr Thomson agreed that a payment of \$1,587 to Officeworks in April 2007 was probably for this office. (Thomson PN 424 - 427). Mr Thomson agreed that a charge of \$1,053 on 17 April 2007 to Bing Lee Electrics was for a portable air conditioner for the Long Jetty Office (Thomson PN 432 - 434). The expenditure at Bing Lee appears on Mr Thomson's CBA Mastercard statement dated 26 April 2007 ([HSUNO.001.0263](#)).
116. Ms Stevens said that a payment of \$604.95 to Postshop at Gorokan 'was probably a printer'. (Stevens PN 453). Ms Ord told FWA that the payment of \$604.95 to Postshop Gorokan could have been for a printer (she 'was pretty sure that was for a printer' (Ord (1) PN 453).

Payments for internet access for the campaign office

117. Charges to Central Coast Internet appear on a number of Mr Thomson's CBA Mastercard statements as follows:

Date	Amount	Reference
23 July 2007	\$301.75	HSUNO.001.0122
3 August 2007	\$59.95	HSUNO.001.0075
4 September 2007	\$59.95	HSUNO.001.0090
5 October 2007	\$59.95	HSUNO.001.0127
5 November 2007	\$59.95	HSUNO.001.0102
11 December 2007	\$59.95	HSUNO.001.0145
4 January 2008	\$59.95	HSUNO.001.0360
8 February 2008	\$59.95	HSUNO.001.0003
TOTAL	\$721.40	

118. The fact that these expenses commenced on 23 July 2007, and were incurred periodically on a regular monthly basis after that time, and the location at which they were incurred, strongly suggest that these expenses were related to Mr Thomson's campaign for Dobell.

Other evidence about the campaign office

119. Mr Burke was unable to say when the Long Jetty campaign office was established (Burke PN 125). However he did say 'I remember we had both extremes in weather, so both the cold and the hot, but I can't give a time' (Burke PN 125). He said that there were three National Office people working from the Long Jetty Campaign Office - himself, Mr Thomson and Ms Stevens (Burke PN 360 - 361).
120. Ms Stevens said that she set up the Campaign Office. She 'pretty much was there from day one' and got the keys. She and Ms Mueller organised the sign writing for the window and got the phones connected (Stevens PN 465). She thought that the office was paid for by the NSW HSU and the Transport Workers' Union (Stevens PN 467). Although she initially thought that the campaign office opened in about September 2007 (Stevens PN 83), when she saw receipts indicating that she purchased work stations for the campaign office in April 2007 she agreed that the campaign office might have been open earlier than she had thought (Stevens PN 473). Ms Stevens went straight from working at home to working out of the campaign office (Stevens PN 476 - 479).
121. Mr Williamson told FWA (Williamson PN 249) that the NSW Union contributed to the Dobell Campaign as well as to the campaign for the nearby electorate of Lindsay, and possibly to others. He said that Mr Thomson's Long Jetty campaign office was the NSW Union's registered office on the Central Coast (Williamson PN 269), leased by the NSW Union (Williamson PN 271). The NSW Union has a number of similar offices around NSW (Williamson PN 274). However the Long Jetty office is not still open. Mr Williamson believes it shut when the lease expired in about February 2008 (Williamson PN 292 - 295). Mr Williamson was unable to say 'whether [this] was right or wrong' (Williamson PN 304).
122. However Mr Williamson was not aware that telephone and fax line charges in respect of the Long Jetty Office were being paid by the National Office to Telstra (Williamson PN 298 - 302).
123. Mr Williamson agreed that Mr Thomson would have been in the Long Jetty Office at some stage 'seeing it was his campaign office' and Mr Williamson said he was aware of this, and that the NSW Union 'made a decision as a state registered union that he could operate his electoral office out of there - out of our office' (Williamson PN 305 - 314).
124. Ms Jackson told FWA that the National Office never had an office on the NSW Central Coast (Jackson (1) PN 29), although she was aware from invoices which she had seen that the National Office had funded activities on the Central Coast, including possibly a Your Rights at Work campaign office (Jackson (1) PN 31).
125. Ms Walton told FWA that Mr Thomson's Long Jetty Campaign office was over the road from an ACTU Work Choices campaign office (Walton PN 274 - 281). Ms Walton attended these premises from time to time and talked to the staff there, and to Mr Thomson, about how his campaign was going (Walton PN 285).

Summary of expenses associated with establishing the Long Jetty Campaign Office

126. On the basis of the matters set out above at paragraphs 110 to 118 of this chapter, it appears that the National Office paid the following expenses associated with establishing the Long Jetty Campaign office:

Purpose	Expenses
Phone and fax line	\$860.64
Desk (from Officeworks)	\$1,587.00
Air Conditioner (from Bing Lee Electrics)	\$1,053.00
Printer (Postshop Gorokan)	\$604.95
Central Coast Internet	\$721.40
Total	\$4,826.99

Other expenses which appear to be directly related to the Dobell Campaign

127. Mr Thomson has expended the funds of the National Office on a number of other purposes which appear to be directly related to his campaign for Dobell.

Payments to Dobell FEC

128. A 'GST [Detail - Cash]' report generated from MYOB data provided by the National Office for the period July to September 2006 ([HSUNO.003.0173](#)) indicates that the National Office paid \$2,000 to the Dobell FEC on 1 July 2006.
129. MYOB Data also indicates that a further payment of \$1,500 to the Dobell FEC was made by the National Office on 6 December 2006 ([WIT.WIL.001.0082](#)).
130. Mr Thomson told FWA that he presumed that these payments would have been fundraisers that the National Office contributed to, but without documentation he said he wouldn't know (Thomson PN 394).
131. Mr Williamson told FWA (Williamson PN 551, PN 559) that he had no idea what these payments were for. Dr Kelly did not know what the payment of \$1,500 to Dobell FEC was for (Kelly PN 707) but said it was not discussed or approved by the National Executive (Kelly PN 709).
132. Ms Stevens told FWA that the \$1,500 payment to the Dobell FEC was probably for the campaign account, and probably for printing (Stevens PN 246 - 250).
133. There is no evidence to suggest that any member of the National Executive apart from Mr Thomson was aware of these payments.

Campaign Bus

134. The National Office has provided a document headed 'Bus 2100' ([HSUNO.001.0201](#)). The document appears to be a maintenance record for a bus which (according to the document) is owned by a Daniel Parish. The document

records certain expenses in respect of the bus between April and July 2007. Five of those expenses have been ticked:

- a. CTP Greenslip (3 months only) (\$140)
- b. Registration for Bus 2100 (3 months) (\$227)
- c. Fuel for Bus to Newcastle (Signwriters) \$175.60
- d. Full Bus Insurance (monthly instalments) (\$79.28)
- e. ALIB setup fee For the Bus 2100 Insurance (\$50).

135. These amounts total \$671.88. Someone has handwritten the following annotation to this statement 'BSB 064148 ACC: 10191056 DP Parish'. On 12 July 2007 Ms Stevens emailed Ms Ord ([HSUNO.001.0169](#)) stating:

Hi Belinda,

RE: Fax- BUS 2100

Bank details: D P Parish

BSB : 064148

Account No: 10191056

Total Payable: \$671.88

Item Dated: 10/7/07 \$79.28 Full bus Insurance (monthly Installments), Could you please set that up as a monthly payment. (It does not have to be on a specific date)

136. A document produced by MYOB ([HSUNO.001.0167](#)) and an SGE Internet Banking Receipt ([HSUNO.001.0168](#)) indicate that the National Office paid DP Parish the sum of \$671.88 on 12 July 2007.
137. Further MYOB records and SGE internet banking receipts shows that the National Office paid a further \$79.28 on 12 August 2007 for what was described in the receipt as 'bus2100-insurance'. ([HSUNO.001.0199](#)), ([HSUNO.001.0394](#)).
138. A MYOB record dated 9 October 2007 records an electronic banking payment to DP Parish of \$526.80 on that date for what is described by the statement as 'Motor Vehicle Expenses'. An email dated 9 October 2007 from Ms Stevens to Ms Ord ([HSUNO.006.0141](#)) forwards an email from Mr Parish to Ms Stevens which states:

Hi Crissie;

2100 bus insurance is due tonight \$80.40

Plus there last months over due \$80.40

And the ctp and rego still out standing

Rego is \$227.00

CTP is \$139.00

Sorry to keep asking,

From Daniel Parish

139. Ms Stevens has written to Ms Ord 'This is for the buS (sic), Daniel Parish, same bank account as before. Someone has handwritten '\$526.80' on the email.

140. Ms Stevens told FWA that (Stevens PN 300 - 304):

Yes, Daniel Parish, that's the bus guy. So he - Daniel is an ALP member of Robertson with his father Kevin. They have these buses, like, through - old buses that you're not allowed to drive on the roads. Like, historic ... yes, buses, and basically what happened was they donated a bus and the bus was signwrited with a big picture of Kevin and Craig on it and drove around the electorate. The bus drivers are former members, or if not members of the ALP, former union members, and they all had to have their bus driving licence and the deal was that obviously you were never allowed to pick up passengers because ... that was the Rule, that we couldn't pick up passengers or anything like that but it was just to drive around so advertise really.

141. Ms Stevens was asked whether this was a HSU advertisement, and she replied (Stevens PN 306): 'No, not a HSU. Purely a Kev07 advertisement.'

142. Mr Thomson said that he used Mr Parish's bus in his campaign, and that he thought the payment of \$671.88 to Mr Parish had been for insurance for the bus or related expenses to assist to have it on the road (Thomson PN 937). Mr Thomson agreed that this was an election expense (Thomson PN 937).

143. Mr Thomson said there may have been some money paid by the National Office for petrol for the bus, but that the Transport Workers' Union had supplied a petrol card for the bus, and that they had drivers who ran the bus and largely paid for the bus. But Mr Thomson agreed that 'there may have been some that we paid as well too' (Thomson PN 939).

144. Mr Thomson was asked whether payments of about \$3,395.07 to Falcon Long Jetty between 20 July 2007 and 31 October 2007 could have been payments to a petrol station in relation to this bus. Mr Thomson agreed that this was a possibility (Thomson PN 940 - 953). However Mr Thomson also said it was possible that these payments were payment of an account which the National Office had at the service station (Thomson PN 961), although the fact that there were two payments made on 20 July was something Mr Thomson thought was not consistent with this possibility (Thomson PN 961). Ms Stevens told FWA that 'we used to park the bus' at the Falcon petrol station (Stevens PN 114). On balance the evidence available to FWA does not disclose what the payments to Falcon Long Jetty were for.

145. Mr Thomson was asked whether this expenditure on a campaign bus was approved by the National Office. He replied (Thomson PN 965):

It was approved by me and it was understood that that was where we were spending some of the money with the National Executive members, this is what we were doing, everyone was absolutely aware of those sorts of things. Look, I even remember there being - and I'm trying to remember because it would help if I could tell you which couple of executive members there was but there was a statement along the lines which was certainly the position of the Executive, that outside of where there were decisions that were made by the Executive in relation to specific expenditure on the Your Rights at Work campaign, given that we didn't have a lot of fat in our budget where we were using it within the budget, projected budget expenditure, they understood and had no issues

with that. There was even - I remember a time where it was raised about why are we having to spend the money in Latrobe when we have two or three other seats that strictly from an HSU point of view they had far more interest in? But I don't have that documented and that was - it was not something that wasn't understood entirely.

146. Mr Thomson was asked whether these statements were made to Executive members in a meeting. Mr Thomson replied (Thomson PN 969):

Look, I think they possibly were. We had very wide-ranging meetings about what we were doing with the election and at least - after March 2007 when I was a candidate these were issues that were raised every meeting.

147. Given that it appears from minutes of the National Executive that the National Executive did not meet between the end of March 2007 and the 2007 federal election, it seems clear that Mr Thomson must have been referring to meetings of some other body that was not the National Executive.
148. When FWA asked Mr Williamson if he was aware of the payment to Mr Parish of \$671 for insurance Mr Williamson replied (Williamson PN 594): 'No. I don't even know who Mr Dan Parish is.' Mr Williamson was also not aware of any basis on which the further payment made to Mr Parish on 9 October 2007 could have been approved expenditure of the National Office (Williamson PN 596). Mr Williamson claimed that he was unaware of Mr Parish's bus being used to campaign for Mr Thomson in Dobell (Williamson PN 597).
149. There is no evidence to suggest that the National Executive were made aware of these payments, let alone that they approved them.
150. The amounts identified in paragraphs 135 to 139 of this chapter as having been spent on, or in relation to, Mr Parish's bus amount to a total \$1,277.96.

Postage expenses for the Dobell Campaign

151. On 21 May or June (the month in the statement is smudged) 2007 the Long Jetty Post Office sent an invoice ([WIT.JAC.002.0145](#)) addressed to: 'Craig Thomson MP Member for Dobell PO Box 123 Ourimbah NSW 2330'. The invoice was for 'clear mail small letters 4850' and was for \$2,182.50'.
152. On 6 June 2007 Australia Post sent a statement as at 31 May 2007 addressed to 'Craig Thomson - ALP Candidate' ([WIT.WIL.001.0284](#)). The statement recorded six purchases occurring between 15 and 31 May 2007, identified as originating in Long Jetty. According to the statement these six purchases were worth a total of \$7,253.17. A summary contained in the statement discloses that in total, these purchases were for:
- a. 519 'base rate' stamps;
 - b. 15,250 small envelopes
 - c. 1 Rental Box
 - d. 1 'Reply Paid' Annual fee.

153. Given the location of these purchases and the description of Mr Thomson in the statements as 'ALP Candidate' it seems probable that Mr Thomson purchased 519 stamps and 15,250 small envelopes for mail-out purposes associated with Mr Thomson's campaign for Dobell.
154. On 6 June 2007 Australia Post issued a statement of account as at that date ([HSUNO.001.0066](#)) which described six transactions during the month of May 2007, and advised a total current balance owing on the account of \$7,253.17. Five of these transactions have been ticked. The first entry, in the amount of \$71.17, has not been ticked. On 20 June 2007 Australia Post raised an invoice for \$7,253.17, addressed to 'Craig Thomson - ALP Candidate Federal Seat of Dobell PO Box 123 OURIMBAH NSW 2350.' ([HSUNO.019.0113](#)). The invoice bears the narration 'Total Supply this Period Ending 31/05/2007'. Someone has annotated this email Att: Sam D. Regards Crissie'. Someone else has put a thick mark through the words 'Sam D'. A document produced by MYOB ([HSUNO.001.0063](#)) and an SGE internet banking receipt ([HSUNO.001.0081](#)) indicates that the National Office paid this amount by electronic funds transfer to Australia Post on 12 July 2007.
155. Mr Thomson was asked at interview whether he could recall what the 15,250 envelopes may have been for. Mr Thomson replied (Thomson PN 931):
- No, but we weren't doing campaign direct mail outs until much later in the actual campaign itself so I'm not sure exactly what it was but presumably - this post office sits right next to that office that you saw at Long Jetty - so I think it's their characterisation of me as much as anything else but I don't - I'm not sure specifically.
156. Mr Williamson was asked if he was aware of any basis on which this could have been approved expenditure of the National Office, but said that he could not recall (Williamson PN 592).
157. Dr Kelly told FWA that she did not know what these payments were for (Kelly PN 719). Nor could she recall them being discussed or approved by the National Executive (Kelly PN 721).
158. When Ms Jackson was asked in her first interview whether the National Executive ever approved this expenditure she answered (Jackson (1) PN 315):
- The National Executive have approved expenditure from January onwards last year so this would have been approved last year. We came to the position at some point that we had to move on and have to have people stop chasing us for our debt, for these debts and I think this, you know, went backwards and forwards, backwards and forwards and eventually the union paid it. But that's the sort of stuff we're seeking assistance from you on about, what's reported on and what's claimable, what we should claim back.
159. Ms Ord told FWA in her first interview that she wouldn't have volunteered to process this payment, but that she 'might probably' have spoken to Mr Thomson about it (Ord (1) PN 503 - 506).
160. A further document dated 11 July 2007 addressed to 'Craig Thomson MP Member for Dobell' also appears to be an Australia Post invoice ([HSUNO.019.0117](#)). It raises a charge of \$138.50, which is described as being for 'Retail Products'. A breakdown discloses that this invoice was for 277 units at \$0.50 each.

161. There is no evidence to suggest that the National Executive were made aware of these payments, let alone that they approved them.
162. The amounts identified in paragraphs 151, 152 and 160 of this chapter as having been spent on postage expenses in relation to Mr Thomson's campaign for Dobell total \$9,574.17.

Payments to LBH Promotions

163. The National Office's Commonwealth Bank Business Card consolidated report dated 28 June 2007 ([HSUNO.021.0400](#)) includes, as a charge incurred by Mr Thomson, a payment to LBH Promotions on 31 May 2007 of \$1,478.40. An SGE internet banking receipt dated 11 July 2007 ([HSUNO.021.0487](#)) indicates that on this date the National Office paid the Commonwealth Bank \$21,206.37 on account of a credit card statement.
164. Mr Thomson was asked by FWA about this payment to LBH Promotions in Kanwal. Mr Thomson said (Thomson PN 929) that this payment would have been for 'letterbox material' and that he was 'pretty sure that that was a Your Rights at Work Stuff that was going out'. According to an internet search of LBH Promotions (see www.lbhpromotions.com.au), LBH Promotions is 'the only locally owned and independently operated In-House Printing and Letterbox Distribution Company on the Central Coast.'
165. In fact, MYOB data provided by the National Office ([HSUNO.003.0201](#)) indicates that the National Office had previously made an electronic payment to LBH Promotions of \$5,931.53 on 30 October 2006.
166. On Mr Thomson's own admission, the May 2007 payment to LBH Promotions was for 'letterbox material' that he was pretty sure was for 'Your Rights at Work stuff'. There is no evidence to suggest that the National Executive were made aware of this payment, let alone that they approved them. These two payments together total \$7,409.93.

ALP Advertising

167. On 14 May 2007 the ALP NSW Branch issued an invoice ([HSUNO.016.0003](#)) to 'HSU - Health Services Union - Vic' for \$12,511.40. The invoice described the charge as being for 'Advertising paid by ALP NSW Head Office relating to Dobell FEC. The invoice has been marked as paid on 18 February 2008. An illegible handwritten annotation, presumably somebody's initials appears next to the words 'Approved by'.
168. A MYOB statement produced by the National Office dated 14 February 2008 ([HSUNO.007.0364](#)) and an SGE internet banking receipt ([HSUNO.007.0365](#)) indicates that on that date the National Office paid \$2,511.40 to the ALP.
169. A MYOB statement produced by the National Office dated 18 February 2008 ([HSUNO.007.0378](#)) and an SGE internet banking receipt ([HSUNO.007.0377](#)) indicates that on that date the National Office paid \$10,000 to the ALP. These two payments exactly equal the sum invoiced by the ALP on 14 May 2007.

170. In a letter to FWA dated 14 May 2010 ([HSUNO.016.0001](#)), Mr Ken Fowlie of Slater & Gordon, who was acting on behalf of Ms Jackson, explained that payment of the \$12,511.40 'was made in two parts due to a \$10,000 limit on the amount that could be paid electronically by the Union on any given day'.
171. When asked at interview what this invoice would have been for, Mr Thomson replied (Thomson PN 890 - 892):
- I'm presuming it was an ALP-related expense that should have been declared in terms of - I'm not sure exactly what they booked at that time or paid for but presumably something that's been paid for. ... I don't recall the specific - - -
172. Mr Thomson was also asked whether this payment would ever have been discussed or approved by the National Executive. His reply (Thomson PN 896) is instructive:
- I'm not sure. It's of a figure that I think while it fell in my delegations, one that because it was sizeable may have been but I'm not sure.
173. Mr Williamson was unable to tell FWA what these payments were for (Williamson PN 570). Nor could Dr Kelly (Kelly PN 715). Dr Kelly could not recall the payments being discussed or approved by the National Executive (Kelly PN 717).
174. Ms Jackson told FWA that she had no idea of the background to this payment (Jackson (1) PN 251). However she continued (Jackson (1) PN 253):
- It would be the New South Wales head office would have spent, according to this invoice if you're asking me to help you with that, the New South Wales branch of the Australian Labor Party spent \$12,511.40 paying for advertising in the Dobell Campaign for Craig Thomson and now they're seeking their money back and that would not be unusual. They provide the ads on bulk for not just Dobell but any other seat and invoice back the campaign and then this has been then sent to us by them. Now, for all we know though they - could have been sending it to him as a mailing address, not for us to pay, I don't know.
175. Mr Thomson agreed that these payments were most likely for 'ALP-related expense that should have been declared' (Thomson PN 890 - 892). Mr Thomson authorised these payments without disclosing these payments to National Executive, or seeking their approval of such payments.

Radio advertising

176. The National Office has produced Invoices from Central Coast Radio Centre raised on various dates commencing 25 October 2007, addressed to 'Craig Thomson Shop 3, 332 The Entrance Road Long Jetty NSW 2261 as follows:
- a. ([WIT.JAC.002.0132](#)) in the sum of \$4,493.50 for '2GO 107.7 - Commercial Advertising 12/11/07 to 21/11/07'.
 - b. ([HSUNO.001.0172](#)) in the sum of \$1,540 for '2GO 107.7 - Commercial Advertising 12/11/07 to 18/11/07'.
 - c. ([HSUNO.001.0175](#)) in the sum of \$2,895.20 for '2GO 107.7 - Commercial Advertising 12/11/07 to 21/11/07'.

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- d. ([HSUNO.001.0181](#)) in the sum of \$1,996.50 for 'Sea FM 101.3 - Commercial Advertising 12/11/07 to 25/11/07.
- e. ([HSUNO.001.0184](#)) in the sum of \$3,722.40 for 'Sea FM 101.3 - Commercial Advertising 12/11/07 to 21/11/07.
- f. ([HSUNO.007.0305](#)) in the sum of \$1,346.40 for 'Sea FM 101.3 - Commercial Advertising 12/11/07 to 19/11/07
177. MYOB records and SGE Internet Banking receipts indicate payment of the following amounts by the National Office to Central Coast Radio Centre on 12 November 2007:
- a. \$1,540 ([HSUNO.001.0170](#)), ([HSUNO.001.0171](#))
- b. \$2,895.20 ([HSUNO.001.0173](#)) ([HSUNO.001.0174](#))
- c. \$4,493.50 ([HSUNO.001.0176](#)) ([HSUNO.001.0177](#))
- d. \$1,996.50 ([HSUNO.001.0179](#)) ([HSUNO.001.0180](#))
- e. \$3,722.40 ([HSUNO.001.0182](#)) ([HSUNO.001.0183](#))
178. A further MYOB statement dated 13 February 2008 ([HSUNO.007.0306](#)) and SGE internet banking receipt ([\\$HSUNO.007.0307](#)) indicates that the National Office made the final payment of \$1,346.40 to Central Coast Radio Centre on that date.
179. Mr Thomson was asked at interview whether he knew what these payments were for (Thomson PN 899 - 919):
- MR NASSIOS: Do you know what those payments would have been for?
- MR THOMSON: They were in relation to some advertising that was done - these are these invoices that are here?
- ...
- MR THOMSON: Yes. I think they were advertising in relation to a position that I had taken as an ALP candidate on that particular issue in the electorate.
- MR RAWSON: Does that mean a campaign ad?
- MR THOMSON: Yes.
- MR NASSIOS: Were those payments discussed or approved by the National Executive?
- MR THOMSON: I don't know specifically whether they were or they weren't but they were certainly known about and they were - whether they were formally discussed, they were certainly informally discussed in and around meetings - understood. In fact this particular - these particular payments came out of an issue that was raised at the ALP national conference at which we had most of our HSU executive people at.
- MR NASSIOS: I don't quite understand - what would the advertising actually have been about?
- MR THOMSON: I'm pretty sure that this advertising is about the need to fund a pipeline on the Central Coast for water.

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- MR NASSIOS: Okay.
- MR THOMSON: Which came out of an ALP conference, it was clearly ALP stuff but that's what the ad was about - - -
- MR NASSIOS: All right. Okay.
- MR THOMSON: - - - to the best of my recollection anyway.
- MR NASSIOS: All right. If I was to say I can't quite see the connection to the HSU am I missing something?
- MR THOMSON: No, this should be categorised as political donations and I presume, given some of the other ones, that it was but I don't know.
- MR RAWSON: Just to clarify, who - it was your decision, you commissioned the advertising?
- MR THOMSON: Ultimately, yes, but again to reiterate, this is not me off doing this in isolation of whatever everyone understands and knows that we're doing in relation to expenditure. I mean our - some of our branches spent much more and much more in my seat as well than we were spending at the national office. So there was a constant dialogue about what and where. In fact I think we even had expenditure from the number 2 branch in my electorate as well - - -
- MR RAWSON: The Vic number 2 branch?
- MR THOMSON: The Vic number 2 branch, yes.

180. It is clear that Mr Thomson accepts that these payments were for campaign advertising which he commissioned in relation to his own political campaign for Dobell.
181. Mr Williamson was unable to recall what the payments to Central Coast Radio were for (Williamson PN 573) or whether they were discussed or approved by National Executive (Williamson PN 576).
182. When Ms Stevens was asked at interview if she knew what payments to Central Coast Radio were for she initially replied (Stevens PN 285): 'No, not off the top of my head.' Ms Stevens was then asked if she would have had any idea who would have approved the payment of that account (Stevens PN 286 - 293):
- MR NASSIOS: Do you have any idea who would have approved the payment of that account?
- MS STEVENS: It would have been Craig. So I didn't have anything to do with the ads on Central Coast Radio. That was really Matt and Craig that put those together.
- MR RAWSON: Did you ever hear them on the radio?
- MS STEVENS: I would have. I would have heard them. I'm just trying to think what they were.
- MR RAWSON: During the election, it's probably hard not to hear them.
- MS STEVENS: Yes, well, that's right, but in fairness, I mean, there was a lot of other stuff going on. I was doorknocking a lot as well so obviously

that makes it a bit hard but, yes, there would have - I would have heard them for sure, but I'm not quite sure. So they're in 2007, those ads?

MR NASSIOS: Yes, November 2007.

MS STEVENS: Well, they would have been campaign ads.

183. Mr Burke agreed that the payments to Central Coast Radio sounded like they were for radio advertisements (Burke PN 226) and that Mr Thomson could have approved them (Burke PN 228). When asked if he himself had had any role in radio advertising Mr Burke replied (Burke PN 230):

Yes, at some point I did. I wrote the script for one of the ads, and it involved a member of the HSU, an ambulance officer, talking about what industrial relations - the industrial relations laws would mean to them. I think it's also - yes. But I'm not sure if that's directly related, so I don't want to make that link which I'm not aware of yet.

184. Dr Kelly told FWA that the payments to Central Coast Radio were never discussed or approved by the National Executive (Kelly PN 766).
185. Mr Thomson's CBA Mastercard statement dated 25 October 2007 ([HSUNO.001.0127](#)) discloses a purchase of \$2,739 from Nova 1069 Pty Ltd Teneriffe Australia, on 12 October 2007. FWA put to Mr Thomson at interview that this appeared to be a Brisbane Radio station, but he said that Nova owned a number of radio stations, and that this payment was an electoral expense paid to one of them - which he thought was 'Star FM' (Thomson PN 1355 - 1362).
186. Ms Jackson told FWA (Jackson (1) PN 296) that she was not aware that the HSU was paying for commercial advertising on Central Coast Radio.
187. The payments to radio stations set out in paragraphs 176 to 180 of this chapter total \$18,731. Given the timing of these payments, and the location of the radio stations concerned, it is clear that this money was spent on radio advertising for the benefit of Mr Thomson's campaign for Dobell. In those circumstances, and given the significant cost to the National Office, Mr Thomson should have had these payments discussed or approved by the National Executive. However given that the National Executive does not appear to have met between March 2007 and the Federal election on 24 November 2007 it is clear that these payments could not have been discussed at, or approved by, the National Executive.

Printing expenses

188. Mr Thomson's CBA Mastercard statement dated 27 June 2007 (HSUNO.001.0110 at 0111) lists several large purchases from The Entrance Print as follows:
- a. 26 May \$1,884
 - b. 31 May \$2,623
 - c. 7 June \$1,108
 - d. 13 June \$2,129
 - e. 18 June \$1,300

- f. 18 June \$657.
189. The same statement also lists a further printing expense of \$821.70, paid to PK Printing Service of Tuggerah on 31 May 2007.
190. Mr Thomson's CBA Mastercard statement dated 26 July 2007 ([HSUNO.001.0122](#)) discloses a further purchase of \$280 from The Entrance Print on 18 July 2007.
191. Mr Thomson's CBA Mastercard statement dated 28 August 2007 ([FAI.002.0025](#)) discloses a further purchase of \$115.08 from The Entrance Print on 2 August 2007.
192. Mr Thomson's CBA Mastercard statement dated 26 September 2007 ([HSUNO.001.0090](#)) discloses a further purchase of \$551 from The Entrance Print on 14 September 2007.
193. Mr Thomson's CBA Mastercard statement dated 26 November 2007 ([HSUNO.001.0102](#)) discloses a further purchase of \$2,000 from The Entrance Print on 13 November 2007.
194. Mr Thomson was asked whether he knew what these expenses were for at interview (Thomson PN 920 - 925). When asked if he knew what these expenses were for he answered:
- They would be a variety of things. Some of the earlier ones probably aren't electoral issues but I would imagine that some of the later ones probably are. Having said that, some of them - without knowing what it is, they could also well be Your Rights at Work election stuff but, you know, clearly the latter stuff was in the context of an election campaign, that material.
195. Mr Williamson could not recall these payments (Williamson PN 587 - 590).
196. Given the timing and nature of the printing expenses set out at paragraphs 188 to 193 of this chapter, the fact that they were incurred on the Central Coast and the fact that Mr Thomson used his CBA Mastercard for these transactions, it appears overwhelmingly likely that these expenses (which total \$13,468.78) were incurred for the purpose of printing materials for Mr Thomson's campaign for Dobell. It is clear that Mr Thomson did not disclose this expenditure to the National Executive, or seek its approval by National Executive.

Summary of expenses relating to the Dobell Campaign

197. On the basis of the foregoing discussion I consider that Mr Thomson incurred the following expenses directly for the purpose of his campaign for Dobell:

Expense	Amount	Paragraphs of this chapter
Establishment of the Campaign Office	\$4,826.99	126
Payments to Dobell FEC	\$3,500.00	128 to 133
Campaign Bus	\$1,277.96	134 to 150
Postage expenses	\$9,574.17	151 to 162

Expense	Amount	Paragraphs of this chapter
Payments to LBH Promotions	\$7,409.93	163 to 166
ALP Advertising	\$12,511.40	167 to 175
Radio advertising	\$18,731.00	176 to 187
Printing expenses	\$13,468.78	188 to 196
Total	\$71,300.23	

Mr Thomson's submissions

198. With respect to finding 117, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening Sub-rule 36(b) of the Rules. It was the policy of the HSU to support the ALP by providing resources for campaigns. All expenditure incurred in relation to the Long Jetty campaign [office] was authorised by the National Executive and was disclosed to the Election Funding Authority in accordance with the relevant disclosure laws.
199. With respect to findings 118 to 124, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule in respect of expenditure of funds and commitment of National Office resources in Dobell.
 - b. As submitted in paragraphs 523.d and 523.e at page 336 in chapter 5, part of the Work Choices campaign, which was strongly supported by the HSU, was to support the ALP and the unions had identified a number of marginal seats for particular campaigning, Dobell was included. Expenditure in Dobell was in accordance with supporting the election of ALP candidates, this was consistent with the Work Choice campaign.
 - c. All expenditure was properly documented and disclosed in accordance with the relevant electoral disclosure laws.
 - d. Furthermore, the members of the National Executive were aware of Mr Thomson's decision to stand for election to parliament in Dobell.

Conclusions

200. Mr Thomson has submitted that the use of existing resources of the National Office to campaign in the electorate of Dobell was within Mr Thomson's authority to approve pursuant to Sub-rule 32(n) on the basis that such activities were the business of the HSU, having regard to the nature of the resolutions passed by the National Executive and referred to in paragraph 82 of this chapter.
201. It is clear from the pattern of National Office resolutions in 2005, 2006 and 2007 that the National Office had specifically authorised a particular commitment to the

campaign for the electorate of La Trobe. It is notable that there is not a single reference to the campaign for Dobell in the minutes of any National Executive meeting during the period in which Mr Thomson was National Secretary. When read as a whole it is reasonably clear that the National Executive had considered, and authorised, a substantial commitment of National Office resources to support the ACTU's marginal seat campaign in the electorate of La Trobe. In circumstances where those decisions are recorded in minutes of National Executive meetings, and those same minutes make no reference at all to any consideration about whether the National Office should allocate resources of the National Office (such as Mr McLeay, Ms Flavell, Ms Kershaw, and even Mr Thomson) to the campaign in Dobell, I consider that the allocation of resources of the National Office to the campaign for Dobell was not capable of being authorised by Mr Thomson pursuant to Sub-rule 32(b) as part of the business of the HSU.

202. Moreover, because Mr Thomson clearly stood to obtain a personal advantage from any funds or HSU resources spent by the National Office on the campaign for Dobell, a reasonable National Secretary in his position would have declared his personal interest in the expenditure of any such resources or funds in Dobell, and taken steps to ensure that the National Office met its obligations under the RAO Schedule in respect of such funds. Indeed, a reasonable person in Mr Thomson's position would have:
- a. ensured that the National Executive was formally informed of his decision to stand for election to parliament in Dobell, and that this advice was formally recorded in the minutes of National Executive;
 - b. sought the approval of National Executive either for each specific expense incurred in relation to his campaign for Dobell, or alternatively, for a set amount of expenditure on that campaign;
 - c. ensured that his personal conflict of interest in relation to such a resolution was declared to the meeting prior to the resolution being put to a vote, and recorded in the minutes of the meeting;
 - d. ensured that periodic reports were made to National Executive about any expenditure so incurred; and
 - e. ensured that appropriate transactional records of all such expenditure were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the AEC and the AIR.
203. Mr Thomson could not, acting in good faith, have expended, and purported to authorise expenditure of, these funds without:
- a. the knowledge or approval of the National Executive;
 - b. first taking steps to disclose to the National Executive his interest in having such expenditure approved, and ensuring that this was recorded in the minutes of the meeting;
 - c. ensuring that periodic reports were made to National Executive about any expenditure so incurred; and

- d. ensuring that appropriate transactional records of all such expenditure were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the Australian Electoral Commission and the AIR.
204. Mr Thomson has submitted that all expenditure was disclosed in accordance with relevant electoral disclosure laws. While I make no comment or judgement (and have no knowledge) regarding whether or not this statement is correct, I note that my Investigation concerns whether there have been contraventions of the Rules or of the RAO Schedule and that any disclosures under electoral law are not relevant to my consideration of whether such contraventions have occurred.

Findings 117 to 124 - Expenditure of National Office funds on Mr Thomson's Dobell Campaign

Expenditure of National Office funds on the establishment of the Long Jetty Campaign Office

117. Mr Thomson breached Rule 36(b) by incurring expenditure of \$4,826.99 on purchases relating to the establishment of the Long Jetty Campaign Office which was not expenditure on the general administration of the HSU, or on a purpose reasonably incidental thereto, without that expenditure being authorised by either National Council or National Executive.

Other expenses directly related to the Dobell Campaign

118. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by failing to declare his personal interest in the expenditure of funds and the commitment of National Office resources in Dobell, and by failing to take steps to ensure that the National Office met its obligations under the RAO Schedule in respect of that issue.
119. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose, by using resources and funds of the National Office in his campaign for Dobell, without taking steps to declare to the National Executive his personal interest in the expenditure of such funds and the commitment of National Office resources, in circumstances where the National Executive had authorised a significant commitment of National Office resources to the La Trobe campaign, and had not authorised the expenditure of any funds or resources of the National Office in the campaign for Dobell.

- 120.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself by directing funds and resources of the National Office to the campaign for Dobell, without taking any steps to inform the National Executive or National Council, or seek the authority of the National Executive or National Council for him to do so.
- 121.** Mr Thomson contravened Sub-rule 32(n) and Sub-rule 36(b) by incurring and purporting to authorise each item of expenditure of National Office funds listed in the table at paragraph 197 of this chapter totalling \$71,300.23 for a purpose which was not the business of the HSU in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.
- 122.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as Mr Thomson by incurring and purporting to authorise each item of expenditure of National Office funds totalling \$71,300.23 listed in the table at paragraph 197 of this chapter in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.
- 123.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose, by incurring and purporting to authorise each item of expenditure of National Office funds (totalling \$71,300.23) listed in the table at paragraph 197 of this chapter in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.
- 124.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself (namely, to advance his prospects of becoming elected to Parliament) by incurring and purporting to authorise each item of expenditure of National Office funds totalling \$71,300.23) listed in the table at paragraph 197 of this chapter.

Criselee Stevens

Employment of, and authorising expenditure incurred by, Ms Stevens

205. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 125 to 128 - Employment of, and authorising expenditure incurred by, Ms Stevens, which are set out below at page 689.

The decision to employ Ms Criselee Stevens

206. Ms Stevens told FWA that she commenced working for the National Office in about July 2005 as an Organising Works trainee. The Traineeship had been advertised in the Sydney Morning Herald, and she applied 'off her own bat'. She needed to find a union as part of the program and she found the HSU. (Stevens PN 8). She said that the traineeship went for a period of 12 months (Stevens PN 12). She said (Stevens PN 15 - 17):

I got on the phone and rang every single union I could think of. Some of them had already had their quota for the program. Some of them didn't put in for the program at all, they had their own organising and all that sort of thing. So really it was by luck that I came across the HSU, because I'd never really heard of them before. They weren't the HSU in Tasmania, they were called HACSU down there.

... And I'd never been in that sort of industry, so I'd never joined. I was given Craig Thomson's number. I don't think anyone expected me to be probably as forceful as I really was about it. Then, sort of, everything fell into place. When I spoke to Craig, he organised a meeting with himself and Michael Williamson, because of the way the National Office worked compared to the New South Wales Branch. Then, basically, we went from there. The Central Coast, I think one of the benefits for me was that I was a little bit more mature, and that I knew the Central Coast very well. Aged care is a big issue up on the Central Coast. It is called God's waiting room, and that's honest, like, you know - - -

207. Ms Stevens said that during that meeting (Stevens PN 59 - 62):

.. They said that basically what they were looking at was for - you know, they were looking for someone who could communicate effectively with such a broad, diverse range of people because the HSU, like any other group of people wherever you work, isn't made up of the same style of person. So they needed someone who was a little bit mature, who could think on their feet, who could actually be enthusiastic enough to, you know, give direction. They were telling me that they would support me in any way they possibly could and if I had any problems that there were certainly processes there like any other employment that you can go through. So it was all pretty general really.

208. Ms Stevens said it was not explained to her why the position she was offered was on the Central Coast: (Stevens PN 66):

That was really made up through the Organising Works. So Craig felt that it fitted very well into the fact that they were looking, and they had tried for quite a while, the HSU, to get into the Central Coast. It is quite a difficult area, because if you don't live locally - you know, people make it hard for organisers that come up from Sydney, 'You're from the

city, what would you know? Go away.' So that's where it, sort of, became - it all worked in sync. You know, Craig thought that that was one of the particular - from a National point of view, one of the areas that they really should have done a lot better, the union, but they hadn't. I guess Michael had resource issues with that, and you know, this would, under the direction, as I was only a trainee of people like Karene Walton, who'd been with the National Office for a while, and Craig himself, that this would be a good opportunity to actually get in there and give it a go.

209. Mr Thomson told FWA that Ms Stevens was interviewed by himself and Mr Williamson 'and we then made her an offer of employment' (Thomson PN 507). Mr Thomson said (Thomson PN 507):

I kind of saw her - and this, you know, may be subject to some criticism, but I kind of saw her position as not being the same as other employees in that it was for a fixed period while she did the course. It was relatively cheap, I think it's, you know, something like \$35,000 a year, it wasn't a lot of money that was there. There were of course additional expenses that we picked up outside of that, but in my mind it was a different situation to employing an ongoing person. But I did make sure that the president of the union was there to be at the interview process and the approval process and then we reported that to executive.

210. Mr Williamson said that he had had a cup of coffee with Mr Thomson and Ms Stevens one particular day, but said that 'to suggest it was an offer of employment would be remote - farthest thing from the truth'. However he agreed that it was 'a general chat about possible employment' (Williamson PN 253 - 255).

The ACTU Organising Works Traineeship Program

211. Mr Thomson's explanation that he decided to employ Ms Stevens 'as a way of demonstrating some of the things that we do more locally' because the HSU had not had much success with the ACTU's Organising Works traineeship program needs to be considered against the terms of that program, as well as against Ms Stevens' own evidence about what duties she actually performed.

212. The National Office has produced a document entitled 'Memorandum of Understanding between Trade Union Training Australia Inc and Unions Participating in the Organising Works Traineeship Program' (**MOU**) ([HSUNO.022.0011](#)). According to clause 3 of this MOU, the purpose of this program is to recruit, train and support 'a new generation of union organisers to focus on organising for growth and acting as a catalyst for change within unions'. Clause 3 also provides that although the program should benefit unions 'the parties recognise that it is primarily a traineeship program which should provide a structured on and off the job learning experience. Moreover, 'To meet the broad objectives of the program, trainees shall primarily be organising non union workers, not servicing existing members. Clause 4 of this MOU provides:

4.1 The union shall ensure that there is recognition within the union office for the program and the role of the trainee.

4.2 The trainee shall be provided with adequate equipment, transport and support to enable successful completion of the program.

4.3 The union shall aim to develop and support an environment where organising non members is seen as a priority and where successful strategies are shared.

213. Clause 7 of the MOU deals with wages and costs, and provides:

7.1 Trainees placed on the T.U.T.A Inc payroll shall be paid a training wage based on the National Training Wage Award, and shall also include payment for workcover, superannuation and payroll tax.

7.2 Most other conditions of employment such as sick leave and hours, shall be determined by the individual union and should be clarified with the trainee on commencement.

7.3 Unions shall pay to T.U.T.A Inc an amount as determined by ACTU Executive at the commencement of the program, unless other arrangements are agreed.

7.4 In addition unions shall be responsible for all on-the-job costs and shall provide transport to and from the residential course(s) and any other travel as determined by the Committee of Management.

214. Clause 8.3 of the MOU provides that:

The parties recognise that planning and the trialling of new recruitment strategies are fundamental components of the program.

215. Clause 12 of the MOU provides:

12.1 Unions shall select trainees and participate in the program with an expectation that the trainee who successfully completes the program shall be offered ongoing employment, unless prior arrangement is made with T.U.T.A Inc and the trainee.

...

12.3 Where a union would not be able to employ the trainee due to exceptional circumstances, early discussion shall be held with T.U.T.A Inc and the trainee and it shall be open to another union to employ the trainee.

12.4 Unions recognise that the objectives of the program are to recruit and train people with the direct aim of assisting in the reversal of current membership trends. As a result, unions recognise trainees should be utilised in roles which are directly involved in organising non union workers.

216. The MOU was signed by Karene Walton on behalf of the National Office on 21 September 2005. Ms Walton told FWA that she was Ms Stevens' mentor under the Organising Works Trainee program (Walton PN 126), and that she considered this part of her HSU duties (Walton PN 128). Ms Walton said that the trainee would have a mentor, whom the trainee could ask questions of (Walton PN 130). Ms Walton was asked at interview whether Ms Stevens role was focussed on the Central Coast, and answered (Walton PN 138 - 140):

She would go and do community campaigning and she would work - she lived in the Central Coast, so she would do some community campaigning in the Central Coast, absolutely.

... She would have done some work probably with the union in terms of some project based work, I would suspect, but that's - you'd need to ask Criselee that.

217. Ms Walton said that (Walton PN 142 - 146):

... community campaigning is actually going out - in terms of organising, when we talk about organising as a union official, there's many aspects to that. So we talk about community campaigning in terms of going out to the community and doing a reach-out to the community. So there's - the Work Choices aspect is probably one of the best ways of demonstrating a community campaign. But you can community campaign around other campaigns. For example, Medicare would be a community campaign that unions would participate in, so that's what you'd call community campaigning. So it's larger than just a workforce or workplace issue or an industry issue, you'd take it out to the community.

... it's a variety of ways. It can be advertising, it can be through standing at train stations, bus stations. It can be, you know, a variety of ways. It can be doorknocking with people and actually sitting down and having a conversation about the particular topic.

218. Three fundamental features of the Organising Works traineeship program emerge from the MOU:

- a. It is focussed on developing trainees to organise 'non-union members' and 'the trialling of new recruitment strategies'. It is clear that the aim of the program is to train new organisers in strategies to engage non-union members in the workplace and recruit them.
- b. The decision to take on a trainee under this program involves a significant financial commitment from a union for the duration of the traineeship;
- c. there is an expectation upon unions who enter into such a traineeship that they will provide ongoing employment to the trainee at the conclusion of the traineeship.

219. On the basis of Mr Thomson's own evidence a fourth feature could be said to be important in Ms Stevens' case - namely, the highlighting to the rest of the HSU of the potential value in becoming involved in the ACTU Organising Works Traineeship program.

The nature of Ms Stevens' duties

220. Ms Stevens said that she was allowed to work from home but had to report daily (Stevens PN 21). She paid her own electricity and rent, but the HSU gave her a mobile phone (Stevens PN 21). She said that she worked with people from the HSU's NSW Branch 'sort of along the way' (Stevens PN 23).

221. When asked to describe a typical day in her employment with the HSU Ms Stevens said (Stevens PN 36 - 39):

Crikey. A typical day? Well, apart from the Organising Works studying, like, because they'd have it in blocks so I'd go to Sydney for a week, you know, and then do that and then come back home. Most of it was actually working on their IR campaign that they had going that they were working with, obviously, Unions New South Wales on. A lot of that was working with members to activate them, to actually come on board, especially at the start. We were sort of saying, you know - organising, you know, where people were from, where could they go, would they be able to make it to Tuggerah or Gosford, also

making sure that the HSU had an interest in the local trades and labour council, so there are a lot of meetings like that.

Also running aged care forums, organising those, they were really more for the public. If you can remember back that far, there was a lady that was found, unfortunately, in a house. She'd been dead for quite a while and this wasn't sort of the first case. Being on the Central Coast I thought it was a good idea to sort of get the word out, check your neighbours, you know, run a campaign to try and organise - because public transport's not easy up there, so if we can't do it through knocking on the door, perhaps we can do it via phone and just ring up every day and sort of say, 'Hi, Mrs Smith,' you know, 'Are you still there?' If she doesn't answer her phone, get someone to go around. So there was a lot of interaction in regard to those sort of campaigns.

There wasn't just one going, there wasn't just one specific channel of thought. It was really a crossover between the aged care issues that not only aged care members faced, but also workers face. Aged care are the lowest, sort of, paid workers of the health care scope, if you like. A lot of those, because of the workplace, sort of, awards and things that was going on under John Howard, people found it really hard because basically they'd employ backpackers for six weeks, you know, to sort of work in aged care centres, and they're not qualified carers and there were issues with that. You know, older people are quite frail and delicate and you need to be careful even when you help bath them or dress them.

So as a union we were quite concerned that those jobs were being offloaded into, like, casual cleaning jobs, really, more than carer positions. So we did a lot of work on the Central Coast in regard to that. So I guess, yes, it was really about just going around and speaking to different groups and whatever that message was for that particular group, you know, and try out of that to actually activate people to be informed and educated in what was coming and what we wanted to do.

222. Asked if there was a particular wages campaign from the time that stuck out in her mind Ms Stevens said (Stevens PN 41):

Well, apart from the aged care - the carer's wage claim. That was certainly - I didn't really have a lot to do with what was going on nationally. I was quite focussed on the Central Coast and my area. So I know that Victoria ran a couple of different campaigns as well, but ours was specifically in regard to, you know, caring for the people who care for you sort of thing. That was sort of the campaign that we ran on the Central Coast.

223. Ms Stevens was also asked who she dealt with in the National Office (Stevens PN 50 - 55):

MR NASSIOS: In terms of other persons in the HSU - - -

MS STEVENS: Yes.

MR NASSIOS: - - - would you have had dealings with many?

MS STEVENS: I had a lot to do with Belinda Ord because she was the administration and accounts person. Being a rental person I actually did move while she was still there and, you know, she organised all that and sorted all that out. But - especially with the phones and, you know, the change of address and all that sort of thing. But really, Karene Walton who was also there, she was my mentor for the Organising Works, and Craig. I had a little bit to do with Mark Robinson, but that was only in relation to media releases. He was in charge of those

and if I got them I'd always touch base and say, you know, 'What do you want me to do with this? Do we need copies or anything like that?' So yes, other than that, no one else in the HSU national office, other than Craig of course.

MR NASSIOS: So if Ms Jackson says she wouldn't have known about you, that would be an accurate statement?

MS STEVENS: I never met her in my life. Never had a conversation with her. The first time I really found out anything was when my mum rang me and said, 'What are you doing in the Sydney Morning Herald?'

224. Mr Thomson was asked at interview if he could describe Ms Stevens' role with the HSU. He said that: (Thomson PN 503 - 505):

... we'd been spending - I'd gone to, for example, the United States in 2004 with the union and had helped write the 'Next Steps' document about the way the union should go. I'd been to Harvard in '96 and spent a bit of time going around unions after that period of time. The ACTU had adopted a proper training program for organisers which they would go through, they would graduate and either be taken up by that union or be available to - for other unions to take on and they would be trained, which was vastly different from my experience with the unions.

When I finished university you were way too young to work for a union. You needed to have experience and those sorts of things, whereas thankfully nowadays we try and take them on earlier. This was part of that program. We weren't having a lot of success, I think our number 2 branch, probably Lloyd's branch, took on some. The Tasmanians may have taken on some, but we would have taken on very few anywhere else.

After a number of years we - I thought, well, I'll take a person on, which is hardly going to set the world on fire in terms of changing the union, but try and use that as a way of demonstrating some of the things that we can do more locally. She had to submit assignments, those sorts of things, and her specific area, I think, was the Your Rights at Work campaign, but there was also community liaison - and interacting with community groups was meant to be part of that sort of issue. Understanding, of course, that our union - all unions, but I suppose our union particularly in the areas that we were most interested in of expanding our membership in aged care. There are lots of other interested parties that we had never really worked with much in the past, so there was some advantages in terms of that.

225. Mr Thomson agreed (Thomson PN 509) that Ms Stevens' role appeared to be based on the NSW Central Coast, although he said 'we did take her to some other places and states from time to time to help with development'. Mr Thomson said that the HSU really had no choice as to where she could work because 'the only place that we could have some control was within the National Office with me' (Thomson PN 509). Mr Thomson said that Ms Stevens worked from home, from the Long Jetty Campaign office, and also from the Your Rights at Work campaign office opposite the Long Jetty Campaign Office (Thomson PN 511).

226. Mr Burke described Ms Stevens' duties to FWA in the following way (Burke PN 314):

Hers were admin role, she had an admin role but she also did organising works which were paid for by the union I believe in Sydney. She had a - yes, her role was to liaise

with Your Rights at Work campaign and, yes, she had a very - that was the main thrust of her role from what I can recall.

227. Mr Burke said that Ms Stevens was not an industrial officer type organiser, but that (Burke PN 316):

like me, she probably went to workplaces on occasion but it was more the Your Rights at Work campaign rather than an industrial capacity.

Knowledge of Ms Stevens' employment among other members of the National Executive

228. Mr Thomson said that the employment of Ms Stevens and the costs relating to her were known and approved by the National Executive (Thomson PN 2017). However:

- a. The fact that Ms Stevens was employed by the National Office was never mentioned in any minutes of National Executive meetings.
- b. The fact that Ms Stevens was employed by the National Office was never mentioned in any document provided to FWA which passed between the National Office and the Branches.
- c. At least in relation to the period from January to March 2007, unlike in the case of the employment of Ms Hall, the costs of employing Ms Stevens was not distinguished from other costs in invoices provided by the National Office to the Branches for contributions toward Ms Stevens salary;
- d. As is clear from the discussion below, each of Mr Brown, Ms Jackson, Dr Kelly and Ms Knight have told FWA that they were unaware that the National Office was employing Ms Stevens; and
- e. While Mr Williamson told FWA that Ms Stevens attended meetings of the National Executive, he has since stated that this is incorrect (see paragraph 19.b of chapter 11 on page 899 and paragraph 238 below).

229. Mr Brown told FWA at interview (Brown PN 196) that he could not recall any disclosure of Ms Stevens' employment being made to the National Executive.

230. In her first interview with FWA Ms Jackson said that she had never been at a meeting where the employment of Ms Stevens had been approved (Jackson (1) PN 194 - 197). Ms Jackson told FWA at her second interview (Jackson (2) PN 291) that she only learnt of the employment of Ms Stevens and Mr Burke by the HSU National Office after a staff member from her Branch met them at a Your Rights at Work meeting:

... as I said to you previously, as far as, you know - you haven't asked me this but I'll volunteer it, the extra staff that was on the payroll at the time that we subsequently discovered during the exit process we didn't know about and all the thing about this is - and I don't know if I said this previously - if we had known about them then we would have approved it. But we didn't, well I didn't. I think it came up - staff from the Victorian office had been to some Your Rights at Work campaign where one of the people that had been working in Dobell had said to one of our staff members, you know, 'Where do you work,' and they said, 'I work at the HSU,' and this person, 'Well so do I' and they're like,

'Oh really. Where do you work,' and they're like, you know, 'Based out at Dobell,' or something like that. People came back and they're like, 'Do you know that we had all these staff that work in Dobell?' I'm like, 'No.' So that's sort of - that's how it sort of in 2007 and, you know, post-election it all came to light. But the National Executive, other than knowing that Craig was running Dobell, as a member of National Executive I did not know that those staff, other than the gossip that occurred with people coming to and from meetings, that they were employed by the HSU.

231. Dr Kelly told FWA (Kelly PN 65) that the finding in the Exit Audit that the National Office had employed Ms Stevens:

... that came as a complete surprise to me and clearly in my view - my view was that they were not working for the union and its members but were working in a campaign for Craig Thomson's seat and that was a complete surprise to me.

232. Dr Kelly said (Kelly PN 379 - 380):

I didn't know that they were employed by the National Office until after Craig Thomson had left. I was not aware of their employment, it never went to National Executive, it didn't go finance committee, and I questioned the amount in the salaries, under the salaries line, because it seemed to me the salaries were too high. I did a back of the envelope on what I thought everybody was being paid and I thought, 'That's funny, has the National Secretary got a salary increase, or what's happening with the salaries budget?' So I actually questioned that, I didn't know these two people were employed until afterwards.

As I said, I attended that first meeting of the officers in - I can't remember whether it was March, around about - might have been earlier, it was after January Executive in 2008 that the officers met, it might have - I can't remember the exact date. The issue of Mathew Burke and Criselee Stevens was raised in that meeting. Michael Williamson, who is the National President, said in that meeting, 'Criselee Stevens used to work in our office.' So clearly you couldn't have two people working in the National Office, in the Sydney National Office, I don't believe that that could have occurred without the knowledge of the National President, at least the National President. Given that he basically offered that he knew Criselee Stevens and that she had worked for him. So I'm only supposing, that's only my view, that Michael Williamson knew that these two people were being employed in the National Office. But that's only my view.

233. Dr Kelly later clarified that she understood Mr Williamson to have told her that Ms Stevens had worked in the NSW Branch office (Kelly PN 410).

234. Dr Kelly said (Kelly PN 385) that at on 3 December 2007 she sent an email to Ms Ord which she copied to Mr Thomson in which she queried the salaries budget when she received documentation for the forthcoming Finance Committee meeting in December 2007 because she thought that it couldn't be correct because certain people had left. The meeting was cancelled and her queries were not responded to.

235. This is consistent with correspondence between Ms Ord and Ms Kelly on 3 December 2007 ([HSUNO.018.0098](#), [HSUNO.018.0096](#)).

236. Mr Williamson told FWA that he could not describe Ms Stevens' role with the HSU (Williamson PN 251), and indeed he did not see her as having a role with the HSU (Williamson PN 257). Pressed that Ms Stevens must have done something,

Mr Williamson said (Williamson PN 261) 'Well, she did, but as to what that was, I have no idea.' The following exchange then took place (Williamson PN 262 - 267):

MR NASSIOS: Does it come as a surprise to you that she was based on New South Wales Central Coast doing whatever it was she was doing?

MR WILLIAMSON: Well, she did live on the Central Coast so - as to what she was doing on the Central Coast I'm - obviously must have been in relation to Dobell somewhere but as to what that was, I don't know.

MR NASSIOS: To your knowledge did her name ever arise at National Executive meeting?

MR WILLIAMSON: In fact she attended them so her name did arise. I remember seeing her at a National Executive meeting.

MR NASSIOS: What would she have done at those meetings?

MR WILLIAMSON: Sat there.

237. Mr Williamson was not aware that Ms Stevens eventually worked out of the office being used by Mr Thomson as a campaign office in Long Jetty (Williamson PN 285), even though he said that this building was leased by the State Union of which he was the General Secretary (Williamson PN 271). Mr Williamson could not say what work Ms Stevens was doing while based in that office (Williamson PN 287). However, when it was put to Mr Williamson that the National Executive did not seem to know that Ms Stevens and Mr Burke were employees of the National Office he replied (Williamson PN 331 - 333):

MR WILLIAMSON: Well, I can't speak for them, but I can't understand how they didn't know something was happening because they were at meetings of the National Executive, from what I can recall.

MR RAWSON: Mr Burke was as well?

MR WILLIAMSON: I can't recall Mr Burke. I can't say that about Matt Burke. I don't even know what - I'm just trying to think now - - - Crissie, yes.

238. In a letter of 3 February 2012 (FWA.022.0556), however, Uther Webser & Evans (who are acting on behalf of Mr Williamson) have subsequently submitted that the information that Mr Williamson provided to FWA in interview that Ms Stevens had attended a National Executive meeting as an observer was incorrect. It was stated that Mr Williamson was confusing Ms Stevens with another woman he had observed at a National Executive meeting.

239. Ms Stevens' name is not recorded as an observer in the minutes of any meeting of National Executive seen by FWA. No other person interviewed by FWA, including Mr Thomson and Ms Stevens, has suggested that Ms Stevens attended a National Executive meeting.

240. Ms Ord told FWA that she did meet Ms Stevens once, but she could not say what Ms Stevens did for the HSU (Ord (1) PN 201 - 203).

Costs to the National Office of Ms Stevens' employment

241. Information is set out at paragraphs 30 to 40 on pages 167 and 169 of chapter 4 regarding Ms Stevens' salary of \$35,000 upon commencement of employment (which appears to have been on 26 September 2005), her salary increase to \$46,800 per annum and payment by the National Office of compulsory employer superannuation contributions on Ms Stevens' behalf.
242. The calculation set out at paragraph 40 on page 169 of chapter 4 estimates that the total salary paid to Ms Stevens during her employment with the HSU National Office was \$92,960.55.
243. If the National Office was paying 12% employer superannuation contributions to Ms Stevens over the estimated period of her employment from 26 September 2005 to 14 December 2007 (see paragraph 40 on page 169 of chapter 4) then it would have paid \$11,395.27 in respect of superannuation contributions for Ms Stevens.
244. The spreadsheet dated 6 December 2007 ([HSUNO.017.0008](#)) discloses that at that time Ms Stevens had accrued 50 days annual leave, which was worth \$9,852.64.
245. Based on these three figures, it seems likely that the National Office incurred employment related costs in respect of Ms Stevens of approximately \$114,208.83 between 26 September 2005 and 14 December 2007.

Expenditure incurred by Criselee Stevens while employed with the HSU

246. After commencing employment with the National Office Ms Stevens signed a document headed 'Health Services Union - National Office Credit Cards'. The document comprised of the following five dot points:
 - The card is always the property of the Health Services Union -National Office and must be returned upon request/termination of employment etc.
 - All transactions must have a receipt to be able to be claimed. Any transactions that relate to electronic purchases made via internet (i.e. flights, information, accommodation bookings etc will be required to have the printout from the internet - detailing purchase item.
 - Prompt return of statement with receipts attached is necessary to ensure account is checked, paid and is up to date. A late payment incurs a fee to the Health Services Union.
 - Any credit cards issued by The Health Services Union cannot be used for personal expenses. All expenses must be for business related purposes - a written notation next to the transaction is required for any items that are not self explanatory.
 - When using any Health Services Union Credit Card, the purchaser is expected to have solicited a cost effective and efficient purchase.
247. Ms Ord believed that all expenditure on credit cards by Ms Stevens and Mr Burke had been authorised (Ord (1) PN 204 - 214).

248. Ms Stevens said that the HSU did not give her a car for work, but that they reimbursed her for petrol expenses incurred on her Diners Club card (Stevens PN 501 - 508).
249. Mr Thomson was asked at interview how he reviewed expenditure by Ms Stevens. Mr Thomson answered (Thomson PN 684):

As I said at the start, I didn't at any stage see her credit card bills and go through them and sit down with her and do that at all. We'd set up parameters as to what she could use them for. If it was outside that, she had to ask me specifically. When she sent in her dockets and her credit card issue and there were the explanations were things that Belinda had an issue with, she would raise them with me, and that was the process. So yes, I approved them, but I didn't specifically sit down with each of them, and I'm not in any sense trying to lessen the approval but I didn't put through that process. Maybe if the office was in one spot, it would have been slightly easier and less time-consuming, but they got sent to Melbourne.

250. Ms Stevens told FWA (Stevens PN 97):

... Craig was always very careful that the paperwork had to be right. He always used to say to me, and I must admit a couple of times when receipts weren't attached with the Diners Club thing, Belinda would be on my back, and he always used to say to me, 'You've got to get those receipts in. There are all these rules and regulations around this sort of thing.'

Diners Club statement 20 December 2005

251. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 December 2005 ([HSUNO.014.0155](#)). The statement shows that for the month to 20 December 2005 Ms Stevens spent \$73.10 on her Diners Club card. This included:
- a. \$18.10 spent at Café Bluestone on 20 December 2005; and
 - b. a \$55 rewards membership fee on 8 December 2005.
252. The statement records a nil opening balance. Given that as at 8 December 2005 Ms Stevens had only recently commenced employment with the HSU, the fact that this statement records a nil opening balance, and the fact that the statement records payment of a \$55 membership fee, it seems likely that this is the first statement issued in respect of Ms Stevens' Diners Club card, and that the transaction at Café Bluestone on 20 December 2005 was the first transaction conducted by Ms Stevens on her Diners Club card.

Diners Club statement 20 January 2006

253. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 January 2006 ([HSUNO.014.0160](#)). The statement shows that for the month to 20 January 2006 Ms Stevens spent \$1,100.22 on her Diners Club card. This included:
- a. \$348.01 spent on 11 January 2006 on a Qantas Airways Limited return ticket in Ms Stevens' name for travel from Sydney to Melbourne on 18 January 2006;

- b. \$159 spent at the Mercure Hotel Sydney on 5 January 2006;
- c. \$107 spent at the Hotel Ibis in Melbourne on 18 January 2006;
- d. \$0.50 spent at Leo's spaghetti bar on 18 January 2006;
- e. \$185.22 spent in five separate transactions at petrol stations between 20 December 2005 and 19 January 2006;
- f. \$78 spent at Sydney Airport Parking on 20 January 2006;
- g. \$152.07 spent on two taxi fares on 13 and 14 January 2006;
- h. \$35.43 spent at Coles Toukley on 12 January 2006;
- i. \$29.79 spent at Coles Toukley on 13 January 2006; and
- j. \$4.45 spent at Norville Hardware on 13 January 2006.

Diners Club statement 20 February 2006

254. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 February 2006 ([HSUNO.014.0167](#)). The statement shows that for the month to 20 February 2006 Ms Stevens spent \$3,885.61 on her Diners Club card. This included:

- a. \$382 spent on 21 January 2006 on a Virgin Blue airfare for her son, Joshua Stevens, for travel from Hobart to Sydney, via Melbourne, on 24 January 2006;
- b. \$82.50 spent on 30 January 2006 with Frequent Flyer/Qantas Club;
- c. \$459.11 spent on 7 February 2006 with Qantas Airways Ltd for travel by Ms Stevens from Sydney to Melbourne return on 28 February 2006;
- d. \$205 spent at the Carlton Crest Hotel on 3 February 2006;
- e. \$27 spent at the Golden Harbour Restaurant on 2 February 2006;
- f. \$21.60 spent at Brando's Fountain Cafe on 9 February 2006;
- g. \$200.04 in six separate transactions at various petrol stations between 24 January and 15 February 2006;
- h. \$32 at Wilson Parking in Sydney on 13 February 2006;
- i. \$102.18 spent on four separate taxi fares between 18 January and 2 February 2006 (two of these appear to have related to travel between Melbourne Airport and Melbourne on 18 and 19 January 2006);
- j. \$600 at Lightsounds Chatswood on 25 January 2006;
- k. \$43.90 at Toukley Photo Specialists on 31 January 2006;
- l. \$10 at Computers and More on 14 February 2006;
- m. \$972.48 at the Cumberland Newspaper Group on 14 February 2006;
- n. \$749.80 at the Cumberland Newspaper Group on 20 February 2006.

Payment of Air Travel for Ms Stevens' son

255. Ms Stevens was asked at interview about the use of her Diners Club card to purchase an airline ticket from Hobart to Sydney for her son, Joshua Stevens. Ms Stevens answered (Stevens PN 128):

Joshua does go to Tasmania and I - we have gone together, but I just - see that's me there, so. But I just - I can't tell you. Like I said, this is the first time that I have heard anything about that, not even in the papers or Craig has never even said anything to me and I doubt whether or not I could have put that through to Belinda without her picking that up. Like we - it was very clear what the Diners cards were to be used for. So I don't know. I would - gee, January 06. Yes. Christmas. I mean I could have put it on the card but - on the wrong card, but I'm very surprised that they didn't pick me up on that or question it so. But it is quite possible.

256. Ms Stevens could not recall asking anyone for permission for this transaction (Stevens PN 129) and could not remember the occasion (Stevens PN 133), but continued:

The only reason that I'm sort of a little bit hesitant about it is because Josh has - Joshua and Emily have family down there. So it is quite possible that around the Christmas holidays, because that's what period it is, that they were actually down there. But see it's just Josh. It's not Joshua and Emily and they always, up until the last six months, would always go together. I'm just trying to think back. I really - it's thrown me a little bit because I don't - I just can't off the top of my head remember it. I mean, you know, it's there. I get that. But I can't remember saying to Craig, 'Can I just put this on the card and pay it back.'

Payments to Carlton Crest Hotel

257. Ms Stevens told FWA that payments to the Carlton Crest Hotel were for her Organising Works traineeship, because she used to have to come to Sydney for training and park her car (Stevens PN 392). She said that Mr Thomson agreed that they would occasionally book a conference room at the Waterfront Resort for a meeting (Stevens PN 579).

Payments to Brandos Fountain Café

258. Ms Stevens told FWA that expenditure at Brandos Fountain Café would have been with Donna Lalor from the Sun Weekly - there were a few of those because that was where they used to meet (Stevens PN 378).

Payments to Cumberland Newspaper Group

259. Ms Stevens was asked at interview about two payments to the Cumberland News Group in February 2006 of \$972.48 and \$749.80, two further payments of \$707.68 and \$854.56 in August and four further payments in September totalling roughly \$4,500. Ms Stevens thought the first two may have been for ads for the aged care seminar that 'we' had (Stevens PN 350). She could not remember what the payments in August and September were for (Stevens PN 351 - 353).
260. Mr Thomson could not recall what these expenses were for (Thomson PN 552 - 562). Mr Thomson was also unable to say why Ms Stevens charged three payments to

John Fairfax Newspapers in May 2006 totalling almost \$2,286, but did not say he would not have approved it (Thomson PN 563 - 574).

Diners Club statement 20 March 2006

261. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 March 2006 ([HSUNO.014.0174](#)).
262. The statement shows that for the month to 20 March 2006 Ms Stevens spent \$1,649.56 on her Diners Club card. This included:
- a. \$756.85 spent with WOTIF.com Pty Ltd on 26 February 2006;
 - b. \$75 spent at the Carlton Crest Hotel on 3 March 2006;
 - c. \$205.23 spent in six transactions at petrol stations between 20 February and 17 March 2006;
 - d. \$67.94 spent on eight separate taxi fares between 27 February and 3 March 2006;
 - e. \$226.99 spent at K-Mart Gorokan on 21 February 2006;
 - f. \$59.99 spent at Dick Smith Electronics on 22 February 2006;
 - g. \$33.05 spent at 'Copy Art and Office Prod' on 22 February 2006;
 - h. \$79 spent at 'Digicall 211 Lakehaven' on 7 March 2006;
 - i. \$40 spent at Computers and More on 12 March 2006;
 - j. \$33.01 spent on interest;
 - k. \$71 spent at Postshop Wyong on 7 March 2006.

Diners Club statement 20 April 2006

263. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 April 2006 ([HSUNO.002.0026](#)).
264. The statement shows that for the month to 20 April 2006 Ms Stevens spent \$806.70 on her Diners Club card. This included:
- a. \$274.85 spent with Wotif.com Pty Ltd on 4 April 2006 (this appears to be for the hotel booking at the Country Comfort referred to below in paragraph 269 of this chapter);
 - b. \$45 spent at the Country Comfort Sydney Central on 7 April 2006 (this appears to be the car parking charges referred below to in paragraph 269 of this chapter);
 - c. \$150 spent at the Waterfront Resort on 18 April 2006 (this appears to be for the conference room booking referred to below in paragraph 270 of this chapter);
 - d. \$9.10 spent at the Coffee Club in Tuggerah on 4 April 2006;
 - e. \$185.01 spent in five separate transactions at petrol stations between 20 March and 19 April 2006;

- f. \$15 spent at K Mart in Gorokan on 29 March 2006;
 - g. \$110 spent at Computers and More on 13 April 2006;
 - h. \$16 spent at Postshop in Lake Haven on 29 March 2006.
265. It appears from a further copy of this Diners Club statement ([HSUNO.021.0133](#)) that someone has reviewed this statement and made annotations which suggest the person was verifying that supporting documentation had been provided for the various expenditures that appear on the statement. Someone, presumably Ms Stevens, has placed ticks next to various items of expenditure recorded on the statement. But someone has handwritten the word 'missing' next to two of the entries for petrol expenses, as well as the entry relating to expenditure on 29 March 2006 at K Mart in Gorokan. At the foot of the page with the K Mart expenditure someone has written '29 Mar lithium Batteries', which suggests that Ms Stevens has sought to explain the K-Mart purchase.
266. Ms Stevens has signed this statement, and appears to have attached a range of supporting documentation to this copy of the Diners Club statement including:
- a. the booking confirmation for the Country Comfort accommodation,
 - b. the tax invoice and receipt for the meeting room hire at the Citigate Sebel Waterfront Resort;
 - c. the invoice and receipt for the car parking charges at the Country Comfort;
 - d. the booking form for the 'Matt' and 'Kerry' Coastal voice advertisements due to be published on 11 May 2006, and copies of the proofs for these advertisements, together with a receipt from Newcastle Newspapers Pty Ltd dated 9 May 2006 for the amount of \$616; (this appears to be attached to this statement in error)
 - e. what appears to be the back of a business card, with the date 9 May 2006, and the amounts \$746.70 and \$1,540 (apparently relating to the dates 16 February and 2 March 2006 respectively) appearing, and the front of a business card for Angie Woods, Office Manager at the Central Coast Herald and Sun Weekly;
 - f. a receipt for \$9.10 from the Coffee Club at Tuggerah, dated 4 April 2006 bearing the handwritten annotation 'Kim - Sublime market.'
 - g. a receipt for \$110 from Computers & More Lakehaven dated 13 April 2006, and another illegible receipt, also from Computers & More;
 - h. a receipt from the Lake Haven Post Office for \$16, dated 29 March 2006;
 - i. various receipts for petrol expenses.
267. The following receipts also appear to relate to expenditure by Ms Stevens during the month to 20 April 2006:
- a. a receipt ([WIT.STE.001.0152](#)), and an EFTPOS receipt, dated 20 April 2006 from Fonziirelli restaurant for \$174.10. This receipt bears the handwritten annotation 'Surf Club volunteers dinner'

- b. A receipt ([WIT.STE.001.0152](#)) dated 5 May 2006 from the Caltex Star Mart in Forresters Beach for \$40;
- c. A receipt ([WIT.STE.001.0152](#)) with an illegible date from the Coles Express in Gokoran for \$40.
- d. A receipt dated 21 April 2006 ([HSUNO.002.0223](#)) from the Citigate Sebel Waterfront Resort for \$150 Conference Room hire and Food on 21 April 2006;
- e. three receipts dated 26 April 2006, 22 May 2006 and 9 June 2006 from the Carlton Crest Hotel ([WIT.WIL.001.0216](#)), each for \$15 for car parking, as well as what appears to be two further receipts for \$15 from the Carlton Crest Hotel for 18 May 2006 and 5 June 2006;
- f. two receipts for Marigold Restaurant, dated 10 May 2006 ([WIT.WIL.001.0216](#)), for \$93.50 and \$75.50 respectively, which both bear the handwritten annotation 'ALP Conf';
- g. a receipt and a Diners Club transaction record, both dated 13 April 2006 ([HSUNO.002.0264](#)) for \$110 from Computers & More, Lakehaven.

Payments to Waterfront Resort

268. Ms Stevens told FWA that payments every month or so of \$150 to the Waterfront Resort were for HSU meetings because 'they did not have an office and sometimes coffee shops were just a little bit hard (Stevens PN 383 - 390).
269. Ms Stevens booked accommodation for herself for 5 and 6 April 2006 in a 'Queen Bedded Room' at the Country Comfort in Sydney Central. According to the booking confirmation email ([HSUNO.002.0262](#)) the cost of this booking was \$274.85. The National Office have also provided an invoice from the Country Comfort Hotel addressed to Ms Stevens for \$45 in car parking charges for the period of 5 to 7 April 2006 ([HSUNO.002.0266](#))
270. The National Office has also produced an invoice from the Citigate Sebel Waterfront Resort for \$150 for a conference room booking on 18 April 2006 ([HSUNO.002.0261](#)).

Diners Club statement 20 May 2006

271. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 May 2006 ([HSUNO.002.0252](#)).
272. The statement shows that for the month to 20 May 2006 Ms Stevens spent \$3,720.50 on her Diners Club card. This included:
 - a. \$150 spent at the Waterfront Resort on 21 April 2006;
 - b. a further \$150 spent at the Waterfront Resort on 5 May 2006;
 - c. \$15 spent at the Carlton Crest Hotel on 26 April 2006;
 - d. a further \$15 spent at the Carlton Crest Hotel on 19 May 2006;
 - e. \$174.10 spent at Fonziirelli Restaurant on 20 April 2006;

- f. \$43.50 spent at Brando's Fountain Café on 9 May 2006;
 - g. \$170.21 spent in five separate transactions at petrol stations between 23 April and 19 May 2006;
 - h. \$40 spent at 'Newsphotos' on 28 April 2006;
 - i. \$9.99 spent at Central Coast Camera House on 4 May 2006;
 - j. \$2,286.70 spent at John Fairfax Publications P/L on 9 May 2006;
 - k. \$50 spent at Postshop Gorokan on 10 May 2006;
 - l. \$616 spent at John Fairfax Publications P/L on 12 May 2006.
273. The following receipts and invoices appear to relate to expenditure by Ms Stevens during the month to 20 May 2006:
- a. An invoice dated 5 May 2006 from the Citigate Sebel Waterfront Resort at The Entrance ([HSUNO.002.0251](#)) for \$150 for hire of a meeting room that day.
 - b. A receipt from Brando's Fountain Cafeteria dated 3 May 2006 (WIT.STE.001.0115) for \$43.50 which bears the handwritten annotation 'Donna - Sun Weekly'.

Payments to Fonzarelli's Restaurant

274. Ms Stevens told FWA that the payment to Fonzarelli's Restaurant of \$174.10 was for a Surf Club volunteers dinner where 'we presented a plaque for the surf club volunteers ... for the sunscreen handouts ... they were HSU members that ... had would come up, like, off their own time, to actually hand out the sunscreen on the beaches' (Stevens PN 378, PN 393 - 404). Mr Thomson 'guessed' that this payment was for the same event, which he said was attended by Kerri Pothurst, an Olympic Beach Volleyball Gold Medallist who was working with Surf Lifesaving, and that this was an example of 'trying to show the union in a different light to the traditional light' (Thomson PN 593).

Payments to John Fairfax Publications

275. Ms Stevens told FWA that a payment of \$3,000 to John Fairfax newspapers in May 2006 might have been for the Sun Weekly but Ms Stevens did not think it had anything to do with Coastal Voice (Stevens PN 353 - 357).
276. Handwritten annotations on the Diners Club statement indicate that someone has reviewed the expenditure listed in the Statement. In particular a tick appears next to each item of expenditure except the 28 April 2006 expenditure at 'Newsphotos'. This item instead has the annotation 'Struan rec wo invoice'. The two entries for expenditure of \$15 at Carlton Crest Hotel each bear the annotation 'Parking'. Ms Stevens has signed the statement.

Diners Club statement 20 June 2006

277. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 June 2006 ([HSUNO.021.0173](#)).

278. The statement shows that for the month to 20 June 2006 Ms Stevens spent \$1,930.47 on her Diners Club card. This included:
- a. Four separate payments of \$15 to the Carlton Crest Hotel, on 22 May, 5 June, 9 June and 19 June 2006;
 - b. \$150 spent at the Waterfront Resort on 13 June 2006;
 - c. \$28 spent at QVB Jet on 10 June 2006;
 - d. \$253 spent in four separate transactions at Marigold Restaurant on 10 June 2006;
 - e. \$42 spent at QVB Jet on 11 June 2006;
 - f. \$730 at Iguana Joes Waterfront Bar on 14 June 2006;
 - g. \$16.60 at Café Bluestone on 19 June 2006;
 - h. \$336 in eight separate transactions at petrol stations between 22 May and 19 June 2006 (in one case, the statement identifies that \$5.09 was spent on goods other than petrol);
 - i. \$24 at Secure Parking on 15 June 2006;
 - j. \$11.16 on a taxi fare on 5 June 2006;
 - k. \$82.05 at Eckersleys Erina on 24 May 2006;
 - l. \$29.88 at Big W Tuggerah on 26 May 2006;
 - m. \$86.97 at Dick Smith Electronics on 26 May 2006;
 - n. \$23.94 at K-Mart Gorokan on 26 May 2006;
 - o. \$11.16 at W C Penfold Stationery Store on 19 June 2006;
 - p. \$23.71 in interest;
 - q. \$20 at Postshop Lakehaven on 20 June 2006.
279. Someone has placed a tick next to all of the items of expenditure listed on the statement, save that:
- a. a cross has been placed next to the expenditure of \$16.60 at Café Bluestone on 19 June 2006;
 - b. a cross has been placed next to the narration 'Shop (GST) \$5.09' in the entry relating to expenditure at Quix Food Store on 19 June 2006;
 - c. Someone has written 'Do not pay - to be refunded' next to the entry for interest.
280. Ms Stevens has signed and dated the statement verifying that the charges in the statement are true and correct on 5 July 2006.

281. The following receipts and invoices, which are also attached to the credit card statement, appear to relate to expenditure by Ms Stevens during the month to 20 June 2006:
- a. An invoice from the Carlton Crest Hotel dated 22 May 2006 for \$15 ([WIT.STE.001.0167](#)) which indicates that the expenditure was for car parking.
 - b. A receipt dated 19 May 2006, apparently recording a payment of \$15 to the Carlton Crest Hotel ([WIT.STE.001.0167](#)).
 - c. An invoice dated 11 June 2006 from 'QVB JET' for \$42 (([WIT.STE.001.0167](#)) (WIT.STE.001.0168) for food and drinks which bears the handwritten annotation 'ALP State conf meeting'.
 - d. A further invoice from Marigold Restaurant, also dated 10 June 2006, for the amount of \$93.50 ([WIT.STE.001.0167](#))
 - e. An invoice from Marigold Restaurant from 10 June 2006 for an amount that appears to be \$75.50 ([WIT.STE.001.0168](#)), and which also bears the handwritten annotation 'ALP conf', and a record of payment by credit card to Marigold Restaurant on 10 June 2006 of the amount of \$16.50, which also bears the annotation 'ALP Conf'.
 - f. An invoice from Mobil Wahroonga (date illegible) for the amount of \$34.41 ([HSUNO.002.0232](#))
 - g. An invoice from Eckersleys dated 24 May 2006 for \$82.05 spent on art materials - which bears the handwritten annotation 'T-shirts', and a customer copy of a receipt from Eckersleys in the same amount ([HSUNO.021.0173](#)).
 - h. An invoice from Dick Smith Electronics in Tuggerah dated 26 May 2006 for \$86.97 three ink cartridges ([HSUNO.021.0173](#)) which bears the handwritten annotation 'Printer'.
 - i. An invoice from Lake Haven Post Office for \$20 dated 20 June 2006 for envelopes ([HSUNO.021.0173](#)).
 - j. An illegible invoice from Cabcharge which bears the handwritten annotation 'Syd' ([HSUNO.021.0173](#))
 - k. An invoice from Big W dated 26 May 2006 for \$29.88 ([HSUNO.002.0229](#)) which bears the handwritten annotation 'C Voice T-Shirts'.
 - l. An invoice from K Mart Lakehaven dated 26 May 2006 for \$23.94 ([HSUNO.002.0229](#)) which is for the purchase of a masonite clip board, which bears the handwritten annotation 'C/Voice'
 - m. An invoice from W C Penfolds Stationery dated 3 June 2006 for \$11.16 ([WIT.STE.001.0166](#)) which bears the handwritten annotation 'stationary'.
 - n. A receipt dated 5 June 2006, apparently recording a payment of \$15 to the Carlton Crest Hotel ([WIT.STE.001.0167](#)).

- o. invoice from the Carlton Crest Hotel dated 9 June 2006 for \$15 ([WIT.STE.001.0168](#)) which indicates that the expenditure was for car parking.
 - p. An invoice from Citigate Sebel Waterfront Resort dated 13 June 2006 for \$150 ([HSUNO.002.0222](#)) for meeting room rental, and a receipt dated 13 June 2006 ([WIT.STE.001.0164](#)) for the same transaction.
 - q. An invoice from Iguanas Waterfront Bar Pty Ltd dated 14 June 2006 for \$730 ([HSUNO.002.0224](#)) for 'Deposit for function on 23.06.06' which bears the handwritten annotation 'Youth I.R night C/Coast', and an EFTPOS transaction record dated 14 June 2006 evidencing payment of same ([HSUNO.002.0226](#)).
 - r. A receipt from Coles Express Gorokan dated 14 June 2006 bearing Ms Stevens signature ([HSUNO.002.0232](#)) authorising payment of \$35.59.
 - s. A receipt from Coles Express Gorokan dated 1 June 2006 for \$45.01 ([HSUNO.002.0232](#)).
 - t. An invoice from 'World Square' dated 10 June 2006 for \$24 ([WIT.STE.001.0170](#)) for parking.
 - u. An invoice from Star Mart at Caltex (date illegible) for \$45.16 ([WIT.STE.001.0170](#)).
 - v. A receipt from Coles Express Wahroonga dated 9 June 2006 for \$40.01 ([WIT.STE.001.0170](#)).
 - w. An illegible invoice from Mobil ([WIT.STE.001.0170](#)).
282. A receipt from the SGE Credit Union dated 10 July 2006 ([HSUNO.021.0192](#)) shows that on 18 July 2006 the HSU paid \$1,930.47 to Diners Club.

Payment to Iguana Joes

283. Ms Stevens told FWA that the payment to Iguana Joes was for a Your Rights at Work night. She said that (Stevens PN 418):
- Actually, it's quite funny but - no, the Your Rights at Work were trying to get younger people more activated. So between - they couldn't really ever get organised a youth - Unions New South Wales don't really have a youth wing; that's pretty much Young Labor, like, within the way the things go. But some young union members that were attached with Alicia - what her name used to be - from Unions New South Wales held this Your Rights at Work night at Iguanas and that was really to try and get the young people - they did up all these packs, you know, funky little things. So I think Della even came to speak at that because at that time he might of - - -
284. She said that the \$730 would have paid for the catering (Steven PN 424) and that she thought the HSU 'were quite happy to donate that to the young ones to try and, you know, help them out a bit.'

Diners Club statement 20 July 2006

285. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 July 2006 ([HSUNO.014.0197](#)).

286. The statement shows that for the month to 20 July 2006 Ms Stevens spent \$2,228.01 on her Diners Club card. This included:
- a. a payment of \$430.85 to WOTIF.com.au on 19 July 2006;
 - b. a payment of \$45.80 to the Mecure Hotel Sydney on 29 June 2006;
 - c. a payment of \$18.10 to Brando's Fountain Café on 7 July 2006;
 - d. two payments totalling \$90.06 to Coles Express on 24 June 2006 and 17 July 2006;
 - e. a payment of \$52 to Wilson Parking on 4 July 2006;
 - f. six payments for taxi fares totalling \$93.45 between 5 and 29 June 2006;
 - g. a payment of \$1,497 to Bing Lee Bennetts Green on 9 July 2006.
287. The following receipts produced by the National Office appear to evidence expenditure by Ms Stevens during this period:
- a. an invoice from Moretons Hotel dated \$29 for 20 July 2006, together with a receipt for the same amount, bearing the handwritten annotation 'volunteers lunch' ([HSUNO.002.0267](#));
 - b. an invoice dated 19 June 2006 from Coles Express Gorokan for the amount of \$52.78, together with an undated receipt for the same amount bearing Ms Stevens signature ([HSUNO.002.0267](#)).

Payments to Bing Lee Bennetts Green

288. Ms Stevens could not identify the payment of \$1,497 on 9 July 2006 to Bing Lee Bennetts Green (Stevens PN 454 - 457), although she did wonder whether it could have been for the purchase of a flat bed photocopier. Mr Thomson was unable to say what this expense was for (Thomson PN 656).

Diners Club statement 20 August 2006

289. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 August 2006 ([HSUNO.002.0293](#)).
290. The statement shows that for the month to 20 August 2006 Ms Stevens spent \$2,761.35 on her Diners Club card. This included:
- a. a payment of \$29 to Mortons on Sussex on 20 July 2006;
 - b. a payment of \$33 to the Beachcomber Resort on 26 July 2006;
 - c. a payment of \$112.85 to WOTIF.com.au on 2 August 2006;
 - d. a payment of \$38.30 to the Clarendon Hotel on 3 August 2006;
 - e. a payment of \$22.20 to Café Bluestone on 31 July 2006;
 - f. payments totalling \$266.02 in six separate transactions at petrol stations between 22 July and 19 August 2006;
 - g. a payment of \$60 at Wilson Parking on 2 August 2006;

- h. a payment of \$50 at Multiplex Parking on 19 August 2006;
 - i. a payment for a taxi fare of \$10.55 on 31 July 2006;
 - j. a payment of \$135.43 to Dick Smith Electronics on 23 July 2006;
 - k. a payment of \$376.60 to Lake Haven Colour Copy Shop on 24 July 2006;
 - l. a payment of \$16.50 at Lake Haven Colour Copy Shop on 14 August 2006;
 - m. interest payment of \$57.91;
 - n. payments to the Cumberland Newspaper Group on 7 August 2006 totalling \$1,552.24.
291. Someone has placed a tick next to each of these items of expenditure save for the expenditure at Dick Smith Electronics, and the entry for interest. Ms Stevens has signed a verification of the expenditure recorded in the statement (but has not dated her signature).
292. The following receipts produced by the National Office appear to evidence expenditure by Ms Stevens during this period:
- a. An invoice from Star Mart at Caltex Lakehaven (date illegible) for \$30 for petrol ([HSUNO.002.0269](#));
 - b. An invoice from Lake Haven Colour Copy Shop dated 24 July 2006 relating to a payment of \$376.60, which bears the handwritten annotation 'Petrol vouch flyers' ([HSUNO.002.0269](#));
 - c. An invoice from Bluestone Café dated 31 July 2006 for \$22.20 which bears the handwritten annotation 'Matt & Crissie Syd meet' ([HSUNO.002.0269](#));
 - d. an illegible invoice from Coles Express Gorokan ([HSUNO.002.0269](#));
 - e. An invoice from Wilson Parking dated 31 July 2006 for \$60 ([HSUNO.002.0270](#));
 - f. A receipt dated 3 August 2006 relating to a charge of \$38.30 from the Clarendon Hotel, and bearing the handwritten annotation 'yr@work meet Newcastle' ([HSUNO.002.0270](#));
 - g. An invoice dated 17 July 2006 from World Square for parking fees of \$50 ([HSUNO.002.0270](#));
 - h. A Cabcharge invoice dated 31 July 2006 for \$10.55 ([HSUNO.002.0270](#));
 - i. A receipt from Coles Express Gorokan dated 29 July 2006 for \$50.20, signed by Ms Stevens([HSUNO.002.0270](#));
 - j. A payment authorisation record for the Beachcomber Resort dated 26 July 2006 for \$33, signed by Ms Stevens([HSUNO.002.0270](#));
 - k. A booking confirmation and invoice from WOTIF.com.au dated 2 August 2006 for accommodation for Ms Stevens at the Hotel Ibis Newcastle for 3 August 2006, for the sum of \$112.85, which bears the handwritten annotation 'yr@work meeting' ([HSUNO.021.0158](#));

- l. an invoice from Coles Express Gorokan dated 11 August 2006 for \$50.09 signed by Ms Stevens ([HSUNO.002.0268](#));
 - m. An invoice dated 14 August 2006 from the Lake Haven Colour Copy Shop for the sum of \$16.50, and a receipt relating to the same transaction ([HSUNO.002.0268](#)).
293. An invoice dated 21 August 2006 from the Cumberland Newspaper Group addressed to Ms Stevens ([WIT.STE.001.0194](#)) indicates an outstanding account payable of \$844.56.

Payment to Beachcomber Resort

294. Ms Stevens said that 'little' payments to Beachcomber resort 'were obviously just for coffees, like, from the Restaurant' and the \$527 payment would have been a motel booking for Your Rights at Work (Stevens PN 427 - 438). Ms Stevens said she was trying to build networks very fast with people (Stevens PN 444). She said that: (Stevens PN 445):

I mean, they would all have retirees, you know, the MUA is one of the unions that have quite a large retiree network so if you can get on side with those guys, you know, and do the right thing they will help you out and that's sort of what we did, we - no-one will hand over membership lists from other unions, they just don't do it. It's like, no, we'll give your name out and they'll contact you. So that's why we did street stalls and everything else. We would have people come out going, 'Why didn't you tell me you needed some help,' and you would think, 'Oh God, you know, the communication is obviously working well then.' But that's really what it was all about.

295. Mr Thomson told FWA that most of the payments to the Beachcomber Resort would have been booking meeting rooms, although he did not specifically recall being at the Beachcomber resort for any meetings (Thomson PN 610 - 613).

Diners Club statement 20 September 2006

296. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 September 2006 ([HSUNO.002.0271](#)).
297. The statement shows that for the month to 20 August 2006 Ms Stevens spent \$5,455.65 on her Diners Club card. This included:
 - a. a payment of \$38.50 to the Beachcomber Resort on 11 September 2006;
 - b. two payments totalling \$207 to the Sydney Harbour Marriott on 15 September 2006;
 - c. a payment of \$26.80 to Café Bluestone on 21 August 2006;
 - d. a payment of \$26.80 to Café Bluestone on 4 September 2006;
 - e. a payment of \$43 to Wilson Parking on 23 August 2006;
 - f. a payment of \$43 to Wilson parking on 6 September 2006;
 - g. five payments totalling \$222.95 to petrol stations between 27 August and 18 September 2006;

- h. five payments for taxi fares totalling \$59.29 between 31 July and 12 September 2006;
- i. a payment of \$18.95 to Toukley Photo specialists on 25 August 2006;
- j. A payment of \$57.98 to Dick Smith Electronics on 5 September 2006;
- k. Four payments of \$1,159.12 each to the Cumberland Newspaper Group between 13 and 18 September 2006;
- l. a payment of \$74.15 to Postshop Gorokan on 19 September 2006.

Diners Club statement 20 October 2006

298. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 October 2006 ([HSUNO.014.0213](#)).
299. The statement shows that for the month to 20 October 2006 Ms Stevens spent \$1,458.14 on her Diners Club card. This included:
- a. a payment of \$26.80 to Café Bluestone on 25 September 2006;
 - b. a payment of \$42.20 to the Coffee Club Tuggerah on 17 October 2006;
 - c. five payments totalling \$176.77 to petrol stations between 23 September and 9 October 2006;
 - d. a payment of \$43 to Wilson Parking on 10 October 2006;
 - e. a payment of \$135.43 to Dick Smith Electronics on 21 September 2006;
 - f. a payment of \$47.76 to Bunnings Tuggerah on 21 September 2006;
 - g. a payment of \$15.90 to Copy Art & Office Prod on 10 October 2006;
 - h. a payment of \$60 to Computers and More on 19 October 2006;
 - i. a payment of \$116.99 to Prestige Party Hire Tuggerah on 21 September 2006;
 - j. three payments to Postshop Lake Haven totalling \$709.70 on 26 and 27 September 2006.

Diners Club statement 20 November 2006

300. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 November 2006 ([HSUNO.014.0218](#)).
301. The statement shows that for the month to 20 November 2006 Ms Stevens spent \$462.08 on her Diners Club card. This included:
- a. six payments totalling \$281.99 to service stations between 24 October and 17 November 2006;
 - b. six payments for taxi fares, all on 21 October 2006, totalling \$122.39;
 - c. a payment of \$56.95 to Copy Art & Office Prod on 20 October 2006.

Diners Club statement 20 December 2006

302. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 December 2006 ([HSUNO.014.0223](#)).
303. The statement shows that for the month to 20 December 2006 Ms Stevens spent \$776.59 on her Diners Club card. This included:
- a. a payment of \$60 to Virgin Blue on 8 December 2006 for travel by Joshua Stevens from Hobart to Sydney on 25 January 2006;
 - b. six payments totalling to service stations between 23 November and 15 December 2006, totalling \$314.42;
 - c. a payment of \$35 to Computers and more on 29 November 2006;
 - d. a payment of \$35 to Computers & More on 6 December 2006;
 - e. a payment of \$56.42 to Coles Toukley on 17 December 2006;
 - f. a payment of \$60 to Computers and More on 18 December 2006;
 - g. a payment of \$115 to Greater Union Cinemas on 23 November 2006;
 - h. a payment of \$100 to Postshop Gorokan on 11 December 2006.

Diners Club statement 20 January 2007

304. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 January 2007 ([HSUNO.014.0228](#)).
305. The statement shows that for the month to 20 January 2007 Ms Stevens spent \$573.22 on her Diners Club card. This included:
- a. a payment of \$24.42 to the Burleigh Heads Hotel, Queensland, on 31 December 2006;
 - b. four payments totalling \$195.47 to petrol stations between 21 December 2006 and 17 January 2007;
 - c. a payment of \$40.46 to Tandy 380 Bribie Island on 28 December 2006;
 - d. a payment of \$4.97 to K Mart Gorokan on 11 January 2007;
 - e. a payment of \$307.15 to WOTIF.com.au on 23 December 2007.

Diners Club statement 20 February 2007

306. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 February 2007 ([HSUNO.014.0231](#)).
307. The statement shows that for the month to 20 February 2007 Ms Stevens spent \$1,732.13 on her Diners Club card. This included:
- a. five payments totalling \$245.07 to petrol stations between 22 January and 12 February 2007;
 - b. a payment of \$52 to Wilson Parking on 6 February 2007;

- c. two payments for taxi fares totalling \$42.13 on 13 February 2007;
- d. a payment of \$696.04 to Officeworks on 8 February 2007;
- e. a payment of \$29.06 to Bunnings Tuggerah on 10 February 2007;
- f. a payment of \$41.31 to Coles Gorokan on 12 February 2007;
- g. a payment of \$120 to Computers and More on 14 February 2007;
- h. interest payments of \$30;
- i. a payment of \$100 to Postshop Gorokan on 30 January 2007;
- j. a payment of \$100 to Postshop Gorokan on 7 February 2007;
- k. a payment of \$225.77 to Telstra Corporation Ltd on 15 February 2007;
- l. a payment of \$50 to Postshop Gorokan on 20 February 2007.

Diners Club statement 20 March 2007

308. The National Office has produced a Diners' Club statement in Ms Stevens' name dated 20 March 2007 ([HSUNO.014.0234](#)).
309. The statement shows that for the month to 20 March 2007 Ms Stevens spent \$1,077.35 on her Diners Club card. This included:
- a. six payments totalling \$342.02 to petrol stations between 1 and 19 March 2007;
 - b. three payments for taxi fares totalling \$68.11;
 - c. one payment to Interflora Australia United Ltd of \$83.55 on 1 March 2007;
 - d. one payment of \$502.92 to Officeworks on 13 March 2007;
 - e. interest charges of \$30;
 - f. one payment of \$50 to Postshop Gorokan on 28 February 2007.

Payments to Interflora Australia

310. Ms Stevens told FWA that payments to Interflora in June 2007 and 15 November 2007 of \$191 and \$68 were for flowers, but Ms Stevens could not say definitively why. The June expense may have been for a wreath for workers who had died on the job, and the November one may have been for a Branch member who was a retired HSU member who passed away (Stevens PN 484 - 486).

Diners Club statement for April 2007

311. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 April 2007 ([HSUNO.014.0238](#)).
312. The statement shows that for the month to 20 April 2007 Ms Stevens spent \$2,839.15 on her Diners Club card. This included:
- a. one payment of \$527.50 to the Beachcomber Resort on 24 March 2007;

- b. five payments totalling \$239.70 to petrol stations between 24 March and 13 April 2007;
 - c. one taxi fare of \$45.62 on 4 April 2007;
 - d. one payment of \$27.50 to Coles Gorokan on 23 March 2007;
 - e. one payment of \$67.01 to Coles Toukley on 27 March 2007 and a further payment of \$37.56 on 16 April 2007;
 - f. one payment of \$1,587.93 to Officeworks on 11 April 2007;
 - g. one payment of \$89.90 to Joyce Mayne on 12 April 2007;
 - h. two payments totalling \$89.51 to Dick Smith Bateau Bay on 13 April 2007;
 - i. one payment of \$70 to Postshop at Wyong on 11 April 2007;
 - j. one payment of \$70 to Postshop at Ourimbah on 11 April 2007;
 - k. one payment of \$11.75 to Postshop at Long Jetty on 18 April 2007.
313. Ms Stevens told FWA that the payment of \$1,587 to Office works in April 2007 would have been for stationery or workstations for the campaign office (Stevens PN 458 - 463). Mr Thomson agreed that the National Office had bought a couple of desks for the campaign office fit out, and that the payment of \$1,587 to Officeworks in April 2007 was probably for this purpose (Thomson PN 423 - 425).

Diners Club statement for May 2007

314. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 April 2007 ([HSUNO.014.0242](#)).
315. The statement shows that for the month to 20 April 2007 Ms Stevens spent \$2,265.55 on her Diners Club card. This included:
- a. three payments totalling \$185.84 to petrol stations between 20 April and 7 May 2007;
 - b. one payment totalling \$60 to Wilson parking on 23 April 2007;
 - c. a payment of \$937.15 to WOTIF.COM Pty Ltd on 24 April 2007;
 - d. one taxi fare of \$9.99 on 26 April 2007;
 - e. two separate payments to Bunnings Tuggerah on 21 April 2007 totalling \$652.33, together with a credit of \$50 from Bunnings Tuggerah on the same date;
 - f. a payment of \$63.96 to Dick Smith at Bateau Bay on 30 April 2007;
 - g. a payment of \$144.01 to Officeworks Direct on 2 May 2007;
 - h. interest charges of \$32.32.

Diners Club statement 20 June 2007

316. The National Office has produced a Diners Club statement in Ms Steven's name dated 20 June 2007 ([HSUNO.014.0246](#)).
317. The statement shows that for the month to 20 June 2007 Ms Stevens spent \$511.33 on her Diners Club card. This included:
- six payments totalling \$287.37 to petrol stations between 24 May and 13 June 2007;
 - a payment of \$73.64 to Coles at Gorokan on 3 June 2007;
 - a payment of \$149.59 to Woolworths at Bateau Bay on 19 June 2007

Diners Club statement 20 July 2007

318. The National Office has produced a Diners Club statement in Ms Steven's name dated 20 July 2007 ([HSUNO.005.0062](#)).
319. The statement shows that for the month to 20 July 2007 Ms Stevens spent \$651.56 on her Diners Club card. This included:
- six payments totalling \$361.32 to petrol stations between 2 June and 20 July 2007;
 - a payment of \$2 to the Newcastle Airport Carpark on 30 June 2007;
 - a payment of \$191.55 to Interflora Australia United Ltd on 26 June 2007;
 - a payment of \$95.94 to Dick Smith at Bateau Bay on 20 July 2007.

Diners Club statement 20 August 2007

320. The National Office has produced a Diners Club statement in Ms Steven's name dated 20 August 2007 ([HSUNO.005.0056](#)).
321. The statement shows that for the month to 20 August 2007 Ms Stevens spent \$455.37 on her Diners Club card. This included:
- two payments totalling \$101.87 to petrol stations on 3 and 15 August 2007;
 - a payment of \$199 to Noosa Blue Resort on 11 August 2007;
 - a payment of \$58 to Ezipark in Pitt Street on 26 July 2007;
 - a payment of \$35 to Sydney Airport Parking on 12 August 2007;
 - two payments for taxi fares totalling \$21.26, both dated 26 July 2007; and
 - one payment of \$39.49 to W C Penfold Stationery Store on 26 July 2007.

Payments to Noosa Blue Resort

322. Ms Stevens told FWA that the payment for the Noosa Blue Resort would not be for anything in the Queensland town of Noosa, as she never went to Noosa (Stevens PN 446 - 449). Mr Thomson said (Thomson PN 625 - 627) that this would have been

one he would have queried if he had seen it without seeking the documents, but that he had no idea what it was for.

Diners Club statement 20 September 2007

323. The National Office has produced a Diners Club card statement in Ms Steven's name dated 20 September 2007 ([HSUNO.005.0050](#)).
324. The statement shows that for the month to 20 September 2007 Ms Stevens spent \$299.88 on her Diners Club card. This included:
- a. two payments totalling \$111.11 to petrol stations on 30 August and 10 September 2007;
 - b. two taxi fares totalling \$94.94 on 29 August 2007;
 - c. a payment of \$94.94 to Dick Smith at Bateau Bay on 7 September 2007.

Diners Club statement dated 20 October 2007

325. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 October 2006 ([HSUNO.005.0044](#)).
326. The statement shows that for the month to 20 October 2007 Ms Stevens spent \$731.50 on her Diners Club card. This included:
- a. a payment of \$206.15 at WOTIF.com Pty Ltd on 27 September 2007;
 - b. five payments totalling \$272.60 to various petrol stations between 21 September and 15 October 2007;
 - c. a payment of \$272.60 to Dick Smith Bateau Bay on 12 October 2007.
327. On 1 November 2007 Ms Ord wrote to Diners Club International ([HSUNO.005.0188](#)) asking them to close Diners Cards for Mr Robertson, Ms Walton and Mr Robinson, and to change the mailing address for cards for the HSU National Office, Mr Thomson, Mr McLeay, Ms Flavell, Ms Stevens and Mr Burke.

Diners Club statement 20 November 2007

328. The National Office has produced a Diners Club card statement in Ms Steven's name dated 20 November 2007 ([HSUNO.005.0034](#)).
329. The statement shows that for the month to 20 November 2007 Ms Stevens spent \$1,281.14 on her Diners Club card. This included:
- a. three payments totalling \$140.20 to petrol stations between 27 October and 18 November 2007;
 - b. a payment of \$150 to Joyce Mayne on 29 October 2007;
 - c. a payment of \$414 to Digical Bateau Bay on 8 November 2007;
 - d. a payment of \$68.55 to Interflora Australia 15 November 2007;
 - e. a payment of \$129.89 to Dick Smith Bateau Bay on 15 November 2007;

- f. a payment of \$301.50 to NRMA on 4 November 2007;
- g. a Rewards Membership payment of \$77 on 20 November 2007.

Payments to Joyce Mayne Electrical

- 330. Ms Stevens told FWA that a payment to Joyce Mayne electrical store would have been for a plug in air conditioner (Stevens PN 490 - 498).
- 331. Mr Thomson did not know what was the nature of \$150 spent at Joyce Mayne electrical store in about October 2005, but speculated that it could have been Ms Stevens purchasing a number of fold-up chairs and tables (Thomson PN 664).

Diners Club statement 20 December 2007

- 332. The National Office has produced a Diners Club statement in Ms Steven's name dated 20 December 2007 ([HSUNO.007.0010](#)).
- 333. The statement shows that for the month to 20 December 2007 Ms Stevens spent \$558.08 on her Diners Club card. This included:
 - a. three payments totalling \$164.86 to petrol stations between 23 November and 5 December 2007;
 - b. a taxi fare of \$35.52 on 4 December 2007;
 - c. a payment of \$326.95 to Dick Smith at Bateau Bay on 5 December 2007;
 - d. interest charges of \$30.

Diners Club statement 20 January 2008

- 334. The National Office has produced a Diners Club statement in Ms Stevens' name dated 20 January 2008 ([HSUNO.007.0014](#)). The statement shows that Ms Stevens did not spend any money on her Diners Club card for the month to 20 January 2008.

Summary of credit card expenditure incurred by Ms Stevens

- 335. The table below sets out Ms Stevens monthly expenditure on her Diners Club card on the basis of the credit card statements discussed in this chapter:

Month	Amount
December 2005	\$73.10
January 2006	\$1,100.22
February 2006	\$3,885.61
March 2006	\$1,649.56
April 2006	\$806.70
May 2006	\$3,720.50
June 2006	\$1,930.47
July 2006	\$2,228.01

Month	Amount
August 2006	\$2,761.35
September 2006	\$5,455.65
October 2006	\$1,458.14
November 2006	\$462.08
December 2006	\$776.59
January 2007	\$573.22
February 2007	\$1,732.13
March 2007	\$1,077.35
April 2007	\$2,839.15
May 2007	\$2,265.55
June 2007	\$511.33
July 2007	\$651.56
August 2007	\$455.37
September 2007	\$299.88
October 2007	\$731.50
November 2007	\$1,281.14
December 2007	\$558.08
Total	\$39,314.24

Other expenditure incurred by Ms Stevens

Summary of other expenditure incurred in relation to Ms Stevens

336. In addition to the expenses which Ms Stevens incurred on her Diners Club card it appears that Ms Stevens was also responsible for the additional expenses incurred by the National Office as discussed below at paragraphs 337 to 339 of this chapter, which total \$1,190.89.

Cumberland Newspaper Group

337. The National Office has produced an invoice from the Cumberland Newspaper Group dated 14 August 2006 ([HSUNO.002.0301](#)) for \$844.36 which is addressed to Ms Stevens.

Telstra invoices

338. The following Telstra invoices indicate that the National Office paid the following amounts for internet services to Ms Stevens:

Date	Reference	Amount
1 July 2007	HSUNO.006.0006	\$66.73
30 July 2007	HSUNO.006.0019	\$69.95
30 August 2007	HSUNO.006.0047	\$69.95
1 October 2007	HSUNO.006.0082	\$69.95
30 October 2007	HSUNO.006.0217	\$69.95
Total		\$346.53

339. It is not possible to tell whether the HSU National Office made any payments for internet services to Ms Stevens before the period covered by the 1 July 2007 invoice, or after the period covered by the 30 October 2007 invoice.

Mr Thomson's submissions

340. With respect to findings 125 to 128, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening Sub-rule 36(b) of the HSU Rules and any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule. Mr Thomson had the power to employ National Office staff, as submitted in chapter 4 at paragraphs 65, 66, 109, 110, 111, 148, 178, 194 and 195.

Conclusions

341. I have set out at paragraphs 88 to 113 of chapter 3 my responses to Mr Thomson's 'introductory' submissions regarding the power of the National Secretary to employ staff and to determine their wages and conditions.
342. I have found at finding 1 on page 175 in chapter 4 that Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing Criselee Stevens on behalf of the National Office without seeking the authorisation of either the National Council or National Executive to do so when her employment was not part of the business of the Union.

343. It is clear that Mr Thomson made a unilateral decision, without reference to the National Executive, to employ Ms Stevens as an ACTU Organising Works Trainee in late 2005. This would have been at about the time Mr Thomson moved to live in NSW. With the possible exception of Mr Williamson, it is clear that Mr Thomson took no steps to bring Ms Stevens' employment to the attention of other members of the National Executive.¹⁴⁶ In particular:
- a. there is no evidence that he ever notified a meeting of National Executive of Ms Stevens' employment;
 - b. apart from some limited knowledge by Ms Jackson, there appears to have been no knowledge of Ms Stevens' employment among members of the National Executive other than Mr Thomson and Mr Williamson, and even Mr Williamson was unable to tell FWA why Ms Stevens had been employed or what she did for the HSU.
344. It is clear from Ms Stevens' own evidence about what she did that she had no involvement in ordinary activities of the HSU that exposed her to engagement with employees in the workplace. Rather, it appears that the overwhelming majority, and perhaps all, of her time was spent on activities on the Central Coast, which were unknown to anyone in the National Office apart from Mr Thomson, and were closely connected to, if not entirely directed towards, building his profile within the electorate of Dobell, and later towards campaigning for his election as the member of Dobell.
345. Information set out at paragraphs 49 to 64 of chapter 4 establishes that the National Executive did not authorise Ms Stevens' employment by the National Office.
346. Moreover it is clear that none of the activities which Ms Stevens was engaged in could be described as 'the business' of the Union and that no records have been kept by the National Office which demonstrate that any particular activity engaged in by Ms Stevens was the business of the Union. Nor has the National Office retained records which demonstrate that any particular expenditure incurred by Ms Stevens was expenditure on or for a purpose reasonably incidental to the general administration of the HSU. The Diners Club statements which are discussed above at paragraphs 251 to 334 of this chapter show that between November 2005 and December 2007 Ms Stevens spent \$39,314.24. Moreover, based on the matters set out above at paragraphs 241 to 245 and 336 to 339 of this chapter it appears that the costs to the National Office which directly arise out of decision to employ Ms Stevens to work on activities which were not business of the HSU include at least:
- a. the estimated employment costs of Ms Stevens (\$114,208.83);
 - b. expenditure of \$39,314.24 incurred by Ms Stevens on her National Office Diners Club card;
 - c. other expenditure which appears to have been incurred by Ms Stevens totalling \$1,190.89.

¹⁴⁶ See paragraph 230 above of this chapter where Ms Jackson stated during her second interview (Jackson (2) PN 291) with FWA that she only learnt of the employment of Ms Stevens and Mr Burke by the HSU National Office after a staff member from her Branch met them at a Your Rights at Work meeting.

347. These amounts total \$154,713.96. This figure does not include the value of the time spent by other staff of the National Office, including in particular Mr Thomson, Ms Walton and Ms Ord, in dealing with issues arising out of Ms Stevens' employment, including her supervision, her ACTU traineeship and general administration of her employment.
348. At a minimum, a reasonable person in Mr Thomson's position would have:
- a. sought the approval of the National Executive to employ Ms Stevens, and ensured that this approval was formally recorded in the minutes of National Executive;
 - b. sought the approval of National Executive either for each specific expense incurred by Ms Stevens in the course of her employment between November 2005 and December 2007, or alternatively, for a set amount of expenditure by Ms Stevens;
 - c. ensured that his personal conflict of interest in relation to each such resolution was declared to the meeting prior to the resolution being put to a vote, and recorded in the minutes of the meeting;
 - d. ensured that periodic reports were made to National Executive about the work of Ms Stevens on the Central Coast, and about any expenditure incurred by Ms Stevens; and
 - e. ensured that appropriate transactional records of all expenditure of Ms Stevens were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the Australian Electoral Commission and the AIR.
349. Mr Thomson could not, acting in good faith, have employed Ms Stevens, and purported to authorise this expenditure, without:
- a. the knowledge or approval of the National Executive;
 - b. first taking steps to disclose to the National Executive his interest in having Ms Stevens employed by the National Office and in having such expenditure approved, and ensuring that this was recorded in the minutes of the meeting;
 - c. ensuring that periodic reports were made to National Executive about the work of Ms Stevens on the Central Coast, and about any expenditure incurred by Ms Stevens; and
 - d. ensuring that appropriate transactional records of all expenditure of Ms Stevens were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the Australian Electoral Commission and the AIR.

Findings 125 to 128 - Employment of, and authorising expenditure incurred by, Ms Stevens

- 125.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise, on behalf of the National Office, the expenditure by, or relating to, Ms Stevens of National Office funds referred to in paragraphs 241 to 339 of this chapter totalling \$154,713.96 which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.
- 126.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary in the same circumstances as Mr Thomson by employing Ms Stevens and purporting to authorise, expenditure of National Office funds referred to in paragraphs 241 to 339 of this chapter totalling \$154,713.96 by, or relating to, Ms Stevens which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.
- 127.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the organisation, and for a proper purpose by employing Ms Stevens and by purporting to authorise expenditure of National Office funds referred to in paragraphs 241 to 339 of this chapter totalling \$154,713.96 by, or relating to, Ms Stevens which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.
- 128.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage (namely, to advance his prospects of becoming elected to Parliament) for himself by employing Ms Stevens and by purporting to authorise, expenditure of, National Office funds referred to in paragraphs 241 to 339 of this chapter totalling \$154,713.96 by, or relating to, Ms Stevens which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.

Coastal Voice

Authorising expenditure of National Office funds on activities of Coastal Voice

350. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 129 to 133 - Authorising expenditure of National Office funds on activities of Coastal Voice, which are set out below at page 702.

What was Coastal Voice?

351. It is clear from financial records provided to FWA by the National Office that the National Office spent a sum of money in and around May 2006 on an organisation known as 'Coastal Voice'. It is clear from those records that Ms Stevens had some significant involvement in that expenditure. Other documents obtained by FWA from the NSW Office of Fair Trading and from the Gosford City Council, as well as from the Coastal Voice website, demonstrate that Mr Thomson was closely associated with Coastal Voice.

352. According to Ms Stevens (Stevens PN 171):

Coastal Voice was a community group set up to try and build, I guess, a non-political but community campaign because there are a lot of people that went, 'Your Rights at Work is Labor. You know, the others are Libs.' But there was a fair lot of people in the middle that actually were - didn't want to be badged as one or the other that were actually quite involved in their community and therefore didn't feel comfortable wearing a T-shirt, you know, didn't really want to do that. They wanted to do something else, and actually get other localised issues out there. You know, there's a couple of bad employers on the Central Coast, and, well, you have to be careful because you can't bag them publicly.

... You know, people wanted an opportunity to be able to concentrate on Tuggerah Lakes without being badged as being a Green, you know, or the roads, you know, which was actually a state issue but, yes, it gets a bit complicated with federal roads and all that sort of stuff. So the whole idea was to try and get those people that weren't necessarily politically active but were interested and weren't happy with what was going on. So I think, you know, the mistake I made was I was trying to sort of jump into every group, you know, I possibly could to help out and of course you can only stretch yourself so far, and what I found was that Coastal Voice had sort of been lampooned by - and it wasn't even intentionally. It was just that you would go to a meeting and a lot of people that were there were actually pro-union or were pro-ALP, so you weren't getting the demographic of people that we thought we would, which was unfortunate, but, yes, it did some good stuff.

353. Ms Stevens also said that (Stevens PN 190):

The objective was that without necessarily having a staunch political banner behind, there was a lot of people that were interested in Tuggerah Lakes but once you put either the Greens or ALP in that sentence they would just go, 'All of youse are hopeless,' you know? 'No-one has fixed Tuggerah Lakes in 20 years. Don't want anything to do about it,' but if you can actually get into the issue and find out what the issue is, then those

people are more willing to back the issue than they are, you know, a party or if they think that they're involved in - you know, or being tricked into something, and some people did. You know, there was the manufacturing awards night about three weeks later and two of the people that were involved that were actually in the paper - because we ran these ads where all different people from the community got to put in their little tag like a picture of their face. You know, 'I've been living on the Central Coast for 30 years. I think Tuggerah Lakes needs to be fixed once and for all.' A couple of these people were actually attacked at a manufacturing awards night and told that basically it was a whole Labor, you know, ruse and that they had been sucked in and all that sort of thing and, you know, why people - and some people still have that opinion. That was never the intention. It's just that I couldn't perhaps differentiate between which cap that I was wearing on the day.

354. Perhaps in summary, Ms Stevens said that (Stevens PN 176):

I just thought it would be a great idea to have something that wasn't as political. The Your Rights at Work stuff was pretty in-your-face, you know, and I thought we could pick up soft votes and get people activated and interested, and fundamentally I do believe that.

355. At least as far as Ms Stevens was concerned, it is clear that Coastal Voice was intended to be a community group that would set out to engage with persons on the Central Coast who did not identify themselves as being supporters of any particular political party. Ms Stevens considered such a community group might become involved in local issues of concern to people on the Central Coast. In particular she nominated Tuggerah Lakes as an issue.

356. Mr Thomson disagreed with Ms Stevens' suggestion that the purpose of Coastal Voice was to pick up soft votes (Thomson PN 45 - 459):

No. I mean, it wasn't political. We had some people who I didn't - well, certainly voted for the Liberal Party that you could probably now describe as Malcolm Fraser Liberals who were part of Coastal Voice. We held a forum on public transport that was very critical of the state Labor government, but it was a big issue on the coast and it's relevance to ... Yes, we had a variety of things that we did. We did a youth forum on drugs and alcohol, we tried to get - we held that at Wyong High School and had police representatives there speaking. Most of the events I didn't speak at.

The one that I - the only one that I really recall playing a major role was actually before Coastal Voice was formed, and that was aged care one because that was an area where we had some expertise in. The rest was supporting that community group

357. Mr Thomson answered a question about how Coastal Voice was established as follows (Thomson PN 444 - 445):

We were looking - one of the things that - which will probably go to some of your other questions later - but over a period of time we were trying to encourage our branches to take more organising trainees from the ACTU. They took very few as opposed to other unions who took a lot. We even had a situation where we had a union official from the United States and Karene Walton, who was working in my office at the time, seconded or gave both to the Victoria number 1 branch to help with an aged care campaign.

We eventually decided to take a trainee on ourselves and help train her up and the area - part of her responsibility was community activism along - the primary thing was the Your Rights at Work campaign but how you get into the community with those sorts of issues.

So there was stuff with that. She had a discussion with me about one of the things on the Central Coast is lack of identity, being caught between Sydney and Newcastle, missing out on particular issues, and that we could look at either plugging into an existing organisation or forming our own. We did an aged care forum on the coast and out of that, at the end of that, there were a number of people who were more interested in doing a range of other forums and from that Coastal Voice came about and we put some money into that over the time.

358. Mr Thomson also said that (Thomson PN 464):

I'm not too sure exactly what Crissie meant with that. Crissie was the FEC secretary, so maybe she was, in her mind, blurring some of those roles, but that was never the way the organisation operated. We had - for a period of time we had Laurie McKenna, the coach of the Mariners as our patron, and at our official launch the Mariners came too. they're not coming to a Labor front. The Liberal Party have tried - have gone through this kind of investigation on a number of occasions as well too, and that just - it wasn't what the purpose of Coastal Voice was about.

359. On balance, there is little difference between Ms Stevens characterisation of Coastal Voice and Mr Thomson's.

360. Mr Burke told FWA (Burke PN 243) that Coastal Voice was a 'community organisation' set up by Mr Thomson and that:

... my role was basically to get a community dialogue going, and to put particular views of the union out there in the public sphere. My role with Coastal Voice was with the web site and with the newsletters that went out with it. We focussed on - I can't recall everything that was written in the newsletter. I remember one of the front pages - there may have been two or three newsletters. One was about dental health and the Health Services Union, and I believe one involved industrial relations.

361. Mr Burke said that Coastal Voice was 'quite issue based and quite union issues based as well' (Burke PN 271). He agreed that there would have been glossy newsletters distributed by Coastal Voice (Burke PN 273). Ms Stevens thought that Coastal Voice would have produced one single one paged newsletter (Stevens PN 210 - 212).

362. It does appear that Mr Burke was not as closely involved with Coastal Voice as either Ms Stevens or Mr Thomson. For example Mr Burke said it was just his impression that Mr Thomson established Coastal Voice and he had no actual knowledge of whether he did (Burke PN 245). He thought Ms Stevens did a lot of ground work for Coastal Voice and it was possible that she was 'correct in thinking that from her perception' she and a group of other persons established Coastal Voice (Burke PN 247).

363. Apart from Mr Thomson and Ms Stevens there was no other member of the National Executive that Mr Burke could recall having anything to do with Coastal Voice (Burke PN 269).

Establishing Coastal Voice

364. Ms Stevens told FWA at interview (Stevens PN 176) that she was one of six persons at a meeting that set up Coastal Voice, and that she was the original secretary. She

described them as 'the anti-Liberal camp' which included a lot of Green voters, independent voters, and informal voters.

365. Asked whether there was a connection between Coastal Voice and the HSU, Ms Stevens said (Stevens PN 177 - 178) (emphasis added):

I think the HSU paid for the web site so Craig understood what we were trying to do, you know. I think that was a donation made from the union but there wasn't - we certainly didn't go to union meetings and ask people to join Coastal Voice and we didn't try and trick anyone into what Coastal Voice was. I just thought it would be a great idea to have something that wasn't as political. **The Your Rights at Work stuff was pretty in-your-face, you know, and I thought we could pick up soft votes and get people activated and interested, and fundamentally I do believe that.** The small communities, you know, thrive better when people are actually educated and involved in their local community. I think things just turn around a little bit better and that's what I was sort of hoping to do there, but unfortunately it sort of - there were just too many fingers in the pie, and like any other group, whether it's P and C or any - people do come in with their agendas.

There was never a, 'We are going to endorse Craig Thomson as a candidate,' or anything like that. It wasn't like that at all. In fact Craig didn't even have his name attached to it. He came to the first meeting. He did say to me that he thought that I had bit off a bit more than I could chew but, you know, 'Off you go and see what you can do,' and, yes, like I said, we did - when I say 'we' there were another lady, Isabel Lowe, she's an older member of the branch, and I've got to say my family are all over the place so Isabel to me is a bit more like my secondary mum. I have a very personal relationship with her and she would help me out where she could.

366. Having identified herself and Ms Lowe as two of the six persons who founded Coastal Voice, Ms Stevens was asked if she could remember the names of the other four people. She answered (Stevens PN 182) that she thought that Brian Kirk was another one, but could not name the other three persons. She said (Stevens PN 184) that the description of Mr Thomson in a newspaper article as being the president of Coastal Voice was inaccurate: 'I don't think he was ever president.'
367. Despite Ms Stevens' claim that Mr Thomson 'didn't even have [his] name attached to it' and that she did not think that he was ever president of Coastal Voice, it is clear from the documents discussed below at paragraphs 388 to 394 of this chapter, as well as from what Mr Thomson himself told FWA, that he was not merely involved in Coastal Voice, but was its President, Public Officer, and public face. In fact, on the basis of the material before FWA, it appears that Mr Thomson was the sole publicly identifiable face of Coastal Voice.

Coastal Voice Website

368. Documents accessed by FWA from the Coastal Voice website on 17 June 2010 demonstrate that Mr Thomson was the principal public contact for Coastal Voice. Mr Thomson's name and phone number is given on:
- a. the page headed 'Get Involved' ([FWA.006.0007](#));
 - b. the page headed 'Contact Coastal Voice' ([FWA.006.0008](#));

- c. the page headed 'Media' ([FWA.006.0008](#)).

Incorporation of Coastal Voice

369. Mr Thomson completed an application for incorporation of Coastal Voice Community Group ([WIT.WIL.001.0223](#)) on 1 May 2006. This application was received by the NSW Office of Fair Trading on 3 May 2006. In the application, Mr Thomson described the objects of Coastal Voice as:
- Protect rights; especially of the elderly and youth; promote provision of quality aged care services; health care services.
370. Mr Thomson also described the principal activities of Coastal Voice as:
- volunteer aged care hotline; seek opinions of Central Coast residents on key community issues.
371. Mr Thomson stated that the sources of income of Coastal Voice would be:
- membership fees, subscriptions and donations.
372. Mr Thomson stated that the persons or organisations with which Coastal Voice would deal were:
- Local councils, state and federal governments, local hospitals and aged care facilities.
373. Mr Thomson signed a declaration on the form that the particulars contained within the application were true.
374. The NSW Registry of Co-Operatives & Associations issued a Certificate of Incorporation of Coastal Voice on 22 June 2006 ([WIT.WIL.001.0220](#)).
375. Mr Thomson are also recorded as the Public Officer of Coastal Voice in the NSW Office of Fair Trading Association Extract ([WIT.WIL.001.0221](#)).

Involvement of the National Office in Coastal Voice

376. Mr Thomson said that he was the president of Coastal Voice up until March 2007 (Thomson PN 451), but that under the by-laws of the organisation he had to resign when he became pre-selected for Dobell.
377. Mr Thomson said that some HSU monies were used to support Coastal Voice (Thomson PN 453), and that this was because (Thomson PN 455):
- We'd worked on a number of occasions with different community groups and different areas. This was, you know, partly using Crissie as an experiment, looking at new ways of doing things. It was in an area that I could gauge its effectiveness a little bit more than in some other places. So that was, you know, partly the reason. It wasn't a major thing for us in any kind of sense. It was largely an out of hours activity that had some benefit to the union through better community links and those sorts of things, but - and that wasn't inconsistent with what we do in some other places.
378. In essence Mr Thomson claimed that Ms Stevens suggested 'plugging into' an existing organisation on the Central Coast or forming their own to get into 'community activism' and that Coastal Voice 'came about' as the result of interest expressed at

an Aged Care forum that the HSU ran on the Central Coast. Moreover, Mr Thomson claimed that part of the purpose of Coastal Voice was to use Ms Stevens 'as an experiment using new ways to do things.' However the weight of evidence suggests that the National Executive was never informed about the Coastal Voice experiment or the money which Mr Thomson had spent on it.

379. There is no reference to Coastal Voice in any minutes of the National Executive meeting provided to FWA.
380. At interview, Mr Brown agreed (Brown PN 367) that the name 'Coastal Voice' was never mentioned at a National Council meeting and no information was provided about it. He said that payments of \$2,286.70 to John Fairfax Publications Pty Ltd for the 'Matt' and 'Kerry' ads were 'absolutely not' discussed or approved by the National Executive (Brown PN 374).
381. Ms Kelly told FWA (Kelly PN 667 - 670) that she had not heard of Coastal Voice and the National Office never considered whether to support it.
382. Ms Jackson told FWA (Jackson (1) PN 260 - 261) that she did not know if the National Office ever approved expenditure for Coastal Voice, but said that they may have.
383. Mr Williamson told FWA that (Williamson PN 402):
- I know [Coastal Voice] was a local sort of organisation on the Central Coast to raise awareness about issues on the Central Coast, yes. Its terms of reference, I don't know anything about that.
384. Mr Williamson could not recall the National Office ever considering whether to support the organisation (Williamson PN 404). He said he did not know how it was established, or when, or by whom, but that (Williamson PN 412):
- I think it was obviously, you know, an organisation to assist again to work out the values of work in, you know, Your Rights at Work over WorkChoices.
385. Mr Williamson said that he did not know of any relationship between Mr Thomson and Coastal Voice other than that Coastal Voice were 'fairly active in supporting' Mr Thomson in his campaign (Williamson PN 418) so there must have been a relationship.
386. Mr Williamson did not know that it was Mr Thomson who had applied for the incorporation of Coastal Voice (Williamson PN 434), but said that 'they were a fairly active group of people assisting him so he must have had some buy-in somewhere, obviously' (Williamson PN 436). He did not know that Mr Thomson was the president, main contact, and media liaison person for Coastal Voice (Williamson PN 438). He did not know whether the National Office paid for other costs associated with the launch of Coastal Voice on Terrigal beach on 27 May 2006 (Williamson PN 440). He did not attend the launch (Williamson PN 444).
387. Mr Williamson could not recall expenditure of \$616 by Ms Stevens for advertising for Coastal Voice in the Sun Weekly ever being authorised by the National Executive (Williamson PN 422). Nor did he know (Williamson PN 430) whether expenditure by

Ms Stevens in May 2006 on T-shirts and art supplies to promote Coastal Voice was ever authorised by the National Executive.

388. The National Office has produced 'proofs' for newspaper advertisements featuring 'Matt' and 'Kerry'. The 'Matt' proof ([HSUNO.002.0207](#)) has a picture of Mr Burke, and the quotation:

My name is Matt and I believe young people should have a say in the future of their community. That's why I'm a member of Coastal Voice (Wamberal)'.

389. The 'Kerry' proof ([WIT.BRO.003.0068](#)) has a picture of a woman who Ms Stevens identified at interview (Stevens PN 196) as being Kerry Stafford, and the quotation:

My name is Kerry and I have lived on the Central Coast for 17 years. I am involved in the Coastal Voice community group because I want my children to have a voice in the future of our area (Tuggerawong).

390. Both proofs also feature website address www.coastalvoice.com.au and the HSU Logo. However the HSU logo has been crossed out in pen on each proof.

391. Ms Stevens said that the HSU logos did not appear in the final advertisement (Stevens PN 200) because:

We had decided that you couldn't put them together and here's the problem again because people would think that they were one and the same so - I don't think they did appear in the final ads.

Expenditure on Coastal Voice

392. The HSU has produced a booking form ([HSUNO.002.0258](#)) which has been completed by Ms Stevens. The form shows that Ms Stevens placed newspaper advertisements on behalf of the National Office to appear on 11 May 2006 based on the 'Matt' and 'Kerry' proofs, and that each advertisement would cost \$308. This is consistent with the following handwritten annotations on the 'Kerry' proof:

308 +

308

616

393. A further copy of this booking form ([WIT.BRO.003.0065](#)) contains what appears to be a photocopied label with the following written in hand:

Rec 847488 9.5.06

\$2286.70

\$746.70 7809505 16/2/06

1540 00 7815806 2/3/06

394. At interview, Ms Stevens identified these proofs as being for the advertisements placed in the Sun weekly newspaper (Stevens PN 193 - 195).

395. A receipt from Newcastle Newspapers Pty Limited dated 9 May 2006 ([HSUNO.002.0259](#)) indicates that they received a payment of \$616 by Diners Club card from 'Health Services Union' for 'PIA Sun Weekly'.
396. When asked at interview whether the expenditure of \$616 of National Office funds on the 'Matt' and 'Kerry' ads was ever authorised by the National Executive or the Finance Committee, Mr Thomson stated (Thomson PN 477):
- Well, it fell very easily within my delegation and was not outside the budgetary constraints that we had in terms of where we spend money. Supporting community groups wasn't particularly unusual, but it was, in some senses - it was more of the exciting, cutting edge stuff that unions were looking at doing, particularly from the United States example that we were spending a lot of time studying.
397. Ms Stevens told FWA at interview (Stevens PN 252 - 273) that she brought about 12 '\$2 T-shirts from Big W and screen printed them with supplies that she bought at Eckersleys.
398. Mr Thomson stated (Thomson PN 479) that he viewed this expenditure by Ms Stevens on T-shirts and art supplies in May 2006 in the same way as the expenditure on the 'Matt' and 'Kerry' advertisements.
399. Mr Thomson told FWA at interview (Thomson PN 447) that the HSU paid for the domain name for the Coastal Voice website.

Launch of Coastal Voice

400. Coastal Voice Community Group Incorporated was incorporated by the NSW Office of Fair Trading on 3 May 2006 ([WIT.WIL.001.0222](#)).
401. On 4 May 2006 a person who identified themselves as the President of Coastal Voice (which was a position Mr Thomson held) lodged an Event Booking Application Form with the Gosford City Council ([GOS.001.0004](#)). The form sought permission to hold an event described as the 'Coastal Voice Community Group Launch' on the Terrigal Reserve on 27 May 2006, between midday and 2.30pm. The form described the event as a Community BBQ with two clowns and face painting. The form also sought permission to erect a marquee. Paragraph 24 of this form stated that:
- A Public Liability Insurance cover for a minimum of \$10,000,000 is to be supplied by the following applicants: Sporting codes, incorporated bodies, users occupying a facility more than ten times a year or hirers gaining financial benefit from an event.
402. The form then states 'Have you attached a copy of your Public Liability/insurance? Yes/No'. It does not appear that either choice has been indicated by whoever completed the form.
403. On 5 May 2006 Mr Thomson emailed Ms Ord ([HSUNO.022.0142](#)) about an unrelated issue. However in the course of that email he said to Ms Ord:
- I also need you to check with our insurance company about public liability insurance for our Community group and directors liability as well.
- Give me a call.

404. On 8 May 2006 Ms Kylie Yeend, the Coordinator Parks & Waterways with the Gosford City Council, wrote to the Coastal Voice Community Group ([GOS.001.0002](#)) notifying them that approval had been granted to use the Terrigal Reserve to conduct the Coastal Voice Community Group Community BBQ on 27 May 2006. The letter advised that there would be a \$60 fee to hire the reserve, and that a security deposit of \$260 would also be required. The letter also advised that the approval was subject to receipt of a copy of the Coastal Voice Community Group's public liability insurance for \$10 million and stated that 'Documentation required along with payment of the scheduled fees will need to be received ten clear working days prior to the event.'
405. There is no evidence before FWA that establishes how Mr Thomson managed to satisfy the Gosford City Council that Coastal Voice held public liability insurance cover for \$10 million.
406. On 18 May 2006 Mr Thomson completed a 'Memorandum' ([HSUNO.002.0246](#)) indicating that he had withdrawn \$320 in cash to pay the cost of access to the Terrigal Reserve (including the security deposit). The form of the Memorandum was as follows:

MEMORANDUM

DATE: 18 May 2006

LOCATION: Gosford

FUNCTION: Beazley IR Council permission documentation and fee

PRESENT: 150 delegates

AMOUNT: \$320

The above meeting has been claimed as a business expense

Craig Thomson

National Secretary

407. Mr Thomson said at interview (Thomson PN 481 - 482) that the then Federal Opposition Leader, Mr Beazley, was speaking at an ALP function on Terrigal Reserve on the same day (but at a separate location) to the Coastal Voice Community Group Launch. Mr Thomson said that:

There were two events that were on at the same time, one of which we - was a Your Rights at Work industrial relations meeting which the then leader of the opposition was speaking at. Coastal Voice took advantage of that and had it's launch immediately after on Terrigal Beach to hopefully have those people come over, but at that launch we were very careful to specifically exclude Mr Beasley from speaking, even though he wanted to speak at it, because again it was too obviously political. There had already been a political event which I participated at in a different capacity, but we probably, you know, went too close to blurring the lines that day in my view.

We would have been better doing them on separate days. But they were intended to be separate events.

408. The Commonwealth Bank Statement for Mr Thomson's CBA Mastercard dated 26 May 2006 ([HSUNO.021.0247](#)) identifies a \$320 payment to the Gosford City Council on 19 May 2006. Mr Thomson has signed the statement in a box labelled 'I confirm the above expenditure (signature of cardholder)'. This was expenditure clearly related to Coastal Voice and not Mr Beazley's function as indicated in Mr Thomson's memorandum of 18 May.
409. On 24 May 2006 Mr Thomson completed a 'Memorandum' ([HSUNO.002.0247](#)) indicating that he had withdrawn \$300 in cash. The form of the Memorandum was as follows:

MEMORANDUM

DATE: 24 May 2006
LOCATION: Terrigal
FUNCTION: Beazley IR
PRESENT: 450 delegates
AMOUNT: \$300

The above meeting has been claimed as a business expense

Craig Thomson

National Secretary

410. The Commonwealth Bank Statement for Mr Thomson's CBA Mastercard dated 26 May 2006 ([HSUNO.021.0247](#)) identifies a \$300 cash withdrawal from a Westpac terminal in Terrigal on 24 May 2006. Mr Thomson has signed the statement in a box labelled 'I confirm the above expenditure (signature of cardholder)'
411. The Commonwealth Bank Statement for Mr Thomson's CBA Mastercard dated 27 June 2006 ([HSUNO.001.0280](#)) identifies payments on 27 May 2006 to Prestige Party Hire (\$273.38) and GT Party Hire (\$116).
412. Mr Thomson said at interview (Thomson PN 482) that:
- Now, I can't recall whether we made some contribution to the actual launch of that or whether we were contributing to the IR forum where Beasley and Della Bosca and myself were speaking, and that was at the Crowne Plaza, so it would probably depend on - - -
413. When shown the statement identifying payments to Prestige Party Hire and GT Party Hire Mr Thomson could not recall which of the two events on Terrigal Beach those payments were for (Thomson PN 491).

Mr Thomson's resignation from Coastal Voice

414. On 17 June 2010 FWA was able to retrieve a page from the Coastal Voice Website ([FWA.006.0010](#)) which carries an article stating that Mr Thomson had resigned from his position with Coastal Voice. The article states:

March 18th, 2007

Craig Thomson resigns from Coastal Voice

Coastal Voice president Craig Thomson has resigned from his position after announcing he is seeking Labor Party pre-selection for the Federal seat of Dobell.

'I can no longer have anything to do with Coastal Voice after making this announcement - we made a Rule early in the piece that you could not be a candidate for any political party and also be a member of Coastal Voice,' said Mr Thomson.

Coastal Voice will continue to operate as an open forum where anyone can give their opinion on how to make the Central Coast the best it can be.

Coastal Voice wishes Craig all the best and is confident that he'll put the Central Coast first in his political endeavours.

Coastal Voice today

415. Mr Thomson told FWA at interview that Coastal Voice still existed, but that it was not particularly active (Thomson PN 461). Mr Thomson said that they had problems with their website when he left because the donation the HSU had made was not an ongoing one. But Mr Thomson said that 'I think there is a small group that's there' although 'I obviously have far less to do with them and did have less to do with them from the time I was a candidate.'

Mr Thomson's submissions

416. With respect to findings 129 to 133, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies contravening Sub-rules 36(b) and 32(n) of the Rules and any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule.
- b. Coastal Voice was a community group. The HSU and Mr Thomson became involved with the Coastal Voice because the HSU and Coastal Voice were both involved in similar issues including aged care and Work Choices.
- c. He was the president of the Coastal Voice until March 2007. The AEC enquiry into whether Coastal Voice was an associated entity concluded-

In the absence of full and specific details of all of the activities undertaken by Coastal Voice in specific time periods, the AEC is unable to conclude that those activities which may reasonably be regarded as directly benefiting a particular political party comprise the whole or a significant proportion of all the activities undertaken by Coastal Voice and are of benefit to a particular political party. The AEC is of the view that the present information and available evidence is unlikely to be sufficient to

enable a Court in a criminal prosecution to find that Coastal Voice is operating "wholly, or to a significant extent" for the benefit of the ALP. Accordingly, the AEC concludes that there is no information or available evidence to show that Coastal Voice meets any of the six grounds set out in paragraph (b) of the definition of an "associated entity" contained in subsection 287(1) of the Electoral Act.

- d. He denies that the Coastal Voice was a "profile building vehicle" for him on the Central Coast. Mr Thomson did not gain any personal advantage from his involvement with the Coastal Voice.

Conclusions

417. Despite Mr Thomson's statement that he 'became involved with' Coastal Voice (which rather understates his involvement in the incorporation of Coastal Voice and his roles as its President, Public Officer and medial contact), I consider that Coastal Voice was always intended to operate as a profile building vehicle for Mr Thomson on the Central Coast for the purpose of enhancing his electoral prospects rather than for purposes related to the HSU. I am of this view having regard to the following matters:

- a. the HSU's involvement in Coastal Voice was never reported to the National Executive;
- b. the crossing out of the HSU logo from both proofs for the 'Matt' and 'Kerry' advertisements;
- c. despite Mr Thomson's claim that Coastal Voice was a project to test and develop Ms Stevens as an Organising Works trainee, the overwhelming evidence suggests that the activities which Ms Stevens undertook in relation to Coastal Voice were not core activities consistent with the purpose of the Organising Works Trainee program (which is discussed in detail at paragraphs 211 to 219 on pages 656 to 658 of this chapter);
- d. Ms Stevens' own evidence about why she established Coastal Voice, including in particular her claim that she thought it could attract persons who did not identify with the ALP and her claim that she thought they could attract 'soft votes' through Coastal Voice;
- e. Ms Stevens own inability to name three of the group of six persons she claimed established Coastal Voice, despite claiming that she herself was one of those six;
- f. Mr Thomson was overwhelmingly prominent in the activities of Coastal Voice as its President, Official Spokesperson and Public Officer. Indeed formal documents associated with Coastal Voice suggest that Mr Thomson was the only person who was ever formally associated with Coastal Voice;
- g. Coastal Voice appears to have been moribund since Mr Thomson's resignation;

- h. the launch of Coastal Voice, even on Mr Thomson's version of events, was an attempt to piggyback off an ALP function held at Terrigal on the same day at which the then opposition leader, Mr Beazley was present.
418. At a minimum, a reasonable person in Mr Thomson's position would have:
- a. sought the approval of the National Executive to expend the funds of the National Office on activities of Coastal Voice, and ensured that this approval was formally recorded in the minutes of National Executive;
 - b. sought the approval of National Executive for Ms Stevens to engage in activities relating to Coastal Voice in the course of her employment by the HSU, and ensured that this approval was formally recorded in the minutes of National Executive;
 - c. ensured that his personal conflict of interest in relation to each such resolution was declared to the meeting prior to the resolution being put to a vote, and recorded in the minutes of the meeting;
 - d. ensured that periodic reports were made to National Executive about the value to the National Office of the activities of Coastal Voice conducted pursuant to the funds committed to it by National Office and about the activities of Ms Stevens in support of Coastal Voice; and
 - e. ensured that appropriate transactional records of all expenditure incurred in relation to the activities of Coastal Voice were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the Australian Electoral Commission and the AIR.
419. Mr Thomson has referred to conclusions of the AEC enquiry into whether Coastal Voice was an associated entity. As with Mr Thomson's earlier submission regarding electoral disclosure laws (see paragraph 204 of this chapter), I note that my Investigation concerns whether there have been contraventions of the Rules or of the RAO Schedule. Any conclusions that may have been reached by the AEC with respect to matters that may have been considered under legislation that is relevant to electoral laws are not relevant to my consideration of whether contraventions of the Rules or the RAO Schedule have occurred.

Findings 129 to 133 - Authorising expenditure of National Office funds on activities of Coastal Voice

- 129.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice when that expenditure was not authorised by National Council or National Executive and those funds were not expended on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU.

- 130.** Mr Thomson contravened Sub-rule 32(n) by failing to control and conduct the business of the HSU between meetings of National Executive by directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice.
- 131.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as Mr Thomson by:
- purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice which were not for, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive, and
 - directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice
- without the knowledge or authorisation of the National Executive.
- 132.** Mr Thomson contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by:
- purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive; and
 - directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice
- without the knowledge or authorisation of the National Executive.

- 133.** Mr Thomson contravened section 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage (namely, to build his own profile in the electorate of Dobell and thereby advance his prospects of becoming elected to Parliament) for himself by:
- purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU; and
 - directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice without the knowledge or authorisation of the National Executive.

Matthew Burke

Employment of, and authorisation of expenditure incurred by, Matthew Burke

420. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 134 to 137 - Employment of, and authorising expenditure incurred by, Matthew Burke, which are set out below at page 722.
421. Information is set out at paragraphs 74 to 89 on pages 176 to 178 in chapter 4 regarding commencement of Mr Burke's employment with the National Office and his terms and conditions of employment.
422. The minutes of National Executive meetings make no reference to the employment of Mr Burke. Information is also set out in chapter 4 at paragraphs 91 to 108 on pages 179 to 182 regarding the fact that members of the National Executive did not recall meeting Mr Burke or any authorisation by that body of his employment.

Mr Burke's duties while employed by the National Office

423. Asked to describe a typical day's duties for the HSU Mr Burke said (Burke PN 72):
- Well, it would be - I guess you would describe it as office administration, maybe political officer as well. Basically duties included doing the web site, which was a major part of the thing. We had a pretty inefficient kind of membership system where every member that wanted to get into the members-only web site had to fill out a form and they went to me and I sent them back. I would basically do what the National Secretary would instruct me to do on any given day, and there was a range of work around the Your Rights At Work campaign, around the day-to-day running of the HSU, but then later on the union's political campaigns as well.
424. Mr Burke said that this did not change much after he became employed by Senator Hutchins after March 2007. He said 'I think I still took on a lot of those roles' and that (Burke PN 74):

Probably could spend a little less time because I was doing my primary work as the - for the senator. But no, there wasn't that major change.

425. When he was asked if it was fair to describe his duties as being 'campaign type duties' Mr Burke answered (Burke PN 76):

Not solely, no. There was a lot of overlap between the community-style organising Your Rights At Work and the political, but yes, sometimes - there was a lot of overlap and a lot of the campaigning, as you've put it, that we were doing was union based as well. We were at the train stations on the Central Coast handing out fliers on putting dental under Medicare which wasn't any party's policy, it was an HSU policy. Again with the industrial relations side of things, a lot of that is what we were doing at that time.

426. When asked whether there was a particular time when his duties became more concentrated on campaigning, Mr Burke described that as being a 'hard question to answer. Just because the amount of overlap between the union - like, kind of the strict union kind of agenda and the other stuff. There was so much overlap I couldn't give you an accurate summation of that' (Burke PN 119).

427. Mr Burke said that he did go out to workplaces but not in an industrial capacity, and that he was not an industrial officer (Burke PN 78).

428. Mr Burke said that he worked from the National Office in Pitt Street, but that he also worked from home and that later on he worked at Mr Thomson's campaign office in Long Jetty, but he could not say when this commenced (Burke PN 80 - 84).

429. Mr Thomson was asked during interview to explain why he thanked Mr Burke during his maiden speech to Parliament. Mr Thomson replied (Thomson PN 710):

Matt played, in that period, two roles that were of assistance to me, one through his employment with the senator and, also in addition to that, his work with the Your Rights at Work campaign. Matt then went on to work for me [after the federal election], as you probably know...

430. Mr Burke was asked what work he believed he had done on Mr Thomson's campaign that had caused Mr Thomson to thank him during his maiden speech to Parliament, and answered (Burke PN 108): 'I think he was helping - he was thanking us for, I guess, helping win Dobell.' Asked how he had done that Mr Burke said (Burke PN 115):

I think just doing the little tasks that needed to be done. Really putting in - just putting in hours and hours upon hours on making that happen. In terms of individual kind of role, I can't really speak for what he was thinking.

431. Mr Burke asked whether he thought he was doing this work from the very moment he had commenced employment (Burke PN 116 - 119):

MR NASSIOS: Do you think you were doing this work from the very moment you commenced employment?

MR BURKE: No. No, I wouldn't say that. I think it did become more politically based as time goes on, but the union had a very strict policy on industrial relations on making sure that John Howard's laws weren't put through. There - I think there was a belief that we had to fight them in an electoral sense, I guess, as well.

MR NASSIOS: Do you think there was a time when you can narrow down when you think you would have gone to campaigning more than prior to campaigning? Is there a period that sticks in your mind?

MR BURKE: That's a bit of a hard question to answer. Just because the amount of overlap between the union - like, kind of the strict union kind of agenda and the other stuff. There was so much overlap I couldn't give you an accurate summation of that.

432. Mr Burke was asked whether he could give an example of a couple of tasks he would have carried out while employed by the National Office where there was an overlap between what he described as 'campaigning activities' and 'union activities'.

Mr Burke replied (Burke PN 153):

Well, definitely with the Your Rights At Work - there were times where I guess you could argue that we were pushing the union's policies on the industrial relations or dental or aged care that weren't ALP policies, but we were pushing them in the electorate and in a campaign context. I guess our goal was to beat the Liberals there. So there is that kind of overlap definitely in something like that.

Mr Burke's duties while employed by Senator Hutchins

433. Mr Burke resigned from employment with the HSU on 6 April 2007 (WIT.WIL.001.0267).

434. Mr Burke said that he was a Members of Parliament Staffer during the period in which he was employed by Senator Hutchins (from March 2007 onwards) and was not entitled to any overtime (Burke PN 68 - 70). As set out at paragraph 86 of chapter 4, Mr Burke stated that, while the arrangement was that he would work a 38 hour week for Senator Hutchins, he would use 'any spare time' that he had working for the HSU. Mr Burke worked 'about 60 or 70 hours a week' (Burke PN 65).

435. Mr Burke was asked to describe his job with Senator Hutchins. He said that it was constituent based and doing general research (Burke PN 519). He said his position was 'Research Officer' but was not sure whether or not this was an official title (Burke PN 521). He added (Burke PN 521):

But basically I'd be at - wherever I was located. We had a sign on the Long Jetty office that said Office of Steve Hutchins as well. So there was a fair bit of signage there, but that was to allow me to do the work of the senator. He's a New South Wales senator, but he's the ALP duty senator for Dobell as well.

436. The following exchange then occurred (Burke PN 522 - 548)

MR RAWSON: The duties for him, was it basically a 9.00 to 5.00 job?

MR BURKE: Yes.

MR RAWSON: So you generally were working for the senator 9.00 til 5.00?

MR BURKE: Well, yes. It would be generally 9.00 to 5.00 but there was also times where it extended beyond that and also times where there would have been crossover with the HSU role. So I didn't have a ticket where I signed in, signed out and I'd go to the different role.

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell
Employment of, and authorisation of expenditure incurred by, Matthew Burke

- MR RAWSON: Can you give us an example of what would be a crossover between the senator's job and the HSU job?
- MR BURKE: Obviously if I was researching on industrial relations especially I'd use the union as a resource.
- MR RAWSON: I mean IR was arguably the biggest single issue in the election. There would have been a fair bit of time where that occurred, I would expect.
- MR BURKE: Yes.
- MR RAWSON: I guess what I'm not clear about is, if you were doing a 38-hour week job as a research officer for the senator, you talked earlier about an agreement between Mr Thomson and the senator about what you could do in your spare time. Why was that any concern of the senator's at all? Why did there have to be an agreement with the senator?
- MR BURKE: I wouldn't be able to tell you.
- MR RAWSON: Okay. If you had taken it upon yourself to decide that when you knocked off at 5 o'clock every night you were going to go and do volunteer work for the HSU or for the Dobell campaign or for the Salvation Army - - -
- MR EASSON: I think Matt mentioned the hours were flexible, so the 38 hours were not exactly the same week in, week out.
- MR BURKE: Yes.
- MR RAWSON: I appreciate that, but - - -
- MR BURKE: Why would - okay - - -
- MR RAWSON: As long you were doing your 38 hours to the senator's satisfaction, why is your spare time any concern of his?
- MR BURKE: Well, obviously when you're working 60 or 70 hours of work it can be of concern to an employer if you're spending so many more hours volunteering and I guess that's why the concern was, yes.
- MR RAWSON: Right. Was there any discussion about how to manage that particular concern? Concern presumably of burn out?
- MR BURKE: Yes. Yes.
- MR RAWSON: Was there any discussion about that?
- MR BURKE: I think, yes, there was a general casual conversation about how I was going if that's what you're asking. I can't remember an official-style conversation.
- MR RAWSON: Where this agreement was reached, there wasn't part of the agreement that concerned - - -
- MR BURKE: I wasn't - - -
- MR RAWSON: - - - managing your welfare or anything?
- MR BURKE: I wasn't there at the time.

MR RAWSON: Okay.

MR BURKE: Yes. So that was done independent of me.

437. Regardless of the precise nature of the agreement between Mr Thomson and Senator Hutchins about the distribution of Mr Burke's time between his two roles, it is clear that:
- a. the hours Mr Burke was expected to work for Senator Hutchins were not fixed;
 - b. the two roles did overlap; and
 - c. it was understood by all that Mr Burke would spend some of his time working for Senator Hutchins in the Long Jetty Campaign Office.
438. In practice it seems likely that, at least as the 2007 federal election approached, Mr Burke's two roles would have become substantially indistinguishable.
439. The question of whether or not this arrangement was consistent with the parliamentary entitlements of Senator Hutchins is beyond the scope of FWA's powers of investigation and inquiry.

Expenditure incurred by Mr Burke

General issues about expenditure incurred by Mr Burke

440. Mr Burke told FWA that it was Mr Thomson who gave him a Diners Club card, and said that Mr Thomson told him that it was primarily for ancillary expenses, mainly petrol, but that anything else was to be 'verbally authorised' by Mr Thomson (Thomson PN 374 - 378). Mr Burke said he sent receipts for his credit card down to Melbourne for processing by Ms Ord 'on a near-weekly basis' (Burke PN 376).
441. Mr Burke told FWA that he thought he was given a HSU credit card prior to his resignation from the HSU (Burke PN 391). However when asked why he was still using this card after his resignation from the HSU in April 2007 he replied (Burke PN 403):
- That was the agreement that Senator Hutchins and Craig Thomson came to and it was to spend on work-related expenses for the Health Services Union.
442. Mr Thomson was asked at interview what Mr Burke would have generally used his Diners Club card for. Mr Thomson replied (Thomson PN 735) 'Pretty much the same as Crissy [Stevens]. Slightly less, I would have thought'. When he was asked whether he had been aware that Mr Burke had spent \$6,705 on his Diners Club card after leaving employment with the HSU Mr Thomson said (Thomson PN 741):
- Look, that was the agreement that we reached to help - you know, the overlap of the role, given the office and the way that it was essentially a union office with a small sign saying 'Senator Hutchins', people came there, you saw the sort of stuff that was on the outside, he was still doing some of the union kind of stuff, and we said, 'We're not going to pay you, top up your salary, but we're happy to pay expenses that are related to what you're doing.' In particular was the petrol, was the main one.

443. Mr Thomson was asked what exactly that work was. Mr Thomson replied (Thomson PN 743):

Well, there was a great deal of variety from assisting Labor generally with some of the on-the-ground local issues on the Central Coast, providing that resource through. Each of the senators are given duty electorates where we don't hold the electorates, so he was playing some role in that, and it was the role for that. That could involve stuff from representing the ALP at functions through to answering - trying to help with a Centrelink inquiry. Once you open an office, people don't distinguish whether you're in or out, sort of thing. So there was the variety of those things. But there was also - a lot of stuff was Rights at Work again. There was that stuff happening all the time.

444. Mr Thomson agreed that by this answer he was categorising the work that Mr Burke did on the Your Rights at Work Campaign as HSU business (Thomson PN 744).

445. Mr Thomson was asked whether the National Executive or the Finance Committee would have been aware of these particular arrangements with Mr Burke's credit card. Mr Thomson replied (Thomson PN 747):

Well, Matt was introduced at Executive and National Council, and said what he was doing and how he was doing it, and then what role he was going to and how he was being paid. So they had an explanation.

446. Mr Thomson's answer is inconsistent with the evidence discussed at paragraphs 91 to 108 of chapter 4 regarding knowledge of Mr Burke's employment among other members of the National Executive.
447. Mr Thomson was asked who would have approved Mr Burke's expenditure on petrol. Mr Thomson said 'It was again generally approved - I approved the general concept that we would pay for his petrol.' (Thomson PN 751). When asked if he had reviewed the expenditure incurred by Mr Burke on his credit card Mr Thomson said that (Thomson PN 753): 'It was done exactly the same way as Criselee Stevens.'
448. Ms Ord told FWA that she processed payments made by Mr Burke and Ms Stevens on their credit cards in the same way as all other cards held by the HSU. She understood that such expenditure had been approved. (Ord (1) PN 206 - 211).
449. Mr Williamson was unaware that Mr Burke spent approximately \$6,700 on his Diners Club card between when he left the HSU's employment in April 2007 and the time of the federal election (Williamson PN 323). Mr Williamson said he was unable to say whether or not this could have been appropriate expenditure of the National Office because he did not know what it was for (Williamson PN 325). However Mr Williamson said the fact that Mr Burke was continuing to spend monies on his National Office credit card after his resignation was not reported to the National Executive or to the Finance Committee (Williamson PN 327).
450. Dr Kelly told FWA that it was never reported to the National Executive or the Finance Committee that Mr Burke had been employed by the National Office, that he had a Diners Club card or that he continued to spend money on the Diners Club card (Kelly PN 473).

Mr Burke's application for a Diners Club card

451. On 26 February 2007 Mr Burke emailed Ms Ord ([HSUNO.022.0146](#)), under the subject heading 'Diners Club card referee', providing a 'friend or relative' for inclusion in a Diners Club form.
452. The National Office have provided a Diners Club card application in the name of Matthew Burke, dated March 2007 ([HSUNO.022.0147](#)). It appears from facsimile transmission reports ([HSUNO.022.0150](#)) and ([HSUNO.022.0145](#)) that this form was faxed to Diners Club on 19 March 2007, or on 26 March 2007.

Expenditure relating to Mr Burke prior to him obtaining a Diners Club card in March 2007

Accommodation at the Airport Clayfield Motel, Brisbane, 6 - 9 November 2006

453. The National Office has produced a Booking Confirmation and Tax Invoice from WOTIF.com.au for four nights' accommodation (6 - 9 November 2006) for Mr Burke at the Airport Clayfield Motel, Brisbane, for a total cost of \$447.15 ([HSUNO.022.0151](#)).
454. There is no evidence before FWA which would explain the purpose of Mr Burke's accommodation in Brisbane in November 2006.

Cabcharges February 2007

455. On 2 February 2007 Mr Burke completed a Cabcharge voucher in the name of 'Hospital Employees Federation' for \$50, describing his journey as being from 'Airport' to 'North Sydney/Clovelly' ([HSUNO.007.0192](#)). It appears that this may have been a voucher for an account of the NSW Union, submitted by it to the National Office for reimbursement. In any event there is no evidence before FWA as to why this expenditure was incurred by Mr Burke.
456. On 13 February 2007 Mr Burke completed two Cabcharge vouchers in the name of 'Hospital Employees Federation' for \$18.90 and \$30.35, describing his journeys as from 'city' to 'Airport' and from 'Airport' to 'Barton'. ([HSUNO.007.0193](#)). It appears that this may have been a voucher for an account of the NSW Union, submitted by it to the National Office for reimbursement. In any event there is no evidence before FWA as to why this expenditure was incurred by Mr Burke.

Total expenditure relating to Mr Burke prior to him obtaining a Diners Club card

457. The amounts set out above in paragraphs 453, 455 and 456 total \$546.40.

Date	Vendor	Amount
6 - 9 November 2006	Airport Clayfield Motel	\$447.15
2 February 2007	Cabcharge	\$50.00
13 February 2007	Cabcharge	\$18.90
13 February 2007	Cabcharge	\$30.35
TOTAL:		\$546.40

Expenditure on Mr Thomson's Diners Club card

Diners Club statement 20 April 2007

458. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 April 2007 ([HSUNO.014.0107](#)).
459. The statement shows that for the month to 20 April 2007 the amount payable on Mr Burke's Diners Club card was \$359.20. This included:
- four payments totalling \$197.20 to petrol stations between 10 and 17 April 2007;
 - two payments for parking fees to Wilson Parking on 15 and 17 April respectively, totalling \$85;
 - payment of a \$77 membership fee on 28 March 2007.
460. This appears to be the first Diners Club statement issued to Mr Burke since the statement identifies no previous balance, nor any previous payments, and includes a charge for a 'Rewards membership fee' on 28 March 2007.

Car expenses

461. Mr Burke said there was a lot of travel between the offices in Long Jetty and Sydney, and that there was a 'massive' amount of travel because of the nature of the role he was undertaking. He used his own car and was not given a car allowance (Burke PN 424 - 432).
462. Mr Burke was asked by FWA whether anyone in particular approved his expenditure on petrol. Mr Burke answered (Burke PN 433):
- Petrol was accepted - was an accepted part that - like those ancillary expenses. If there was anything else to do with the car - I think at one stage I paid for an insurance or something like that. That would have been verbally authorised and then receipts sent to Melbourne. But petrol receipts were also sent to Melbourne as well. Actually all receipts were sent to Melbourne quite diligently. Yes.
463. Mr Thomson agreed that he had 'approved the general concept that we would pay for [Mr Burke's] petrol after his resignation from the HSU (Thomson PN 746 - 751).

Diners Club statement 20 May 2007

464. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 May 2007 ([HSUNO.014.0111](#)).
465. The statement shows that for the month to 20 May 2007 the amount payable on Mr Burke's Diners Club card was \$1,971.48. This included:
- eight payments totalling \$522.31 to petrol stations between 20 April and 19 May 2007;
 - one payment of \$50 to the Harbourside Carpark in Sydney on 9 May 2007;
 - three payments, totalling \$635.45, to WOTIF.com Pty Ltd, on 23 April, 23 April and 29 April 2007;

- d. one payment of \$70 to Four Points Sydney on 28 April 2007;
 - e. One payment of \$24 to the Sydney Convention and Exhibition Centre on 29 April 2007;
 - f. one payment of \$17.76 for a taxi fare on 27 April 2007;
 - g. one payment of \$14.98 to Tandy Electronics Tuggerah on 23 April 2007;
 - h. one payment of \$32.47 to Dick Smith at Bateau Bay, on 5 May 2007;
 - i. one payment of \$361.42 to Dick Smith at Bateau Bay, on 15 May 2007;
 - j. one payment of \$11.82 to Woolworths in Bateau Bay on 18 May 2007;
 - k. one payment of \$82.94 to K Mart in Bateau Bay on 18 May 2007
 - l. a payment of \$118.80 to MD Web Hosting Pty Ltd on 30 April 2007;
 - m. a payment of \$36.27 to Domain Directors Pty Ltd on 1 May 2007;
 - n. a payment of \$25 to Postshop at Long Jetty on 18 May 2007.
466. The statement also records a credit of \$32.49 from Dick Smith Bateau Bay on 15 May 2007.

MD Webhosting

467. Mr Burke could not recall what the payment of \$118 in April 2007 to 'MD Web Hosting' would have been for (Burke PN 508). Nor could Mr Thomson (Thomson PN 797).

Diners Club statement 20 June 2007

468. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 June 2007 ([HSUNO.014.0116](#)).
469. The statement shows that for the month to 20 June 2007 the amount payable on Mr Burke's Diners Club card was \$1,190.63. This included:
- a. four payments totalling \$101.20 at 'Café Pennoz, all on 7 June 2007;
 - b. seven payments to petrol stations totalling \$457.76 between 23 May and 18 June 2007;
 - c. one payment to Wilson Parking in Sydney of \$25 on 10 June 2007;
 - d. one payment of \$79 to Bunnings Tuggerah on 21 May 2007;
 - e. one payment of \$43.68 to Woolworths Bateau Bay on 22 May 2007;
 - f. one payment of \$12.25 to Woolworths Bateau Bay on 29 May 2007;
 - g. one payment of \$15.98 to Dick Smith Electronics on 13 June 2007;
 - h. one payment of \$495 to John Fairfax Publications on 31 May 2007.
470. The statement also records a credit of \$39.99 from K-Mart Bateau Bay on 21 May 2007.

John Fairfax Publications

471. Mr Burke told FWA that the payment of \$495 to John Fairfax publications in May 2007 'sounds like it'd be for a photo' to use in publications, but he was not sure what the photo was. (Burke PN 490 - 498). Mr Thomson told FWA he had no idea what this payment may have been for (Thomson PN 793).

Diners Club statement 20 July 2007

472. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 July 2007 ([HSUNO.005.0001](#)).
473. The statement shows that for the month to 20 July 2007 the amount payable on Mr Burke's Diners Club card was \$690.58. This included:
- a. seven payments totalling \$380.46 to petrol stations between 22 June and 17 July 2007;
 - b. one taxi fare totalling \$30.64 on 3 July 2007;
 - c. a payment of \$29.18 to Coles Bateau Bay on 26 June 2007;
 - d. a payment of \$188.95 to Dick Smith at Bateau Bay on 11 July 2007;
 - e. a payment of \$14.98 to Dick Smith at Bateau Bay on 13 July 2007;
 - f. a payment of \$5.62 to Coles at Wadalba on 19 July 2007;
 - g. three payments totalling \$40 to News Text on 9 July 2007.

Diners Club statement 20 August 2007

474. The National Office has produced a Diners Club card statement in Mr Burke's name dated 20 August 2007 ([HSUNO.005.0025](#)).
475. The statement shows that for the month to 20 June 2007 the amount payable on Mr Burke's Diners Club card was \$676.18. This included:
- a. nine payments totalling \$482.76 to petrol stations between 21 July and 19 August 2007;
 - b. three payments of \$48 for car parking, on 26 July, 28 July and 7 August 2007;
 - c. one payment of \$47.60 to Dominos at the Entrance on 22 July 2007;
 - d. three payments totalling \$97.07 to Woolworths on 22, 22 and 27 July 2007.

Diners Club statement 20 September 2007

476. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 September 2007 ([HSUNO.005.0020](#)).
477. The statement shows that for the month to 20 September 2007 the amount payable on Mr Burke's Diners Club card was \$767.21. This included:
- a. five payments totalling \$314.51 to petrol stations between 22 August and 18 September 2007;

- b. a payment of \$179.95 to Ritters Hardware on 22 August 2007;
- c. a payment of \$136 to Tandy Electronics at Tuggerah on 19 September 2007;
- d. a payment of \$136 to Dick Smith Electronics at Tuggerah on 19 September 2007.

Diners Club statement 20 October 2007

478. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 October 2007 ([HSUNO.005.0040](#)).
479. The statement shows that for the month to 20 October 2007 the amount payable on Mr Burke's Diners Club card was \$1,150.29. This included:
- a. eight payments totalling \$372.39 to petrol stations between 20 September and 19 October 2007;
 - b. a payment of \$18 to the Sydney Convention and Exhibition Centre on 12 October 2007;
 - c. a payment of \$61.48 to Woolworths at Tuggerah on 11 October 2007;
 - d. a payment of \$15.67 to Coles at the Entrance on 11 October 2007;
 - e. a payment of \$3 to Dan Murphys at Tuggerah on 11 October 2007;
 - f. a payment of \$679 to the Telstra Shop on 3 October 2007.
480. On 1 November 2007 Ms Ord wrote to Diners Club International ([HSUNO.005.0188](#)) asking them to close Diners Cards for Mr Robertson, Ms Walton and Mr Robinson, and to change the mailing address for cards for the HSU National Office, Mr Thomson, Mr McLeay, Ms Flavell, Ms Stevens and Mr Burke.

Diners Club statement 20 November 2007

481. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 November 2007 ([HSUNO.005.0014](#)).
482. The statement shows that for the month to 20 November 2007 the amount payable on Mr Burke's Diners Club card was \$2,637.55. This included:
- a. six payments totalling \$378.07 to petrol stations between 23 October and 18 November 2007;
 - b. a payment of \$96.15 to WOTIF.com Pty Ltd on 25 October 2007;
 - c. a payment of \$1,089.58 to the NRMA on 29 October 2007;
 - d. a payment of \$679 to the Telstra Shop at Erina on 30 October 2007;
 - e. a payment of \$394 to the Road Traffic Authority at Wyong on 31 October 2007.

Telstra Shop, Erina

483. Mr Burke said that the payment of \$679 to Telstra Shop on 30 October 2007 would probably be a phone (Burke PN 441). When he was told that there were two

payments of that amount to Telstra (the other appears on Mr Thomson's Diners Club card) Mr Burke said that they could have both been for phones, because he bought a phone, lost it, and then bought another one (Burke PN 450 - 453).

Car registration and insurance

484. Mr Burke states that, pursuant to an agreement with Senator Hutchins and Mr Thomson, he was permitted to charge work related expenses for the HSU to the credit card after he left employment with HSU. (Burke PN 398 - 411) Mr Burke states that he travelled a lot by car for HSU work. (Burke PN 424 - 425) Petrol was an accepted expense that did not require approval. (Burke PN 432- 433) For other expenses Mr Burke sought prior verbal approval from Mr Thomson. (Burke PN 457 - 464) Ms Ord also authorised expenses. (Burke PN 472)

485. Mr Burke gave evidence that he obtained oral authorisation to charge insurance to his Diners Club card. During interview, Mr Burke was shown his Diners Club card statement dated 20 November 2007 which records the two transactions referred to above at paragraphs 482.c and 482.e of this chapter. Mr Burke gave the following evidence (Burke PN 424 - 439):

MR NASSIOS: Did anyone in particular approve your expenditure on petrol, or was it just accepted that that was part and parcel?

MR BURKE: Petrol was accepted - was an accepted part that - like those ancillary expenses. If there was anything else to do with the car - I think at one stage I paid for an insurance or something like that. That would have been verbally authorised and then receipts sent to Melbourne. But petrol receipts were also sent to Melbourne as well. Actually all receipts were sent to Melbourne quite diligently. Yes.

MR NASSIOS: Okay. So a payment of \$1089 to the NRMA between 29 and 31 October 2007 is probably registration?

MS CARRUTHERS: Insurance

MR BURKE: I'd say so, yes, or insurance. NRMA, yes.

MR NASSIOS: Sorry, yes. RTA is probably insurance. Sorry, registration.

MS CARRUTHERS: Registration.

MR BURKE: Yes.

486. Mr Burke stated that Mr Thomson approved arrangements with him to apply after his employment with the HSU had terminated. The arrangement included provision that the HSU would pay his petrol expenses. Mr Thomson stated that Mr Burke was introduced to the National Executive and the National Council and informed about his role. Mr Thomson was of the view that those bodies thereby had an explanation of Mr Burke's role. The processes for approval of expenses incurred by Mr Burke were said to be the same as those for Ms Stevens (Thomson PN 746 - 753):

MR NASSIOS: All right. Do you know whether the national executive or the finance committee would have been aware of these particular arrangements with the credit card after he was - - -

- MR THOMSON: Well, Matt was introduced at executive and national council, and said what he was doing and how he was doing it, and then what role he was going to and how he was being paid. So they had an explanation.
- MR NASSIOS: So even after he had resigned from the union?
- MR THOMSON: Yes.
- MR NASSIOS: Okay. All right. In terms of that expenditure on petrol, who would have approved that?
- MR THOMSON: It was again generally approved - I approved the general concept that we would pay for his petrol.
- MR NASSIOS: As we've asked with Ms Stevens, did you review the expenditure in any way?
- MR THOMSON: It was done exactly the same way as Criselee Stevens'. He sent explanations and dockets down - - -

487. Mr Thomson was unsure whether part of the arrangement with Mr Burke was that the National Office would pay expenses for Mr Burke's car registration and insurance but said that it was possible, because 'we had agreed to the running costs of the car' (Thomson PN 785 - 788). Mr Thomson said (Thomson PN 788):

... We agreed to the running costs of the car, but I don't recall those specific items being brought to my attention. That's not saying that they didn't fall within the parameters either but without more information I just don't know.

488. Mr Thomson also said (Thomson PN 1718) that payment by the National Office of Mr Burke's car registration (along with the car registration of several others) in November 2007:

... must have just come up as in the regular - the cars were leased and had insurance on them. I am presuming they came up. I think the one in relation to Matt was approved by me as part of his expenses that was there. The Karene one, I can't particularly remember why we were still paying that then. That may well be part of her agreement but I don't have that detail in front of me. Yes.

489. Dr Kelly states she did not consider Mr Burke's expenditure after he had ceased employment with the HSU to be legitimate HSU expenditure. (Kelly PN 458 - 465)
490. Mr Williamson has no knowledge about the expenditure by Mr Burke on a credit card after he left employment with HSU in April 2007. He was not able to say whether it was appropriate expenditure. The expenditure was not reported to the National Executive or the finance committee. (Williamson PN 316 - 327)
491. In the circumstances, the expenditure on car insurance and registration for Mr Burke in November 2007, well after his resignation from the National Office, was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU. It is clear that these payments were not authorised by the National Council or the National Executive.

Diners Club statement 20 December 2007

492. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 December 2007 ([HSUNO.005.0006](#)).
493. The statement shows that for the month to 20 December 2007 the amount payable on Mr Burke's Diners Club card was \$675.75. This included:
- four payments totalling \$289.41 to petrol stations between 23 November and 5 December 2007;
 - a taxi fare of \$29.08 on 26 November 2007;
 - a payment of \$134 to Bunnings at Tuggerah on 21 November 2007;
 - a payment of \$159 to Dick Smith at Penrith Plaza on 159.00;
 - a payment of \$30.50 to Strathfield at Gosford on 4 December 2007
 - interest charges of \$34.51.

Diners Club statement 20 January 2008

494. The National Office has produced a Diners Club statement in Mr Burke's name dated 20 January 2008 ([HSUNO.005.0010](#)). The statement shows that Mr Burke did not spend any money on his Diners Club card for the month to 20 January 2008.
495. A Diners Club statement addressed to the National Office and dated 20 February 2008 ([HSUNO.012.0291](#)) includes a charge of \$60 for renewal of Mr Burke's membership fee on 1 February 2008. A Diners Club statement addressed to Mr Burke and dated 20 February 2008 ([HSUNO.014.0150](#)) shows that for the month to 20 February 2008 two new charges were charged to Mr Burke's Diners Club card:
- interest charges of \$30 were applied on 20 January 2008;
 - a Rewards Membership Fee of \$77 was charged on 20 February 2008.
496. Mr Burke continued to receive Diners Club statements (but did not incur any new charges) on 20 March 2008 ([HSUNO.012.0329](#)).

Summary of expenses incurred on Mr Burke's Diners Club card

497. The table below sets out monthly amounts that were charged to Mr Burke's Diners Club card on the basis of the credit card statements discussed above at paragraphs 458 to 496 of this chapter:

Month	Amount
April 2007	\$359.20
May 2007	\$1,971.48
June 2007	\$1,190.63
July 2007	\$690.58
August 2007	\$676.18

Month	Amount
September 2007	\$767.21
October 2007	\$1,150.29
November 2007	\$2,637.55
December 2007	\$675.75
January 2008	\$0.00
February 2008	\$167.00
Total:	\$10,285.87

Expenditure by Mr Thomson on airfares and accommodation for Mr Burke

Travel to Canberra and return 20 March 2007

498. Mr Thomson's Diners Club statement for the month to 20 April 2007 ([HSUNO.015.0184](#)) includes a charge of \$292.38 for a return Qantas airfare from Sydney to Canberra for Mr Burke on 20 March 2007. A further charge from Qantas Holidays Domestic of \$200 in the name of Matthew Burke for the travel date of 20 March 2007 appears to relate to accommodation for Mr Burke for that evening. The same statement also discloses that Mr Thomson also travelled on a return flight from Sydney to Canberra that day. Mr Thomson was initially unable to say why a trip for Mr Burke from Canberra to Sydney and back on 20 March 2007 had been charged to his credit card (Thomson PN 804 - 816). However, later, in the course of answering an unrelated question Mr Thomson said (Thomson PN 1026):

But we, you know, shut down our aged care areas and we'd go to those kind of meetings, which actually reminds me, that question - the issue of where Matt Burke was with me in Canberra, I think I remember addressing the ALP social policy committee on our dental health plan, I think that's probably around the time that he may have been there with that, but - sorry, that's not sequential in terms of (indistinct) it just sort of popped into the head then. Yes, so it was an incredibly difficult time because I was also then being asked to negotiate a successor on behalf of - the New South Wales Branch were unclear as to who they wanted. I'd suggested to them Natalie Bradbury. So she was in the mix and they said they supported her.

Travel to Canberra and return 19 June 2007

499. Mr Thomson's Diners Club statement for the month to 20 June 2007 ([HSUNO.015.0212](#)) includes a charge dated 13 June 2007 for \$986.82 for a return airfare from Sydney to Canberra on 19 June 2007 in the name of Matthew Burke.
500. Mr Thomson's Diners Club statement for the month to 20 July 2007 ([HSUNO.002.0316](#)) includes a credit of \$4.01 which the statement identifies as being in respect of travel by Mr Burke between Sydney and Canberra on 19 June 2007.

Total expenditure by Mr Thomon on airfares and accommodation for Mr Burke

501. The amounts set out above in paragraphs 498, 499 and 500 total \$1,475.19.

Date of travel	Vendor	Amount
20 March 2007	Qantas	\$292.38
20 March 2007	Qantas Holidays Domestic	\$200.00
19 June 2007	Qantas	\$986.82
19 June 2007	Cabcharge	-\$4.01
TOTAL:		\$1475.19

Mr Thomson's submissions

502. With respect to findings 134 to 137, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:

- a. He denies contravening Sub-rules 32(j) and 36(b) of the Rules by failing to obtain prior approval of National Council or National Executive regarding the arrangement with Mr Burke after his employment with the HSU ceased. The National Secretary did not require approval from National Council or National Executive as authorising the expenditure was within the power of the National Secretary.
- b. He denies contravening subsection 285(1) of the RAO Schedule by failing to obtain prior approval of National Council or National Executive regarding the arrangement with Mr Burke after his employment with the HSU ceased. The National Secretary did not require approval from National Council or National Executive as authorising the expenditure was within the power of the National Secretary.
- c. He denies contravening sub-rule 36(b) of the Rules in respect of purporting to authorise expenditure on car insurance and registration for Mr Burke in November 2007, after his resignation from employment with the National Office. The National Secretary had the power to set the terms and conditions of employment of staff. One of the conditions of Mr Burke's employment with the HSU was that the HSU would continue to pay for certain expenses of Mr Burke's after his employment had finished.
- d. It is also relevant to note that Mr Burke continued to undertake incidental work for the HSU, even after his resignation. After Mr Burke's employment with the HSU, Mr Burke worked for Senator Hutchins. Senator Hutchins' office was in the same building at the HSU NSW branch. As a result of this overlap Mr Burke often performed incidental tasks for the HSU.
- e. He denies contravening subsections 285(1) and 286(1) of the RAO Schedule.
- f. As submitted with respect to earlier findings, the National Secretary has the power to employ staff and Mr Burke was employed pursuant to that power. The National Secretary did not require the approval of the National Executive.

- g. All expenditure in relation to Mr Burke was maintained and all reporting obligations to the AIR and AEC were satisfied.
- h. He denies contravening subsection 287(1) of the RAO Schedule. Mr Thomson did not improperly use his position to gain an advantage for Mr Burke. As Mr Burke was undertaking tasks related to the general administration of the HSU which required him to travel in his car he gained no personal advantage.

Conclusions

503. I have set out at paragraphs 88 to 113 of chapter 3 my responses to Mr Thomson's 'introductory' submissions regarding the power of the National Secretary to employ staff and to determine their wages and conditions.
504. I have found at finding 3 on page 185 in chapter 4 that Mr Thomson contravened Sub-rules 21(e) and 27(a) by employing Mr Burke without the authority of either National Council or National Executive when his employment was not part of the business of the Union.
505. It is clear that Mr Thomson made a unilateral decision, without reference to the National Executive, to employ Mr Burke in 2006. It is also clear that Mr Thomson took no steps to bring Mr Burke's employment to the attention of other members of the National Executive. In particular:
- a. there is no evidence that he ever notified a meeting of National Executive of Burke's employment;
 - b. there appears to have been no knowledge of Mr Burke's employment among members of the National Executive.
506. Furthermore, I consider that Mr Thomson's stated reason for employing Mr Burke (to ensure that he was available in the future to be employed by Senator Hutchins) indicates that this was, in effect, a decision made in his own self-interest to ensure that (as in fact happened), since Senator Hutchins was the duty Senator for Dobell, Mr Burke would be available to work in Mr Thomson's campaign office and to work on his campaign for Dobell.
507. It is clear from Mr Burke's own evidence about what he did that he had no involvement in ordinary activities of the HSU that exposed him to engagement with employees in the workplace. Unlike Ms Stevens, there is some evidence that Mr Burke did at least perform some ordinary administrative duties for the National Office. But this evidence does not suggest that this was a significant part of Mr Burke's duties. Certainly it seems fanciful to suggest that Mr Burke would ever have been employed by the National Office as an administrative assistant, but for the fact that Mr Thomson wanted to ensure that Mr Burke would be available in the future to work out of his campaign office. It appears that the majority of Mr Burke's time was spent on activities on the Central Coast, which were unknown to any person in the National Office apart from Mr Thomson, and were closely connected to, if not entirely directed towards, building Mr Thomson's profile within the electorate of Dobell, and later, towards campaigning for his election as the member of Dobell.

508. It is clear that the National Executive never authorised Mr Burke's employment by the National Office, as it was required to do (see paragraphs 73 to 426 of chapter 2).
509. Moreover it is clear that none of the activities which Mr Burke was engaged in could be described as 'the business' of the Union, and at best, only a very small proportion of his duties could in any way be described as being incidental to the business of the Union.
510. The Diners Club card reports which are discussed above at paragraphs 458 to 496 of this chapter show that between April and December 2007 Mr Burke spent \$10,108.25. Moreover, based on the matters set out above at paragraphs 453 to 501 of this chapter, it appears that the costs to the National Office which directly arise out of Mr Thomson's decision to employ Mr Burke to work on activities which were not business of the HSU include at least:
- a. the estimated employment costs of Mr Burke of \$29,400 (as set out in paragraph 89 of chapter 4);
 - b. other expenditure which appears to have been incurred by, or in relation to, Mr Burke prior to him being issued with a Diners Club card totalling \$546.40 (as set out at paragraph 457 above);
 - c. expenditure of \$10,285.87 incurred by Mr Burke on his HSU National Office Diners Club card (as set out in paragraph 497 above); and
 - d. expenditure by Mr Thomson on airfares and accommodation for Mr Burke totalling \$1,475.19 (as set out above in paragraph 501 above).
511. These amounts total \$41,707.46. This figure does not include the value of the time spent by other staff of the National Office, including in particular Mr Thomson and Ms Ord, in dealing with issues arising out of Mr Burke's employment, including his supervision, and general administration of his employment.
512. At a minimum, a reasonable person in Mr Thomson's position would have:
- a. sought the approval of the National Executive to employ Mr Burke, and ensured that this approval was formally recorded in the minutes of National Executive;
 - b. sought the approval of National Executive either for each specific expense incurred by, or in relation to, Mr Burke in the course of his employment between November 2006 and April 2007, or alternatively, for a set amount of expenditure by Mr Burke;
 - c. sought the approval of National Executive to obtain a National Office Diners Club card for Mr Burke to use while employed by Senator Hutchins, and approval of clear and comprehensive guidelines about the purposes for which Mr Burke was entitled to use any such card, and how much expenditure Mr Burke was authorised to incur;
 - d. ensured that his personal conflict of interest in relation to each such resolution was declared to the meeting prior to the resolution being put to a vote, and recorded in the minutes of the meeting;

- e. ensured that periodic reports were made to National Executive about the work of Mr Burke on the Central Coast, both while in the employ of the National Office, and after that time, for so long as he was permitted to have and use a National Office Credit card and about any expenditure incurred by, or in relation to, Mr Burke; and
 - f. ensured that appropriate transactional records of all expenditure by, or in relation to, Mr Burke were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the Australian Electoral Commission and the AIR.
513. Mr Thomson could not, acting in good faith, have employed Mr Burke, and purported to authorise this expenditure, without:
- a. the knowledge or approval of the National Executive;
 - b. first taking steps to disclose to the National Executive his interest in having Mr Burke employed by the National Office and in having such expenditure approved, and ensuring that this was recorded in the minutes of the meeting;
 - c. ensuring that periodic reports were made to National Executive about the work of Mr Burke on the Central Coast, and about any expenditure incurred by Mr Burke, including expenditure incurred after Mr Burke's resignation from the HSU; and
 - d. ensuring that appropriate transactional records of all expenditure by, and in relation to, Mr Burke were maintained to ensure that the National Office would be able to fulfil its reporting obligations to the Australian Electoral Commission and the AIR.

Findings 134 to 137 - Employment of, and authorising expenditure incurred by, Matthew Burke

- 134.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive.
- 135.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as himself by employing Mr Burke and purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive.

- 136.** Mr Thomson contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose, by employing Mr Burke, and by purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke, including after Mr Burke's resignation from the HSU, which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive.
- 137.** Mr Thomson contravened section 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage (namely, to advance his prospects of becoming elected to Parliament) for himself by employing Mr Burke, and by purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke, including after Mr Burke's resignation from the HSU, which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Central Coast Rugby League

Authorising payment to the Central Coast Rugby League by the National Office

514. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 138 and 139 - Authorising payment to the Central Coast Rugby League by the National Office, which are set out below at page 739.

The Sponsorship Agreement

515. FWA was provided by the HSU with the unsigned agreement titled '2006 Central Coast Division of Rugby League - Major Sponsorship Contract' ([HSUNO.018.0251](#)). It was prepared by Sublime Marketing Innovations, Chittaway Bay, NSW, on behalf of the Central Coast Division of Rugby League, based in Gosford NSW, and the Heath Services Union, Craig Thomson, National Secretary, Level 2 106-108 Victoria Street, Carlton South VIC (**the Sponsorship Agreement**).
516. The Sponsorship Agreement comprised three pages, including the title page and the signing clause page, and the only provision was set out as follows:

As agreed we offer a major sponsorship package to the Health Services Union with the following list of inclusions in exchange for \$30,000 cash. The major competition sponsor package excludes GST and provision of HSU logo as a patch, embroidery or iron on transfer for use on the jerseys worn by players in the 2006 Season. The major sponsorship package will include the following items:

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell
Authorising payment to the Central Coast Rugby League by the National Office

- Naming rights to the 2006 Central Coast Division Senior Competition. The 2006 Central Coast HSU Cup.
- HSU logo to be placed on the front of all players' jerseys playing in the 2006 Central Coast Division Competition including first grade, reserve grade, under 19's and under 17's teams. This does not include the Central Coast Representative side jerseys, as the Country Rugby League logo must be placed on those.
- Placement of HSU logo on the official Central Coast Division letterhead and other stationary (sic).
- HSU logo and the 'Your Rights At Work' logo to be branded on the 2006 Competition Programs printed weekly throughout the 2006 Season.
- Advertising space in each week's program sized at 14.5cm wide x 21cm high or a full A5 page. The space will be black and white unless otherwise specified and completed artwork provided by the sponsor each week as a jpeg file via email.
- Placement of the HSU logo on any visual media advertising including newspaper and television or acknowledgement during radio advertising.
- Promotional signage space at the home ground for all weekly rounds of the competition and the 2006 Grand Final.
- Promotional signage at any official off the field Central Coast Division event held during the sponsorship period such as the 2006 (sic).
- The ability to hand out HSU literature at the Game of the Round each week during the competition.
- A link from the Central Coast Division web page to the HSU website. Both the HSU logo and the 'Your Rights At Work' logo to be branded on the Division website in the Sponsors section.
- 10 Season Passes for your staff for the 2006 Season.
- 6 places in the Sponsors Box for the 2006 Central Coast Representative Game placed on May 13th and the 2006 Grand Final played on September 30th.
- Presentation of the 2006 Grand Final Winner Trophy to the winning team on Grand Final Day.

517. The third page, the signing page, set out as follows:

2. acceptance

To accept this agreement please sign and date below.

I, Craig Thomson, National Secretary of the Health Services Union accept this proposal and agree to commit to the items as specified in this agreement and the associated costs. This agreement is in force for the 2006, 2007 and 2008 Season for \$30,000 per annum plus a CPI increase each year for the 2007 and 2008 Season.

Other documentary evidence relating to the Sponsorship Agreement

MYOB Spreadsheet

518. MYOB data that has been provided by the HSU indicates that in March 2007 two payments totalling \$34,320 were made by the National Office to 'Central Coast Division of Country League Inc' ([WIT.WIL.001.0082](#)):
- a. \$15,000 on 6 March 2007; and
 - b. \$19,320 on 7 March 2007.

Invoices

519. The National Office has produced an invoice numbered '#FP74' and dated 22 February 2008 from the Central Coast Division of Country Rugby League Inc. This invoice is addressed to 'HSU, Craig Thomson, National Secretary, Level 2, 106-108 Victoria Street, Carlton South, VIC 3053'. It identifies a payment required of \$39,073.32, inclusive of GST of \$3,552.12. The invoice identifies the payment as being for 'Major Sponsorship of Country Rugby League for 2008'. ([HSUNO.012.0265](#)).
520. On 10 April 2008 (some four months after Mr Thomson's resignation as National Secretary) Criselee Stevens sent an email to Mark McLeay advising that Kim Williams, Sublime Marketing, had contacted her regarding an outstanding invoice for the final instalment of sponsorship monies for the 'HSU Central Coast Rugby League Cup'. Ms Stevens asked Mr McLeay for advice as to when payment will be made. ([WIT.BUR.001.0071](#)).
521. A Remittance Advice dated 30 June 2008 identifies that payment was made by the HSU, PO Box 3078, 208-212 Park Street, South Melbourne, Vic 3205, to the Central Coast Country League Inc, Dane Drive, PO Box 143, Gosford NSW, 2250 for invoice #P974 in the amount of \$39,073.32 ([WIT.JAC.002.0126](#)).

Evidence of witnesses about the Sponsorship Agreement

522. Ms Stevens told FWA that (Stevens PN 31):
- ... That was really done because the ETU had sponsored the Central Coast soccer. They got there first. Craig said to me that the union would not allow to sponsor, like, one team because then it would be seen as being preference over, you know, mums and dads have kids in one team, 'Why isn't my team' - all that sort of thing. So we decided that then maybe we could sponsor the whole of the football, and it was called the HSU Cup.
523. Ms Stevens gave the following explanation as to why she considered the National Office entered into the Sponsorship arrangement (Stevens PN 137 - 142):
- MS STEVENS: I was probably the driving force behind it. I rang Craig after I'd gone to a Trades and Labor Council meeting and said, 'The bloody ETU are sponsoring Central Coast soccer.' The Mariners are huge on the Central Coast. It was like, 'We've got to sponsor something,' you know? We can't let the ETU - a bit of inter-union rivalry, always good. Craig said, 'Well, we can't sponsor individual teams because that

causes problems in regard to, you know, if we sponsor, you know, Bob's netball team then why can't we sponsor everybody else's kids' netball teams,' and netball was fairly big on the Central Coast. So I had made a phone call to the Central Coast Rugby League and was put in touch with a woman called Kim Williams who basically was desperate. In fact I was told by a woman called Donna Lalor, who used to work at the Sun Weekly before they closed it down on the Central Coast, that the Central Coast Rugby League were looking for a major sponsor.

But I didn't have any idea how much money or who to contact or anything like that. So she gave me Kim Williams' number and basically I spoke to Kim. In that time she put the whole stuff together. It had to go to Craig because it had to be authorised by the National Executive. That was my understanding. So all the documents - and I must admit I, you know, I thought that that would be a very positive thing for the Central Coast, especially considering ambos are often at football games, you know, and that's the synergy between the health workers. We fix up footballers, you know, whether they're drunk and disorderly or not, and, you know, I thought it would go really well. So, yes, so Craig agreed with me. He thought it was a great opportunity and, you know, as far as I know the executive accepted it. Because it was three years' sponsorship.

MR NASSIOS: Yes.

MS STEVENS: It wasn't just, you know, six months.

Evidence about why the Sponsorship Agreement was entered into

524. The following exchange occurred between Mr Thomson and I at interview (Thomson PN 325 - 326):

MR NASSIOS: - - - was there any approval of the use of union funds in that seat?

MR THOMSON: There was the issue of the sponsorship of the Rugby League which - there had been - first of all - my aim with that had been to have the New South Wales branch pay it if they could. We were in the situation on the Central Coast and throughout the country that unions were paying for different sporting opportunities where they arose. The Electrical Trades Union, for example, sponsored all the junior soccer on the Central Coast with Your Rights at Work. We - yes, the CFMEU of course quite famously and still to this day sponsor the Canberra Raiders, but that arose out of that campaign as well too. ...

525. Mr Thomson was asked whether there was a difference between the Sponsorship Agreement and his election campaign, and responded (Thomson PN 328):

Yes, in that I don't think it particularly got me a vote at all. It was raising - it wasn't about - it was choosing how to spend the money as a candidate, I wouldn't have spent it on that. The benefit was to the union's brand name. The area health service is the biggest employer on the Central Coast, so the union has relatively large numbers there, but it was about reinforcing the Your Rights at Work message, and that was the branding that was there, and as I said, unions were doing it all over the place. We also, before that, sponsored in Victoria. We did two other sponsorships, one in Victoria where we did

something at the AFL. We did that with the LHMU. We got two AFL footy players to publicly talk about union rights, and every AFL game for that weekend we were handing out flyers as part of the arrangement, and balloons, and Sharon Burrows was there as part of that. We also did a similar thing at an A-League game on the Central Coast, and I think some of the branches may have done - I think the Tasmanians actually targeted and did one of those Hawthorn home games in Tasmania as well too, but that's from memory.

526. Mr Thomson was asked why the NSW Branch of the HSU did not want to enter into the Sponsorship Agreement, and replied (Thomson PN 1536): 'That's a question for them.'

Evidence about what the National Office received under the Sponsorship Agreement

527. Mr Thomson told FWA that (Thomson PN 326):

... We sponsored the Central Coast Rugby League and they had the union's logo on every football team's jersey and they had a program they produced for every match which said, 'Your Rights at Work: worth fighting and voting for,' and they agreed to have Your Rights at Work signs around all the rugby league grounds in relation to the matches that they played.

528. Mr Thomson also said (Thomson PN 1522):

... It was entirely about Rights at Work. It was a very reasonable price to have that sort of sponsorship. It was - the Rugby League was falling over which is basically why it was so cheap. It involved radio ads as well. The cup for the Central Coast Rugby League those three years was called the 'HSU Your Rights at Work Cup'. I think I went through earlier some of the other marketing visuals that we were able to do. An ad in the program, our Your Rights at Work signage around the grounds, those sorts of things.

529. Mr Thomson was asked more questions about what the National Office received under the Sponsorship arrangement (Thomson PN 1531 - 1534):

MR NASSIOS: Is it - I certainly recall the Your Rights at Work campaign material, but in terms of this particular material, did the HSU have its emblem or something on the sign?

MR THOMSON: Yes.

MR NASSIOS: So if you'd looked at the signs you would have seen HSU?

MR THOMSON: Yes, and it's called the HSU Your Rights - I think it was actually called the HSU Cup, and then underneath it when they put the ads in the paper every week about the Rugby League games they also put the banner Your Rights at Work, but the actual name of the cup was the HSU cup.

530. Mr Thomson was asked for details about the way in which the benefits of the Sponsorship Agreement were used by the HSU (Thomson PN 1537 - 1540):

MR NASSIOS: In terms of the Sponsorship Agreement, there were 10 season passes, six places in the sponsor's box for the representative game and the grand final. Do you know who used those tickets?

MR THOMSON: They were largely unused. We gave some to some HSU delegates. A couple of delegates from North Gosford Private Hospital, who in

particular were local followers of the Rugby League, I think they were the ones who went. I went on grand final day. I think that was pretty much the only time that I went from my recollection.

MS CARRUTHERS: Did you get to present the cup?

MR THOMSON: I got to present the cup, but let me tell you, that doesn't do anything for you. The Central Coast Rugby League had a history of there being a fight at the end of the result no matter what happened. So people weren't particularly watching what was happening after the thing was finished. So you kind of handed it and got out of there as quick as you can.

531. Ms Stevens told FWA that (Stevens PN 144):

Then we had the HSU Cup to which we also ran the IR - the banners were Your Rights at Work. Even in the program there was, 'Your Rights at Work, the HSU proudly support Central Coast Rugby League,' and that was pretty much it. That's all I know. We just kept turning up, handing out stuff, you know. There were a few rules, what you were allowed to do, what you weren't allowed to do, you know. Don't pick fights at the gate, all that sort of stuff and, yes, it went really well.

532. Ms Stevens was asked at interview by FWA about the use by the National Office of the benefits it was entitled to under the Sponsorship Agreement (Stevens PN 155 - 167):

MR NASSIOS: All right. Again just curiosity. I don't know much about rugby, but certainly in terms of, you know, who would have attended and handed out the trophies and so on?

MS STEVENS: So we had - well, Craig actually attended and handed out the grand final trophy. I attended a race day in his place once. That was like a lunch thing at Wyong races, because we had sponsored a race as part of Your Rights at Work race. He would turn up. There was a - what do they call them - the country regional - you know, the country championships or like - - -

MR NASSIOS: I think I know the concept.

MS STEVENS: Yes, sorry.

MR NASSIOS: Yes, okay.

MS STEVENS: Where you pre-select - yes, where you elect, you know, members and they go play for the country - - -

MR NASSIOS: Yes.

MS STEVENS: - - - and the regional stuff.

MR NASSIOS: Yes.

MS STEVENS: And Craig sort of handed out the jerseys on that night. That was very cold at Berkeley Vale, but, yes, other than that it was - at the gates we always tried to organise HSU members to hand out and they pretty much did. I mean, it was very hard. We couldn't cover every single game on a weekend because he just didn't have the people but, you know, we would try and nail the main games. Everyone was

very supportive - I would say it's that type of community - of the Your Rights at Work, so that, you know, they love the T-shirts, any other badges, stickers, all that sort of stuff that we could hand out, we were allowed to do that, and so that's pretty much all they did on the day, and of course went in and watched the footy.

MR NASSIOS: All right.

MR RAWSON: So you used to hand out Your Rights at Work badges and T-shirts and stuff at the games, did you?

MS STEVENS: Yes, out the front of the gate so as people were walking in, we were allowed to do that. That went to the Central Coast Rugby League committee because we didn't want to offend anyone and so there were certain Rules about, you know, 'Be nice to people, and if they don't want to accept them, don't shove them in their face and don't, you know, stand up there and political grandstand.' Craig never actually spoke, you know, at a football match on the microphone or anything but I think the main thing was what people - or what the campaign was about was, you can add the banners and every time you would see Your Rights at Work, everyone knew exactly what it meant. You know, that was probably just before the orange and black bags hit, you know, which came from Unions New South Wales. And they leant us some people too. You know, there were some people that were coming up to watch Woy Woy and Umina or whatever, they would be happy to hand out, you know, 'That would be great, the more the merrier.' You know, never turn anyone away.

533. During interview with FWA, Mr McLeay advised as follows (McLeay PN 456 - 460):

MR NASSIOS: Okay. Now, were you aware during 2007 that the HSU National Office had a sponsorship agreement with Central Coast Rugby League at a cost of over \$30,000 a year?

MR McLEAY: I've been told that, yes.

MR NASSIOS: I ask you as a National Industrial Officer, what did you see to be the value of that arrangement?

MR McLEAY: Of the sponsorship? I mentioned a number of unions that have done - sponsorship was to promote the cause, and when I was at the - for instance, when I was at the USU, we had an arrangement with the Newcastle Knights' coach where we sponsored the collar. So our logo would appear on the collar, and so every time there was an interview done with the coach on tele, you saw the union's logo. I understand that this was part of promoting the Your Rights at Work. That it entitled that - the logo, the union's logo appears on the jersey and so it promotes the union's - at least the union's image.

I presume because I know - I don't know the details of exactly what it entailed, but I know when I was at the USU the arrangement that we had was that we were also able to deliver pamphlets at certain - at games, so we - you know, we had the Your Rights at Work - some Your Rights at Work information and union information and that sort of thing. I know other unions did similar things. The Nurses'

Association - here in New South Wales, the New South Wales Nurses' Association had an affiliation with soccer. I think the ETU also provided - went into a sponsorship arrangement with a - I think again with a sort of code where they had soccer balls that had the ETU logo on there and banner advertising around the grounds and that sort of thing.

Evidence about whether the entry into the Sponsorship Agreement was authorised

534. Mr Thomson was asked by FWA how the Sponsorship Agreement was authorised: (Thomson PN 1517 - 1522)

MR NASSIOS: Okay. We've spoken about the Central Coast Rugby League sponsorship.

MR THOMSON: Yes.

MR NASSIOS: Now, that sponsorship, as I understand it, was a three-year sponsorship agreement for I think \$30,000 per year, indexed to CPI.

MR THOMSON: Yes.

MR NASSIOS: I'm asking this question in relation to how that was authorised. Well, I'll leave it at that.

MR THOMSON: I had discussions with the New South Wales secretary about it. He suggested that it should be something that the National Union pays, not him. That was then reported and we entered into the deal.

535. Later in the interview Mr Thomson was asked again how the Sponsorship arrangement had been authorised (Thomson PN 1523 - 1530):

MR NASSIOS: Do you know how it was authorised? I'm just trying to work out exactly what process would have taken place.

MR THOMSON: It was - the approach was made to me. I then made an approach to the New South Wales branch. We had discussions, we then - it was decided the national office would be the appropriate person to pay for that. That was reported and fitted within our kind of contributions that we were making in terms of the Your Rights at Work campaign.

MR NASSIOS: So there was no - am I able to say there was no specific reference to this - to the national executive?

MR THOMSON: There didn't need - in my view anyway, they didn't need to be. It was within our budget for expenditure in terms of that. The main thing I was concerned about was twofold. (1) I would have preferred if New South Wales paid for it, but the second part of that was making sure that we didn't put - they didn't get offside about it as well, that they were supportive of the issue. They were.

MR NASSIOS: When we - very early on we spoke about approval of delegations and certain sums of money. Arguably this one, if you do the three years, 30,000 with CPI, I mean you're close to the \$100,000 mark.

MR RAWSON: Well, to be fair, in fact it came over.

MR NASSIOS: It came over. Is there - was there a process as a result of those delegations that, in your mind, you felt as though it should go through some other process?

MR THOMSON: If this had been an issue that was happening outside the major campaign that we were running and putting resources into, possibly. But it wasn't - this was not a secret. You can't, kind of, keep that thing secret. In fact the whole idea of it is to be exactly the opposite of it being a secret. I mean, I viewed that it had approval and there was never an issue raised in relation to this.

536. Mr Williamson told FWA in an interview that he was aware of the Sponsorship Agreement. He described it as follows (Williamson PN 502):

Yes. I think it was that the National Executive made the decision, if my memory serves me correctly, to endorse the sponsorship to carry Your Rights at Work information logos on the Central Coast Leagues Club, I think, if that's the one I'm referring to, yes. Yes.

537. Mr Williamson was asked about the way in which the National Executive had authorised the Sponsorship Agreement (Williamson PN 516 - 525):

MR RAWSON: I think, Mr Williamson, you said that you thought that the National Executive approved that.

MR WILLIAMSON: I can recall that discussion taking place at a National Executive meeting, yes.

MR RAWSON: We can't find the reference to that, I think. I don't think we have seen any minutes that refer to that.

MR WILLIAMSON: Okay.

MR RAWSON: Do you recall whether it was - I mean, in your mind, was it discussed at a formal executive meeting?

MR WILLIAMSON: I would think so, Craig, yes, from my recollection, because it's - you know, I think it was under the banner of Your Rights at Work discussions that would have taken place, I would have thought, but I definitely can recall it being held.

MR NASSIOS: Well is there a possibility we're talking of two different things? Is there a possibility that Your Rights at Work logo on a jumper is different to this?

MR WILLIAMSON: Well it could be that. I think that's what it was. I don't think it was a - you know, 'Vote Craig Thomson' plastered all over them. I think it was Your Rights at Work that was the driver for that.

MR RAWSON: But you remember discussion about sponsorship of rugby in some form?

MR WILLIAMSON: I can recall something along those lines, Craig, yes.

538. Ms Jackson stated she was unaware of the Sponsorship Agreement until during the Exit Audit. She stated as follows (Jackson (1) PN 278 - 283):

MR NASSIOS: ...Central Coast Rugby sponsorship, were you aware that the union had entered into a sponsorship agreement for the Central Coast Division Rugby League competition for \$30,000 a year?

MS JACKSON: No, but I do have a jumper in my Sydney office framed.

MR NASSIOS: When did you become aware of - no, it's quite right.

MS JACKSON: When did I become aware of this?

MR NASSIOS: Yes.

MS JACKSON: I became aware of this during the exit audit because at the same time they were calling up for their instalments. I think I forwarded those emails to you went to somebody - yes, they were screaming for their money. We were two payments behind or something.

539. When asked during the FWA interview whether the Sponsorship Agreement was approved by the National Executive or the finance committee Dr Kelly advised as follows (Kelly PN 149 - 151):

DR KELLY: They might have been done with the knowledge of members of National Executive, but not National Executive as a body. For example, it came out after the event that there was sponsorship provided to a rugby league club on the north coast - northern beaches or wherever. That never went to National Executive. The first time I ever heard about that was after Craig Thomson had left. Yes.

MR NASSIOS: All right.

DR KELLY: There seemed to me to be a lot of things that were never taken to National Executive, and in the finance committee, we were just - well, that was obviously hidden somewhere, because I never saw it.

540. Later Dr Kelly was asked directly about whether she considered the expenditure of the National Office on the Sponsorship Agreement to have been appropriate expenditure of the National Office (Kelly PN 653 - 658):

MR NASSIOS: Do you have a view about whether this was appropriate expenditure of the National Office?

DR KELLY: Yes, I do.

MR NASSIOS: May I ask what that view is.

DR KELLY: I think it's inappropriate expenditure of the National Office.

MR NASSIOS: Can I ask, do you know who attended the representative game and/or the grand final sponsor's box? Six games over three years?

DR KELLY: I didn't know we had a sponsor's box.

541. Mr Brown was asked about the Sponsorship Agreement in interview with FWA (Brown PN 354 - 362):

MR NASSIOS: In 2006 the National Office entered into a three-year sponsorship agreement with the Central Coast division of rugby league for \$30,000 per season. Was this expenditure ever discussed and/or approved by the National Executive?

MR BROWN: Absolutely not.

MR NASSIOS: Did you know about it?

MR BROWN: Not until after March 2008 when I was examining the records.

MR NASSIOS: Do you have a view about whether this was appropriate expenditure of the National Office?

MR BROWN: It certainly was not appropriate. It should never have been made.

542. Ms Ord was asked by FWA about who instructed her to make payments to Central Coast Rugby League Inc (Ord (1) PN 366 - 372):

MR NASSIOS: So in terms of each of them I'm going to basically ask you how they were processed, you know, whether you were instructed to approve them in some way or, sorry, to make the payments and so on. I apologise that there are quite a lot of questions, but I need to ask you all these questions. Now, in 2006 the National Office entered into a 3-year sponsorship agreement with the Central Coast Division of rugby league for \$30,000 per season. Do you recall this payment?

MS ORD: I don't recall a particular payment but I do, or I didn't even recall the amount, but I do recall that occurring, yes.

MR NASSIOS: Okay. Do you know what sort of process would have taken place for that payment to be approved?

MS ORD: I think Craig just told me to pay it.

MR NASSIOS: Okay.

MS ORD: It didn't seem out of line to me.

Evidence relating to the payment of the National Office's contribution for the 2008 season under the Sponsorship Agreement

543. Mr Thomson was asked about the involvement of Ms Stevens in the steps taken by Central Coast Rugby League Inc to recover payment from the National Office in respect of the 2008 season (Thomson PN 1547 - 1550):

MR NASSIOS: I'll show you an email that was sent from Mr Stevens on 10 April 2008, so I acknowledge it was after your time - - -

MR THOMSON: Yes.

MR NASSIOS: - - - to Mark McLeay. It advised that she'd been contacted by Kim Williams about the outstanding final invoice. Do you have any idea why Ms Williams would have been raising this with Ms Stevens?

MR THOMSON: They were friends. They became friends while I was there, but they were friends. That was - - -

544. Ms Stevens was asked by FWA at interview about whether she had continued to interact with the HSU after she commenced working for Mr Thomson. She replied (Stevens PN 31):

The only time I did have - not really. I tried to contact Kathy Jackson a few times. That was in relation to the fact that there was an ongoing - the Your Rights at Work, part of that process was actually the HSU sponsored the Central Coast Rugby League.

545. Ms Stevens continued (Stevens PN 36):

So part of that, there was six months left to go. The lady that I worked with from Central Coast Rugby League could never get onto Kathy in regard - because there were still things that had to be done. 'What information would you like in the program? You know, where's your photos, you know, do you want to put a blurb in there?' All that sort of thing. 'Who's going to present the trophy?' So I saw it as sort of like my responsibility to try and bridge that communication because I'd been working with her for two and a half years, but unfortunately I never got a call back. ...

546. Later in her interview Ms Stevens was asked again about her involvement in the process by which Central Coast Rugby league Inc sought payment of the 2008 sponsorship monies from the National Office (Stevens PN 145 - 154):

MR NASSIOS: Okay. Can I ask you about 10 April. I think you've actually already answered this but I'm going to ask it in case I didn't hear properly. 10 April 2008 I think it was Kim Williams would have contacted you about the outstanding final invoice.

MS STEVENS: Yes.

MR NASSIOS: My recollection is that may be when you were trying to get in touch with - - -

MS STEVENS: Kathy Jackson.

MR NASSIOS: - - - Ms Jackson.

MS STEVENS: Yes.

MR NASSIOS: But is that - why did she? What happened at that time?

MS STEVENS: Why did Kim write to me?

MR NASSIOS: Talk to you. Yes.

MS STEVENS: Because just through previous affiliation. She had obviously met Craig to originally sit down and talk about the contract and, you know, what was in it and what they'd get and what they wouldn't get and what they could do. Craig basically said to Kim, 'Well, Crissie is the one looking after that so if you've got any problems go through her,' which is the stuff like the programming, you know, what we're going to put in, you know, grand final day, all that sort of stuff, the logistics. So I think that was just really through the affiliation beforehand. She rang me and she said, 'Like the old National Secretary, a lot easier to work with,' and of course I had a laugh, you know, then, 'The new one. She won't return my phone calls,' and,

look, I tried the same thing. I wanted to actually be able to sit down with her and go, 'Look, this is where we're up to. This is everything that's being done, you know. You'll have a great time. Here's your local members that, you know, can run it. Off you go,' and she just wasn't interested. Just wouldn't even take the call.

547. Ms Jackson told FWA that she only became aware of the existence of the Sponsorship Agreement during the Exit Audit when Central Coast Rugby League Inc contacted the National Office about payment of the 2008 season's sponsorship: (Jackson (1) PN 283 - 289):

MS JACKSON: I became aware of this during the exit audit because at the same time they were calling up for their instalments. I think I forwarded those emails to you went to somebody - yes, they were screaming for their money. We were two payments behind or something.

MR NASSIOS: All right.

MS JACKSON: And at that point I asked for the contract because if we were to pay it and under the contract to say we did have to pay it.

MR NASSIOS: All right. Did you refuse to continue with the sponsorship?

MS JACKSON: No, because we were locked into the contract because the National Secretary can sign contracts on our behalf and that's what had happened.

MR NASSIOS: Do you think there's anything [of] value in that sponsorship?

MS JACKSON: I don't know.

Mr Thomson's submissions

548. With respect to findings 138 and 139, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies breaching Sub-rules 32(n) and 36(b) of the Rules. Object 4(b) of the Rules is "to regulate and protect the conditions of labour and relations between workers and employers, and between workers and workers." Object 4(s) includes making gifts for charitable purposes.
 - b. The National Office of the HSU and the Central Coast Rugby League had a sponsorship agreement, where the HSU was permitted to promote the Your Rights at Work campaign and the HSU. This arrangement benefitted the HSU by raising the HSU's profile in the area as well as the Your Rights at Work campaign. As submitted in paragraphs 523.d and 523.e at page 336 in chapter 5, the HSU strongly supported the campaign against Work Choices.
 - c. The HSU receives income from its financial members. It is fundamental that the HSU is continually raising its profile and increasing its membership.
 - d. The Your Rights at Work Campaign is a community campaign run by the ACTU. The Your Rights at Work Campaign brings together the hundreds of thousands of hard working Australians who want to protect their rights and conditions at work. The Your Rights at Work Campaign began in 2005 when the Howard

Government released its proposed workplace changes. A number of trade unions across Australia are heavily involved with the Your Rights at Work Campaign, as can be evidenced by the participation in the Your Rights at Work Rally in September 2011. The Your Rights at Work Campaign currently has 133,580 supporters.

- e. Expenditure on sponsorship and advertising is expenditure on the general administration of the HSU, or for a purpose reasonably incidental to the general administration of the HSU and does not require approval of the National Executive or the National Council. Further, as submitted at paragraph 73 on page 142 in chapter 3, at the National Executive Meeting in Perth on 25 and 26 February 2003 the National Executive approved an expenditure delegation to the National Secretary of up to \$50,000.
- f. It should also be noted that there is a long standing connection between rugby league and the labour movement. The arrangements between the HSU and Central Coast Rugby League are reflective of many other arrangements with unions and rugby league clubs throughout Queensland, New South Wales and the Australian Capital Territory.
- g. The delegation of the National Executive in February 2003 was valid and amounts to approval of the National Secretary to authorise payments and amounts to a general prior approval of expenditure. Reference is made to submissions made at paragraphs 73.a and 73.b on page 142 in chapter 3.
- h. Further, the sponsorship agreement, in the judgement of Mr Thomson was in the best interests of the HSU. Mr Thomson also denies contravening subsection 285(1) of the RAO Schedule in respect of the payment to the Central Coast Rugby League.
- i. I have failed to inform myself of the details of the sponsorship agreement. Under the arrangement the HSU and the Your Rights at Work Campaign received publicity. At no time did any material, poster or club shirt refer to Mr Thomson. Mr Thomson denies gaining any personal advantage from the sponsorship arrangement. The sponsorship arrangement was considered a success by the National Office of the HSU.

Conclusions

549. It appears from Ms Stevens' evidence to FWA that it was she who first took the proposal to Mr Thomson that the HSU enter into the Sponsorship Agreement with Central Coast Rugby League Inc. It is apparent from Ms Stevens's statements about why she did so that she at least was motivated in part by what she termed 'inter-union rivalry'.
550. Mr Thomson also stressed the fact that other unions were sponsoring sporting teams in his answers to FWA about why the Sponsorship Arrangement was entered into. However it seems probable that the key reason for entering into the Sponsorship Agreement was the one identified by Mr Thomson, namely, that it gave exposure through naming rights, advertising and signage to the HSU and to the 'Your Rights at

Work' brand. According to Ms Stevens, the Sponsorship Agreement also gave the HSU the capacity to hand out 'Your Rights at Work' literature at games.

551. It is possible that Mr Thomson received some personal advantage from the entry into the Sponsorship Agreement by the National Office. Any promotion of the 'Your Rights at Work' brand on the Central Coast during 2006 and 2007 was likely to benefit him as the eventual ALP candidate for the seat of Dobell. By late 2005 Mr Thomson was seeking to improve his profile within Dobell in order to enhance his prospects of being preselected by the ALP to contest the seat of Dobell.
552. Mr Thomson may also have received some more direct personal advantage from the entry into the Sponsorship Agreement by getting the opportunity to hand out the premiership cup at the Grand Final, and to present guernseys to the representative team before a representative match. The value to Mr Thomson of such opportunities is impossible to quantify but this does not mean that such value does not exist. Nevertheless, I accept that any personal advantage is remote.
553. On his own evidence, Mr Thomson entered into the Sponsorship Agreement without seeking the authority of the National Executive or National Council to do so. Indeed, Mr Thomson said that:
- a. he and Mr Williamson decided that the National Office should pay for the Sponsorship Agreement;
 - b. this decision was reported to the National Executive;
 - c. however there was no need for the matter to be referred to the National Executive for decision because the commitments under the Sponsorship Agreement were 'within our budget for expenditure in terms of that [presumably, on the Your Rights at Work campaign]';
 - d. in any event there was no secret that the National Office had entered into the Sponsorship Agreement because, by its nature, that agreement involved a very deliberate public identification of the HSU as the sponsor of the competition.
554. In contrast, Mr Williamson told FWA that he believed it was the National Executive who made the decision to enter into the Sponsorship Agreement, and that the matter had been discussed by the National Executive.
555. However the weight of evidence suggests that the decision to enter into the Sponsorship Agreement was not made, or authorised, by the National Executive:
- a. each of Ms Jackson, Dr Kelly, Mr Brown, and Mr Thomson said the decision was not made by the National Executive (although Mr Thomson did say the decision had been reported to National Executive);
 - b. there is no reference to the decision to enter into the Sponsorship Agreement, or even to the existence of the Sponsorship Agreement, in any minutes of National Executive meetings; and
 - c. in early 2008, after the departures of Mr Thomson, Ms Stevens and Ms Ord, it appears that there was nobody left in the National Office who was aware of the Sponsorship Agreement when the Central Coast Rugby League Inc made efforts

to procure payment from the National Office of the sponsorship monies for the 2008 season.

556. Further, to the extent that minutes of National Executive meetings can be taken as approving any expenditure on the Your Rights at Work campaign, that approval centred around the seat of La Trobe in Victoria which had been allocated to the HSU by the ACTU. No minutes of National Executive meetings that have been viewed by FWA authorise expenditure by the National Office of funds on any activities that formed part of the Your Rights at Work campaign in the seat of Dobell.
557. The National Office has not produced a record relating to the payment of sponsorship monies in respect of the 2006 season to Central Coast Rugby League Inc. However the Sponsorship Agreement provided that the value of the sponsorship would initially be set at \$30,000. Also, it is notable that in 2008 Central Coast Rugby League Inc was only seeking overdue payments relating to the 2007 season from the National Office. Given these two matters, it is probable that the National Office paid \$30,000 to Central Coast Rugby League Inc in respect of the 2006 rugby season, in early 2006. HSU records demonstrate that further contributions, of \$34,320, and \$39,073.32, were made in 2007 and 2008 respectively, in respect of the 2007 and 2008 seasons. Accordingly, it seems probable that the total amount of money paid by the National Office to Central Coast Rugby League Inc between 2006 and 2008 in respect of the Sponsorship Agreement was \$103,393.32.
558. This total figure is significantly higher than the amount which Mr Thomson claims he was authorised to expend by the 'delegation' which he claims was approved by National Executive at its meeting on 25 and 26 February 2003, although (for reasons set out at paragraphs 40 to 67 of chapter 5) I do not consider that any such delegation had been approved. I have also set out at paragraphs 17.c, 31 to 72 and 73 to 76 of chapter 3 my responses to Mr Thomson's 'introductory' submissions regarding the 'delegation'.
559. There is no evidence which suggests that any of the payments of sponsorship monies to Central Coast Rugby League Inc while Mr Thomson was National Secretary in 2006 and 2007 were approved by the National Executive or National Council.
560. I consider that:
- a. in the absence of any National Executive resolutions authorising expenditure on the Your Rights at Work campaign in Dobell, entry into the Sponsorship Agreement on the Central Coast was not the 'business of the union' within the meaning of Sub-rule 32(n);
 - b. the payment of monies totalling \$103,393.32 by the National Office to Central Coast Rugby League Inc pursuant to the Sponsorship Agreement was not expenditure on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU; and
 - c. the payment of those monies was not authorised by either National Council or National Executive.

561. A reasonable person in Mr Thomson's position would not have:
- a. entered into the Sponsorship Agreement on behalf of the National Office; or
 - b. caused payments to be made by the National Office to Central Coast Rugby League in respect of its commitments under the Sponsorship Agreement
- without seeking and obtaining the prior approval of either National Council or National Executive to do so.

Findings 138 and 139 - Authorising payment to the Central Coast Rugby League by the National Office

- 138.** Mr Thomson contravened Sub-rules 32(n) and 36(b) by failing to conduct the business of the HSU, and by purporting to authorise payments of monies of the HSU without authority of either National Council or National Executive to do so, by:
- entering into the Sponsorship Agreement on behalf of the National Office without seeking the approval of the National Executive or National Council to do so;
 - causing the National Office to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2006 and 2007 rugby seasons without seeking the approval of the National Executive or National Council to do so in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU; and
 - causing the National Office to be liable, under the terms of the Sponsorship Agreement, to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2008 rugby season.

- 139.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by:
- entering into the Sponsorship Agreement on behalf of the National Office without seeking the approval of the National Executive or National Council to do so;
 - causing the National Office to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2006 and 2007 rugby seasons without seeking the approval of the National Executive or National Council to do so in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU; and
 - causing the National Office to be liable, under the terms of the Sponsorship Agreement, to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2008 rugby season.

Dads in Education Fathers' Day Breakfast

Authorising payment of Dads in Education Fathers' Day Breakfast by the National Office

562. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 140 to 143 - Authorising payment of Dads in Education Fathers' Day Breakfast by the National Office, which are set out below at page 745.

Evidence

563. Documents viewed by FWA disclose that the National Office received an invoice dated 25 June 2007 from Dads in Education for \$5,000 for 'Support of Father's Day Breakfast' ([HSUNO.001.0190](#)). That invoice was marked for the attention of Belinda Ord, and was paid by the National Office by two payments of \$2,500 each on 22 and 23 August 2007 ([HSUNO.001.0403](#) and [HSUNO.001.0194](#)).
564. On 22 August 2007 Ms Ord emailed Ceri Aubrey, Director, Dads in Education, as follows ([HSUNO.001.0191](#)):

'Hi Ceri

As per my phone call with Katrina, could you please send an invoice for \$5000 sponsorship/donation.

I will also need your BSB and Account number to pay via EFT

Cheers and kind regards'

565. Ceri Aubrey responded to Ms Ord's email as follows ([HSUNO.001.0192](#)):

'Hi Belinda
I have attached the invoice for you. Bank details are:
BSB: 633 000
Account No: 127850097
Account Name: Dads in Education Ltd
Kind Regards
Ceri Aubrey
Director
Dads in Education
(E) ceri@dads.org.au
(M) 0407 600 178
(W) www.dads.org.au'

566. Later that day Ms Ord emailed further ([HSUNO.001.0192](#)):

'Hi Ceri
I have just paid \$2500 via EFT payment - Please see EFT remittance attached. 2nd payment for \$2500 will be paid tomorrow.
Cheers and kind regards'

567. Mr Aubrey responded ([HSUNO.001.0196](#)):

'Hi Belinda
Thank you for transferring the money. I was unable to open the attachment though.
Kind Regards'

568. On 22 August 2007 an EFT receipt was issued in the amount of \$2,500 for 'Dad's in Education' in payment for 'Purchase #00000082' on 17 July 2007.
([HSUNO.001.0188](#))

569. On 22 August 2007 at 15:46:13 a SGE Credit Union inetbank receipt was issued. The Narrative stated 'inv#03' and the amount detailed as \$2,500. ([HSUNO.001.0404](#))

570. On 23 August 2007 at 11:16 am Ms Ord emailed Mr Aubrey again as follows:

'Hi Ceri
I have just transferred 2nd payment of \$2500. I have not attached EFT receipt this time.
Goodluck and best wishes for your breakfast.
Cheers and kind regards'

571. On 23 August 2007 at 11:05:22 a SGE Credit Union inetbank receipt was issued. The Narrative was 'father's day breakfast' and the amount detailed was \$2,500.
([HSUNO.001.0410](#))

572. On 23 August 2007 an EFT receipt was issued in the amount of \$2,500 for 'Dad's in Education' in payment for 'Purchase #00000082' on 17 July 2007.
([HSUNO.001.0194](#))

573. Mr Thomson was asked at interview about the payments on 22 and 23 August 2007 (Thomson PN 1657 - 1672):

MR NASSIOS: It appears to be for a Father's Day breakfast. Was that payment discussed or approved by the National Executive?

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell
Authorising payment of Dads in Education Fathers' Day Breakfast by the National Office

- MR THOMSON: It was discussed – we had National TV on it. We did Sunrise – again, it's something that people can't say they didn't know about.
- MR NASSIOS: Okay.
- MR THOMSON: It started as a Central Coast thing but it was all of – all the schools in the ACT, a lot of the Sydney schools and the Central Coast schools. They held it at the end of literacy week and they were encouraging fathers to come in and read to their kids after they had a breakfast with the kids at school.
- MR RAWSON: You say there was no secret because it was on National television.
- MR THOMSON: Yes.
- MR RAWSON: If someone from the National Executive was watching Sunrise that morning – and I presume - - -
- MR THOMSON: They wouldn't have got a shock.
- MR RAWSON: You were on Sunrise - - -
- MR THOMSON: No, I was standing next to the person who was on Sunrise - - -
- MR RAWSON: They see you in the background.
- MR THOMSON: Yes.
- MR RAWSON: They might think, 'Craig is somehow involved in this,' or even, 'Craig is supporting it.'
- MR THOMSON: No, they - - -
- MR RAWSON: But they wouldn't necessarily jump to the conclusion that the HSU has spent \$5000 supporting it.
- MR THOMSON: We told them about it, this is not an unknown issue at all.

574. A second invoice dated 8 October 2007, also for \$5,000, was received from Dads in Education for 'Support of 2008 Father's Day Breakfast'. That invoice was paid by the National Office on 3 December 2007 ([HSUNO.001.0185](#)), which is 11 days before Mr Thomson resigned as National Secretary and some nine months before the event was to be held.
575. Mr Thomson was asked at interview about the fact that the second invoice for \$5,000, which had been sent in October 2007, was for the Father's Day breakfast that was not to occur until September 2008. Mr Thomson replied (Thomson PN 1679):
- I think we agreed to do it for two years. I don't know - I didn't structure how the payments were done but it was a two year agreement that we had with them.
576. Mr Thomson also explained that he did not need to separately authorise payment of the invoice for the 2008 breakfast because it 'was part of the original agreement so it wasn't actually a new decision that was being made. The original agreement was 2007 from my recollection' (Thomson PN 1681).
577. Mr Burke described Dads in Education as being 'again a group in the Central Coast. They used to run breakfasts around Father's Day for - it was involving fathers reading

to their children.' (Burke PN 210). When asked whether he knew of any relationship between either the HSU or Mr Thomson and Dads in Education, Mr Burke replied 'Yes, I believe Craig at some point, I'm not sure when, was made a patron of the group, Dads in Education, yes.' (Burke PN 212).

578. Ms Stevens explained that Dads in Education was (Stevens PN 224):

... put forward by Ceri Aubrey who has been running it for years and years, far before 2006, and that's really more about getting dads interested in education. They used to have a Father's Day breakfast once a year...the only thing I'm aware of that Craig did with Ceri Aubrey was Ceri's son walked from Sydney to Canberra raising money and poor old Brandon did his ankle or something on the way down...but anyway Craig met them and just did some media because Ceri was from the Central Coast and did live in Dobell and they did a thing on Sunrise which was basically all about Dads in Education. It wasn't anything to do with Craig really. He was just standing there'.

579. Ms Stevens also stated that Ceri Aubrey was a member of the ALP, although he was not a member of the HSU (Stevens PN 232 - 236). However Ms Stevens told FWA that she did not know anything at all about the payments made by the National Office to Dads in Education (Stevens PN 226).

580. When asked in interview about the payments to Dads in Education, Mr Williamson could not recall whether they were ever discussed or approved by National Executive (Williamson PN 535, PN 539). He also had 'no idea' who would have approved payment for the 2008 breakfast (Williamson PN 541).

581. Ms Jackson told FWA in her first interview that she was uncertain regarding whether National Executive had ever approved payments to Dads in Education. She stated (Jackson (1) PN 235):

We approved something, yes, but I'm not...I'm not sure whether it's Dads in Education or something but there was something approved. But I think the issue, if it wasn't approved it was definitely spoken about. Where is it? So, for example, you have a report of the National Executive that said 'and last week I went to the Dads in Education Campaign and it cost the union \$2500', I think that was taken as approval but I'm not sure what the minutes reflect because we can't find them.

582. Ms Jackson said she became aware of these payments when she became the National Secretary and went through all the accounts and saw what monies had been spent (Jackson (1) PN 241).

583. Dr Kelly told FWA that the payments to Dads in Education had not been discussed or approved by either National Executive or the Finance Committee (Kelly PN 690).

584. No minutes of National Executive or National Council meetings that have been viewed by FWA record a resolution authorising payments to Dads in Education on 22 and 23 August 2007 and on 3 December 2007.

Mr Thomson's submissions

585. With respect to findings 140 to 143, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules and any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule. Mr Thomson had the power to make the donations. Further making the donations was consistent with the objects of the HSU.
 - b. He denies gaining any personal advantage from the donations made by the National Office to the Dad's in Education Breakfast. The HSU donated \$10,000 in total to Dads in Education. This amount had been budgeted for, in the budget approved by the National Executive. The Breakfast was a bona fide charitable purpose.

Conclusions

586. Mr Thomson has submitted that the payments totalling \$10,000 to Dads in Education were budgeted for, in the budget approved by the National Executive. For the reasons set out at paragraphs 154 to 156 of chapter 5, I am not persuaded by this argument.
587. It is clear that the payments totalling \$10,000 between August and December 2007 to Dads in Education was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU. It is clear that Mr Thomson was closely involved in the decision to make these donations.
588. The benefit of sponsorship of the Father's Day Breakfast to Mr Thomson's candidacy in Dobell is patent given that the agreement was entered into in mid 2007 and that payments for the 2007 Breakfast were made in August 2007. Given that Father's Day is the first Sunday in September and the federal election was held in late November 2007, Mr Thomson's appearance on National television in association with this event just a few months before the election would, on any reasonable view, have assisted in gaining publicity for his candidacy in the seat of Dobell.
589. Accordingly I consider that Mr Thomson gained a personal benefit from purporting to authorise donations of \$10,000 to Dads in Education.
590. A reasonable person in Mr Thomson's position would have taken steps to ensure that these payments were approved by National Executive and recorded in the minutes of National Executive.

Findings 140 to 143 - Authorising payment of Dads in Education Fathers' Day Breakfast by the National Office

- 140.** Mr Thomson contravened the requirements of Sub-rule 36(b) by purporting to authorise payments to Dads in Education, totalling \$10,000, without those payments having first been approved by the National Executive or National Council in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 141.** Mr Thomson contravened the requirements of subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by failing to ensure that payments by the National Office to Dads in Education totalling \$10,000 between August and December 2007 were approved by National Executive or National Council and recorded in the minutes of National Executive in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 142.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose by purporting to authorise payments made by the National Office to Dads in Education totalling \$10,000 between August and December 2007 in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 143.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely, by advancing his campaign to become elected as the member for Dobell, by purporting to authorise payments made by the National Office to Dads in Education totalling \$10,000 between August and December 2007.

Golden Years Collectables

Authorising payment to Golden Years Collectables by the National Office

591. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 144 to 147 - Authorising payment to Golden Years Collectables by the National Office, which are set out below at page 747.

Evidence

592. A charge was made to Mr Thomson's CBA MasterCard on 25 November 2006 for \$2,050 at Golden Years Collectables in Erina on the Central Coast of New South Wales ([HSUNO.014.0081](#)). Mr Thomson has described that payment as being for 'a series of memorabilia issues, things that we bought and donated, and I think that was declared' (Thomson PN 1342). Mr Thomson further stated that the memorabilia was donated 'To the ALP, for raffles' (Thomson PN 1344). Mr Thomson thought that they may have also paid a separate amount to frame the memorabilia (Thomson PN 1346).
593. Mr Williamson stated in interview that he had 'no idea' what the payment to Golden Years Collectables was for (Williamson PN 545) and could not recall whether the payment was authorised by National Executive (Williamson PN 547). Dr Kelly stated that she did not know what the payment was for and that it was not discussed or approved by National Executive (Kelly PN 706 - 709).
594. No minutes of National Executive or National Council meetings that have been viewed by FWA record a resolution authorising a donation of memorabilia to the value of \$2,050 to the ALP.

Mr Thomson's submissions

595. With respect to findings 144 to 147, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules and any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule. As stated above, the National Secretary has the power to make the donations on behalf of the HSU. Further making the donation was consistent with the objects of the HSU. The HSU supported the ALP and this donation was disclosed in accordance with the political donations laws.
 - b. He denies gaining any personal advantage from the donations made by the National Office to Golden Years Collectables.

Conclusions

596. It is clear that the payment of \$2,050 to Golden Years Collectables to purchase memorabilia to donate to the ALP for raffles was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.
597. Mr Thomson agreed in interview that he was aware that the National Office made a payment to Golden Years Collectables and the purpose for which the memorabilia was acquired. Given the day to day practices surrounding payment and authorisation of expenditure by the National Office (which are discussed in Schedule 2) and the fact that he was aware of this payment, I consider that Mr Thomson purported to authorise the payment of \$2,050 to Golden Years Collectables in November 2006.

598. A reasonable person in Mr Thomson's position would have taken steps to ensure that the payment of \$2,050 to Golden Years Collectables was approved by National Executive and recorded in the minutes of National Executive.
599. In making the payment of \$2,050 to Golden Years Collectables, Mr Thomson was motivated by a desire to increase his profile within the ALP by promoting the memorabilia to the ALP. This was not a proper purpose and Mr Thomson was not acting in good faith in what he believed to be the best interests of the HSU.

Findings 144 to 147 - Authorising payment to Golden Years Collectables by the National Office

144. Mr Thomson contravened Sub-rule 36(b) by purporting to authorise payment by the National Office of \$2,050 to Golden Years Collectables for memorabilia without the prior approval of either National Executive or National Council to do so in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
145. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by failing to ensure that the payment of \$2,050 by the National Office to Golden Years Collectables was approved by National Executive and recorded in the minutes of National Executive in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
146. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose by purporting to authorise the payment of \$2,050 by the National Office to Golden Years Collectables in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
147. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely, by advancing his campaign to become preselected as the ALP candidate for the seat of Dobell by purporting to authorise the payment by the National Office of \$2,050 to Golden Years Collectables.

Central Coast Convoy for Kids

Authorising payment to the Central Coast Convoy for Kids by the National Office

600. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 148 to 151 - Authorising payment to the Central Coast Convoy for Kids by the National Office, which are set out below at page 750.

Evidence

601. MYOB data ([HSUNO.003.0173](#)) discloses that on 12 September 2006 the National Office made a payment of \$5,000 to the Central Coast Convoy for Kids. Mr Thomson described the payment in interview (Thomson PN 1583) as being:

Yes, it's a fundraiser for one of the children's hospitals I think. It's truck drivers, bus drivers and the like who form a massive convoy and drive through the Central Coast and they raise money by doing that and so forth. So it's something that has happened for a long, long time.

602. Mr Thomson further explained that 'the donation was in terms of some of the logistics of assisting them getting it running that year. While it had gone for many years, I think they had had some trouble' (Thomson PN 1585).

603. Although Ms Stevens did not know that the HSU had made a donation, she described the Central Coast Convoy for Kids as (Stevens PN 222):

'...this big fundraiser that they have. They have like their trucks, like a convoy of trucks going around, and they meet at Gosford race course and it's like a fair or a carnival day and all the money is to raise money for kids and Gosford Hospital. That's my understanding'

604. As far as Ms Stevens was aware, Central Coast Convoy for Kids did not have any connection with the ALP or the HSU (Stevens PN 228). Mr Burke also described the event as a 'long standing kind of Community event, where you have hundreds of trucks going through the Central Coast. It's one of the biggest events of the year, and they raise a lot of money for sick children' (Burke PN 204).

605. When asked whether the donation was ever authorised by the National Executive, Mr Thomson said (Thomson PN 1591) that 'It was reported to National Executive and it should have been reported as a donation. I'm assuming that you're telling me that it wasn't...'

606. Mr Williamson thought that the Central Coast Convoy for Kids was 'a Your Rights at Work thing' and could not recall in interview whether National Council or National Executive ever authorised expenditure related to the Central Coast Convoy for Kids (Williamson PN 526 - 529). Dr Kelly stated in interview that she did not know what the donation of \$5,000 to 'Convoy for Kids' in the email sent by Belinda Ord on 14 August 2007 related to and that National Office did not approve this expenditure (Kelly PN 674 - 676).

607. No minutes of National Executive or National Council meetings that have been viewed by FWA record a resolution authorising a donation of \$5,000 to Central Coast Convoy for Kids on 12 September 2006.
608. During interview with FWA Ms Ord stated that she recalled being told by Mr Thomson to pay a \$5,000 invoice that 'might have been a donation'. However, she was unsure whether this related to either Dads in Education or Central Coast Convoy for Kids. Ms Ord thought that she may have had a discussion about the invoice with Mr Thomson before it arrived, and that she may not have been surprised when she saw the invoice and may not have questioned it (Ord (1) PN 427 - 435).

Mr Thomson's submissions

609. With respect to findings 148 to 151, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules and any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule. The National Secretary has the power to make donations. Further making donations was consistent with the objects of the HSU. The HSU had a history of donating to the Central Coast Convoy for Kids.
 - b. Mr Thomson denies gaining any personal advantage from donations to the Central Coast Convoy for Kids. The HSU donated \$5,000 in total to Central Coast Convoy for Kids. This amount had been budgeted for, in the budget approved by the National Executive. The Central Coast Convoy for Kids was a bona fide charitable purpose.

Conclusions

610. Mr Thomson has submitted that the payment of \$5,000 to Central Coast Convoy for Kids had been 'budgeted for' in the budget approved by the National Executive. For the reasons set out at paragraphs 154 to 156 of chapter 5, I am not persuaded by this argument.
611. It is clear that the payment of \$5,000 to the Central Coast Convoy for Kids was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.
612. Mr Thomson agreed in interview that he was aware that the National Office made a payment to Central Coast Convoy for Kids on 12 September 2006. Given the day to day practices surrounding payment and authorisation of expenditure by the National Office (which are discussed in Schedule 2) and the fact that he was aware of this payment, I consider that Mr Thomson purported to authorise the payment of \$5,000 to Central Coast Convoy for Kids on 12 September 2006.
613. Moreover the payment was made to a high profile community event in or around the seat of Dobell (to which Mr Thomson was soon to stand for ALP pre selection). Mr Burke described the Central Coast Convoy for Kids as being '...one of the biggest events of the year' (Burke PN 204) while Ms Stevens described it as 'this big

fundraiser that they have. They have like their trucks, like a convoy of trucks going around, and they meet at Gosford race course and it's like a fair or a carnival day' (Stevens PN 222). The payment to Central Coast Convoy for Kids was made some six months before Mr Thomson was preselected for the seat of Dobell. While he was therefore not actively canvassing for votes as a preselected candidate at this point in time, sponsorship of the event must nevertheless have had at least the potential to raise Mr Thomson's public profile within the seat of Dobell in anticipation of fighting for ALP pre selection and (should that be successful) subsequently for election to Parliament.

614. A reasonable person in Mr Thomson's position would have taken steps to ensure that this payment was approved by National Executive and recorded in the minutes of National Executive.
615. I consider that, in making this payment, Mr Thomson was motivated by a desire to increase his public profile within the seat of Dobell in sponsoring the Central Coast Convoy for Kids. I consider that this payment was not for a proper purpose and that Mr Thomson was not acting in good faith in what he believed to be the best interests of the HSU.
616. Accordingly I consider that Mr Thomson gained a personal benefit from the making by the National Office of a donation to the Central Coast Convoy for Kids.

Findings 148 to 151 - Authorising payment to the Central Coast Convoy for Kids by the National Office

148. Mr Thomson contravened Sub-rule 36(b) by purporting to authorise payment of \$5,000 by the National Office to the Central Coast Convoy for Kids without the prior approval of either National Executive or National Council in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
149. Mr Thomson contravened the requirement of subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by purporting to authorise the payment of \$5,000 by the National Office to Central Coast Convoy to Kids in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU and by failing to ensure that the payment of \$5,000 by the National Office to Central Coast Convoy to Kids was approved by National Executive and recorded in the minutes of National Executive.

150. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose by purporting to authorise the payment by the National Office of \$5,000 to the Central Coast Convoy for Kids in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
151. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely, by advancing his campaign to become preselected as the ALP candidate for the seat of Dobell by purporting to authorise the payment by the National Office of \$5,000 to Central Coast Convoy for Kids.

Requirements of section 237 of the RAO Schedule in relation to donations

Evidence

617. In addition to the matters set out at paragraphs 6 to 83 of this chapter, the following information is relevant to Findings 152 and 153 - Subsection 237(1) of the RAO Schedule in relation to donations, which are set out below at page 754.
618. Part 2 of Chapter 8 of the RAO Schedule regulates other records that must be kept by registered organisations and lodged with the AIR. Amongst those records are particulars of loans, grants and donations that have been made by an organisation or its branches during a financial year. Requirements regarding notification of loans, grants and donations are set out in section 237 of the RAO Schedule.
619. A reporting unit must, within 90 days of the end of the financial year, lodge with the AIR (or with FWA, as appropriate) a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made during the financial year:

237 Organisations to notify particulars of loans, grants and donations

- (1) An organisation must, within 90 days after the end of each financial year (or such longer period as the Registrar allows), lodge in the Industrial Registry a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A statement lodged in the Industrial Registry under subsection (1) must be signed by an officer of the organisation.

...

- (5) The relevant particulars, in relation to a loan made by an organisation, are:
 - (a) the amount of the loan; and
 - (b) the purpose for which the loan was required; and
 - (c) the security given in relation to the loan; and
 - (d) except where the loan was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.
 - (6) The relevant particulars, in relation to a grant or donation made by an organisation, are:
 - (a) the amount of the grant or donation; and
 - (b) the purpose for which the grant or donation was made; and
 - (c) except where the grant or donation was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.
 - (7) Where an organisation is divided into branches:
 - (a) this section applies in relation to the organisation as if loans, grants or donations made by a branch of the organisation were not made by the organisation; and
 - (b) this section applies in relation to each of the branches as if the branch were itself an organisation.
 - (8) For the purposes of the application of this section in accordance with subsection (7) in relation to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.
620. No statement of loans, grants and donations has been lodged by the registered organisation with the AIR or with FWA for the years ended 30 June 2006 or 30 June 2007.
621. Sub rule 36(g) operates as a prohibition against the making of any loan, grant or donation of an amount exceeding \$1,000 unless either the National Council or the National Executive has, before the loan, grant or donation was made, satisfied itself of the two matters set out in subparagraph 36(g)(i) and given the approval required by sub paragraph 36(g)(ii) of the Rules.
622. A reasonable person in Mr Thomson's position with the staff that were available to him, would have lodged, or caused to be lodged, the statement of particulars that is required by subsection 237(1) of the RAO Schedule to be lodged with the Australian Industrial Registry within 90 days of the end of the financial year in which the each of the following donations:

- a. the Central Coast Convoy for Kids for \$5,000 on 12 September 2006; and
 - b. Golden Years Collectables to the value of \$2,050 in November 2006
- were made.

Mr Thomson's submissions

623. With respect to findings 152 and 153, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(f) of the Rules and subsection 285(1) of the RAO Schedule. In 2006 and 2007 the National Secretary relied on others to prepare and lodge the relevant documents and has only recently become aware of this oversight. Given the number of years that has now elapsed since the documents were required to be lodged, Mr Thomson is unable to recall why the documents were not lodged. However, it should be noted that it is most likely that the 2006 report was due while Mr Thomson was on annual leave and the 2007 report was due after Mr Thomson resigned from the HSU.
 - b. Further, Mr Thomson is not an organisation within the meaning of section 237 of the RAO Schedule.

Conclusions

624. While Mr Thomson may have employed a National finance officer to undertake daily tasks such as preparing documentation for lodgment with the AIR, it nevertheless remained the responsibility of the National Secretary under Sub-rule 32(f) to 'lodge and file with and furnish' with the AIR 'all such documents as are required to be lodged, filed or furnished' under the RAO Schedule. Further, while it is acknowledged that Mr Thomson is not a registered organisation under the RAO Schedule, Sub-rule 32(f) nevertheless places upon him, as National Secretary, the obligation to comply with subsection 237(1) of the RAO Schedule.
625. Mr Thomson has also submitted that the 2007 statement under section 237 of the RAO Schedule was due after he had resigned from the HSU (on 14 December 2007). This is incorrect. The statement under subsection 237(1) of the RAO Schedule was required to be lodged by 28 September 2007, being 90 days after the end of the financial year. Mr Thomson did not resign from his office as National Secretary until 14 December 2007. Further, I note that the statement under subsection 237(1) was also due before the period in which Mr Thomson has claimed that he took annual leave in 2007.

Findings 152 and 153 - Subsection 237(1) of the RAO Schedule in relation to donations

- 152.** Mr Thomson contravened the requirement in Sub-rule 32(f) that he lodge with the Industrial Registrar all documents that are required to be lodged under the RAO Schedule in that he failed to lodge a statement of loans, grants and donations for the year ended 30 June 2007 within 90 days of the end of that financial years which disclosed the donations:
- to Central Coast Convoy for Kids for \$5,000 on 12 September 2006; and
 - of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006.
- 153.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as Mr Thomson by failing to:
- seek, as required by the Rules, the approval of National Council or National Executive before each of the following donations:
 - to Central Coast Convoy for Kids for \$5,000 on 12 September 2006;
 - of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006; and
 - to Dads in Education totalling \$10,000 in August and December 2007; were made; and
 - lodge, or caused to be lodged, the statement of particulars that is required by subsection 237(1) of the RAO Schedule to be lodged with the Australian Industrial Registry, within 90 days of the end of the financial year ended 30 June 2007 in which each of the following donations:
 - to Central Coast Convoy for Kids for \$5,000 on 12 September 2006; and
 - of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006;was made.

Chapter 8 - Mr Thomson's management of the finances of the National Office

1. This chapter concerns Mr Thomson's management of the finances of the National Office as a whole while he was National Secretary of the HSU, including Mr Thomson's prioritisation of expenditure of HSU funds on his campaign in Dobell over other activities of the National Office.
2. Information regarding the legislative scheme that applied to the National Office and regarding the Rules is set out in chapter 2.
3. Findings 154 to 156 - Expenditure of HSU funds on Mr Thomson's campaign for Dobell in priority to other activities of the National Office are set out at the end of this chapter at page 817.

Expenditure of HSU funds on Mr Thomson's campaign for Dobell in priority to other activities of the National Office

How was the National Office funded?

Branch structure

4. When Mr Thomson became National Secretary on 16 August 2002, the HSU had a total of 11 Branches. Rule 48 provided that, with the exception of Victoria and Tasmania, there was one Branch in each State of Australia (with members in the Australian Capital Territory belonging to the NSW Branch¹⁴⁷ and members in the Northern Territory belonging to the South Australian Branch¹⁴⁸). At that time there were five Branches in Victoria and two in Tasmania, with membership of those Branches being determined in each State on an occupational basis.
5. The effect of Rule 48 is that all members of the HSU are members of a Branch and the National Office reporting unit has no members.

¹⁴⁷See Sub-rule 48(l).

¹⁴⁸See Sub-rule 48(m).

6. An annual return of information under section 268 of the WR Act that was signed by the National Secretary, Mr Rob Elliott, on 30 July 2002 ([FWA.004.0194](#)) stated that the total number of members of the HSU was 61,279. Membership of the Branches was divided up as follows:

Victoria No.1 Branch	10,150	Tasmania No.1 Branch	7,200
Victoria No.2 Branch	5,012	Tasmania No.2 Branch	60
Victoria No.3 Branch	2,856	Western Australia No.3 Branch	3,004
Victoria No.4 Branch	1,772	South Australia Branch	301
Victoria No.5 Branch	684	Queensland Branch	161
NSW Branch	30,079		

7. Annual returns of information that were lodged with the AIR in subsequent years under section 233 of the RAO Schedule show that the total membership numbers for the HSU increased by some 15,000 between 2002 and 2007:

- a. As at 31 December 2003 ([FWA.004.0184](#) at 0189) - 65,972;
- b. As at 31 December 2005 ([FWA.004.0045](#)) - 75,957;
- c. As at 31 December 2007 ([FWA.004.0026](#)) - 76,387.

8. By far the largest number of members of the HSU belonged to the NSW Branch. The next largest Branch (with fewer than half the number of members of the NSW Branch) was the Victoria No.1 Branch. Even so, the NSW Branch and the Victoria No.1 Branch between them accounted for some 50,000 of the 76,000 members at the end of 2007. The remaining 25,000 members were divided among the nine other Branches, although four of those nine Branches had fewer than 1,000 members. Membership figures as at 31 December 2007 were divided up amongst the Branches as follows ([FWA.004.0026](#) at 37):

Victoria No.1 Branch	14,791	Tasmania No.1 Branch	7,423
Victoria No.2 Branch	5,876	Tasmania No.2 Branch	40
Victoria No.3 Branch	3,674	Western Australia Branch	4,350
Victoria No.4 Branch	2,461	South Australia Branch	630
Victoria No.5 Branch	753	Queensland Branch	263
NSW Branch	36,126		

9. As is discussed below, capitation fees and levies from the Branches were virtually the only sources of income of the National Office. Given the large number of members in the NSW and Victoria No.1 Branches, the income levels of the National Office directly reflected whether these two Branches in particular had paid their capitation fees and levies.

Membership subscriptions and capitation fees

10. Rule 8 provides for annual membership subscriptions to be paid by members to the Branch to which they belong:
 - (a) The annual contributions payable by members shall be such amounts as may from time to time and from such date be determined by the branch committee of management of the appropriate branch.
 - (b) Contributions shall be payable 13 weeks in advance.
 - ...
 - (d) All contributions, fees, fines and levies payable by members of the Union shall be paid to and collected by the appropriate Branch Secretary or his/her duly appointed agent.

11. Contributions are payable by Branches to the National Council as capitation fees. Rule 36 provides that:
 - (a) The funds and property of the Union shall consist of -
 - ...
 - (ii) the amounts of the branch contributions payable to the National Council pursuant to this rule;
 - ...
 - (c) Each branch shall pay annually to the National Council capitation fees (which includes the Branches (sic) proportion of the National unions (sic) affiliation fee to the ACTU) being such amount per financial member as decided from time to time by two-thirds vote of National Council. Such capitation fees shall apply equally to branches.
 - (d) Each Branch's capitation fees shall be calculated and payable on the basis of the number of financial members of the Union attached to that Branch as at the 30th June in the appropriate year certified as correct by the Branch Secretary and shall be paid in the case of capitation fees, by the 31st August next following, or, if a branch chooses to pay capitation fees on a quarterly basis, by 14 July, 14 October, 14 January and 14 April next following, or if the Branches chooses to pay monthly by the 14th of each month.
 - (e) Any Branch which has failed to pay its capitation fees in accordance with this Rule shall not, unless the National Council otherwise decides, be entitled to representation at any meeting thereof until such payment is made in full. Where any Branch has so failed to pay, its Branch Secretary shall not, unless the National Executive otherwise decides, be entitled to participate in any meeting of the National Executive until such payment is made in full.

Levies

12. National Council also has power to raise funds under Rule 9 by imposing levies upon either the Branches or upon categories of members:
 - (a) The National Council shall have power to impose levies upon any one or more branches or upon the members of any specific category of the membership of the Union provided that such levy may only be imposed by a two-thirds majority of the

National Council and provided that such a levy shall not be imposed in a harsh or discriminatory manner.

Financial Position of the National Office in 2002

Financial report for the year ended 30 June 2002

13. The financial report of the National Office for the year ended 30 June 2002 ([HSUNO.018.0424](#)) shows that the National Office received income of \$663,572 in capitation fees from the Branches. It is of note, however, that no monies were paid by the National Office in that financial year to the ACTU for affiliation fees.
14. Notes to the balance sheet for the year ended 30 June 2002 disclose that the National Office had:
 - a. a current asset of \$277,597 in unpaid capitation and affiliation fees that were receivable from the Branches;
 - b. a non-current asset of a loan of \$430,751 to the Victoria No.1 Branch; and
 - c. current liabilities of \$503,182 to trade creditors and \$222,011 for employee entitlements.

A note regarding the loan to the Victoria No.1 Branch states that the Committee of Management had agreed on 19 September 2002 that 'outstanding amounts as at the 30th June 2002 will be repaid over five years by the provision of serviced office facilities to the National Office.'

15. The HSU had an operating deficit of \$54,982 at the end of the 2001/2002 financial year.

Position when Mr Thomson became National Secretary on 16 August 2002

16. Mr Thomson described his assessment of the financial position of the National Office in November 2002 as 'woeful' (Thomson PN 227). Mr Thomson stated that he had had no knowledge of debts to the Australian Taxation Office, Slater & Gordon or HESTA before becoming National Secretary. As he said, 'These were all surprises...[the level of debt] kept on growing as time went by as there were more unpaid bills discovered'.
17. Mr Thomson said, however, that the financial position of the National Office became of less concern to the National Executive as time went by (Thomson PN 229):

Look, I think at the start we discussed all of the financial state...A lot of the first couple of years of the meetings - the finances were a very prominent issue being discussed at the executive. As those debts were paid off and as budgets were put in place, you'll notice that the finance report at the executive is less of an issue in terms of what happens at the executive meeting. So at the start there was a lot of discussion about these things. I mean, we had times where I was concerned about being able to pay staff wages because we had debts and because capitation fees weren't coming in as quickly as they needed to be and those sorts of things, so it was, you know, week to week there for a while at the start with some of these finances.

18. Mr Thomson had previously noted (Thomson PN 38) that:

Also we were trying to make sure that we were represented on national forums. We hadn't participated in the ACTU, in fact, I spent all of my time paying off enormous debts that the national office had to the ACTU in capitation fees that hadn't been paid, that was paid off before I left but they were something in the order of, you know, over half a million dollars that they just hadn't been paying which meant, quite obviously, they weren't getting representation at ACTU national meetings.

19. Mr Thomson was asked in interview whether he took any particular steps to address the 'woeful' financial position of the National Office in late 2002. Mr Thomson replied (Thomson PN 231):

Where we could reach agreement, we did. We tried directly [to] pay them off. We set up the finance committee. We put the finance rule in place. I employed Belinda Ord. They were kind of the immediate reactions to that, and in my view, and I think the view of the executive, we had that under control with those measures. As I said, the one that I remember the most was the ACTU one because that was the biggest one that took us the longest period of time to pay off, and because of the WorkChoices campaign, that debt suddenly jumped up again at the end when there was more money due that hadn't been paid.

20. Dr Kelly also described the financial position of the HSU prior to Mr Thomson becoming National Secretary as 'not in good shape' (Kelly PN 120):

...I think the financial state of the national office has always been a bit problematic and prior to Craig coming on board there were some payments made to the former national secretary and I'd say the finances of the union was not fantastic, not in good shape.

21. Mr Iaan Dick was first appointed auditor of the National Office in 1999. Mr Dick stated in interview that, at that time, 'there was a great shortage of cash so they were strapped for cash all the time and they just had enough money to pay the wages' (Thomson PN 144).

22. Although the only minutes of meetings of National Council that have been provided by the HSU to FWA are from 2002, it is clear from those few minutes and from minutes of National Executive meetings around the time when Mr Thomson became National Secretary in August 2002 that the National Office was experiencing problems due to non-payment by Branches of their capitation fees.

23. Minutes of a National Council meeting on 23 July 2002 ([HSUNO.023.0033](#)) record:

ACTU CAPITATION FEES

Moved: R Feltham Seconded: T Seymour

National Council accepts and adopts the report by the National Auditor regarding the payment of affiliation fees to the ACTU.

National Council authorizes the continuation of discussions with the ACTU about arrangements to deal with the debt owed.

National Council notes with concern the level of non-payment by branches of both the ACTU capitation fees and National Council capitation fees and calls on branches to become financial urgently. Council notes that separate discussions are continuing

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between the National Office and the Victoria No.1 branch regarding discharge of the branch's debt to the National office.

National Council in light of the above report congratulates the National Secretary on his management of the National Office finances given the high and ongoing level of debt owed by branches to the National Office.

Motion put to the vote CARRIED

24. Attached to the resolution regarding payment of affiliation fees to the ACTU was a report generated from MYOB on 23 July 2002 entitled 'HSUA Branches Amounts Owing At 23/7/2002' ([HSUNO.023.0252](#)). That document breaks down amounts owing to the National Office by Branches into capitation fees and ACTU affiliation fees and can be summarised as follows:

Branch	Capitation Fees owing to National Office	Affiliation Fees owing to ACTU	Total owed by Branch
New South Wales	\$0	\$35,493.22	\$35,493.22
Queensland	\$1,789.21	\$568.78	\$2357.99
South Australia	\$4,986.75	\$2,086.30	\$7,073.05
Tasmania No.1	\$81,789.52	\$27,862.86	\$109,652.38
Tasmania No.2	\$203.40	\$77.88	\$281.28
Victoria No.1	\$314,789.40	\$109,596.89	\$424,386.29
Victoria No.2	\$65,674.47	\$12,719.11	\$78,393.58
Victoria No.3	\$0	\$3,707.09	\$3,707.09
Victoria No.4	\$29,461.23	\$7,173.29	\$36,634.52
Victoria No.5	\$4,410.40	\$1,695.19	\$6,105.59
TOTAL	\$503,104.38	\$200,980.61	\$704,084.99

25. However these figures do not accord with information that is provided in the financial report for the year ended 30 June 2002 that was lodged with the AIR ([HSUNO.018.0424](#)). Note 4 states that the National Office had a current asset of \$277,597 that was receivable from the Branches in unpaid capitation and affiliation fees. This seems to be a significantly lesser sum than that presented to National Council on 23 July 2002 ([HSUNO.023.0252](#)), given that that document indicated that \$704,084.99 was unpaid by the Branches in capitation and affiliation fees.
26. If the figures presented to National Council were correct, while a considerable sum (of \$200,000) was owed to the ACTU in unpaid affiliation fees (although this sum was not 'over half a million dollars' as was stated by Mr Thomson in interview (Thomson PN 38)), by far the bigger debt was that owed by the Branches to the National Office, with more than \$500,000 in outstanding capitation fees.

27. Minutes of that same National Council meeting on 23 July 2002 ([HSUNO.023.0033](#)) record agreement on the imposition of a levy:

NATIONAL OFFICE LEVY

Moved: M Pike Seconded: K Jackson

The report on HSUA National Office financial position is received and noted. A levy of \$5 per member per year is to be paid on a quarterly basis to commence from 1 September 2002. Such a levy is to be monitored on a quarterly basis.

Motion put to the vote CARRIED

Mike Hall and Zita Mitchell against.

28. It appears as though this levy was only imposed for one quarter as minutes of a meeting of National Executive on 25 and 26 February 2003 ([HSUNO.024.0055](#)) record the following:

9.5 Membership Levy

Discussion took place with regards to membership levy and a question was raised about the dates the levy should cease. Agreed that the levy was for one quarter only.

29. The National Council meeting on 23 July 2002 ([HSUNO.023.0033](#)) also foreshadowed in the following resolution increases in capitation fees in order to fund the National Office:

NATIONAL OFFICE BUDGET

Moved: C Thomson

Seconded: A Lillicrap

The attached draft budget is approved for the remainder of the financial year. Further, the National Secretary is to provide regular reports on the financial performance of the National office including recommendations for increases in capitation fees to achieve the aims of the 'Role and Function of the National Office document.'

Motion put to the vote

CARRIED

30. Minutes of the meeting of National Executive on 19 September 2002 ([HSUNO.018.0461](#)) further record:

3. Financial Status of Branches

The National Secretary reported the following:

All Branches are financial with the exception of the HSUA Victorian Number 1 Branch, the Queensland Branch and the South Australian Branch. The South Australian Branch has now paid the July quarter and July half yearly ACTU capitation fee and is committed to future payments. In relation to HSUA Vic No 1 and the Queensland Branch, they are the subjects of separate reports that deal with the specifics of their debts.

...

4.2 Queensland Branch

The National Secretary gave the following report:

The National Secretary and the National President at the invitation of the Queensland Branch visited Cairns on the 13th September to meet with the Secretary, President and

advisor of the Branch. The purpose of the visit was to explore ways in which the long-term viability of the Queensland Branch could be ensured...

The NSW Branch has also agreed to administer the Branch taking on board any debts and obligations of the Queensland Branch...

Motion:

Moved Craig Thomson, seconded Chris Panizza

'NATIONAL EXECUTIVE NOTES THE REPORT OF THE NATIONAL SECRETARY ON THIS ISSUE.'

Carried

4.3 Vic No 1 Capitation Debt

The National Secretary reported that an agreement has been reached between the National office and the Victorian Number 1 Branch over outstanding capitation and affiliation fees. The Branch has paid the July quarter capitation and affiliation fees and has entered into an agreement providing \$82,000 worth of services per year to the National Office including free rent, electricity phones etc (attached).

Discussion took place about the indicative nature of the items that were being provided to the National office as a way of paying off outstanding debt.

Motion:

Moved Craig Thomson, seconded Stephen Pollard

'JEFF JACKSON AND HIS NEW TEAM SHOULD BE CONGRATULATED FOR PUTTING INTO PLACE A FINANCIAL STRATEGY THAT ENABLES THE BRANCH FOR THE FIRST TIME IN MANY YEARS TO MEET ITS OBLIGATION TO THE NATIONAL UNION AS WELL AS ENTERING INTO AN AGREEMENT THAT REPAYS SIGNIFICANT AMOUNTS OF BACK DUES OWED BY THE BRANCH EACH YEAR.'

Carried

Motion:

Moved Craig Thomson, seconded Iris Knight

'THE ARRANGEMENTS OUTLINED BY THE NATIONAL SECRETARY IN RELATION TO THE VICTORIAN NUMBER 1 BRANCH BE ENDORSED AND THE NATIONAL SECRETARY BE AUTHORISED TO SIGN THE AGREEMENT BETWEEN THE BRANCH AND THE NATIONAL OFFICE.'

Carried

...

4.4.2 Update on financial status from 16 August

In relation to the union's finances since the 16th August, the National Secretary reported on a number of factors. All Branches are now paying capitation fees to the National Office and their proportion of affiliation fees for the ACTU. The union has paid its June quarterly affiliation to the ACTU. Outstanding debts are currently around \$150,000 with a further \$265,698.74 being debt owed to the ACTU. Further discussions between the ACTU and the National Secretary are to be take place shortly.

...

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In relation to ACTU affiliation payments, a separate account has been set up so that general capitation payments and ACTU affiliation payments will remain separate and will be recorded as such in the National Office accounts.

It was further suggested by the National Secretary that a small finance committee be established to assist in these matter.

The National Secretary stressed that it has to be the aim of the union that finances are not an issue of controversy.

Motion:

Moved Craig Thomson, seconded Jorge Navas

'A FINANCE COMMITTEE BE ESTABLISHED COMPRISING OF PETER MYLAN, ROSEMARY KELLY AND CRAIG THOMSON.'

Carried

Motion:

Moved Craig Thomson, seconded Chris B4rown

'THIS REPORT IS FOR INFORMATION PURPOSES ONLY.'

Carried

31. As set out in the table above at paragraph 24 of this chapter, the Victoria No.1 Branch owed the National Office \$314,789.40 in outstanding capitation fees. Item 4.3 in minutes of the National Executive meeting on 19 September 2002 ([HSUNO.018.0461](#)) refers to an agreement under which the Branch would provide \$82,000 worth of services per year to the National Office. The terms of that agreement were set out in a document entitled 'Attachment C Agreement Between the National Office and the Victorian Number 1 Branch' ([HSUNO.023.0049](#)) which states as follows:

In relation to the outstanding debt of \$430,751.33, it is agreed that this debt shall be reduced by the amount of in kind services provided by the number one Branch at the National office as set out below:

Item	\$P.A.
Rent	\$40,000
Electricity	\$15,000
Telephones	\$15,000
Photocopying	\$5,000
Cleaning	\$2,000
Accounts	\$3,000
Sunday Items	\$2,000
Total	\$82,000

32. A letter dated 11 October 2002 was sent from the ACTU to Mr Thomson ([HSUNO.017.0039](#)) regarding an arrangement for payment by the HSU of its outstanding ACTU affiliation fees:

Further to our discussions on 27 September 2002, I write to confirm our understanding regarding the ACTU affiliation fees of the HSUA.

We note that you have now commenced paying your quarterly fees.

As of today's date the HSUA owes \$305,532.49 in prior unpaid affiliation fees.

In order to repay this amount it is understood that the HSUA will pay \$10,000 per quarter in addition to the normal affiliation fees.

This will mean that the outstanding debts will be cleared by 2007.

Could you kindly confirm this is consistent with your understanding of our arrangement.

33. Minutes of a meeting of National Council on 23 October 2002 ([HSUNO.023.0001](#)) record a discussion regarding capitation fees and ACTU affiliation fees:

4.4.1 Capitation Fees and ACTU Affiliation Fees

During discussions between Branches regarding the future direction of the union there were acknowledgements that capitation fees that have not moved in 10 years were in need of review. Similarly, with the level of debt that the union has to the ACTU, the amount the union pays each quarter to the ACTU has had to increase to help repay some of the unions debt.

Currently most Branches pay the following fees:

Capitation Fee	ACTU Affiliation Fee	Levy	Total
\$13.56	\$2.60	\$5.00	\$21.16

In light of this it is recommended that the Finance Committee meet and prepare a recommendation for the National Executive meeting in December 2002.

Resolution

Moved Craig Thomson

Seconded Rosemary Kelly

'THAT THE FINANCE COMMITTEE MEET TO PROVIDE A RECOMMENDATION TO THE DECEMBER 2002 NATIONAL COUNCIL MEETING ON APPROPRIATE CAPITATION AND ACTU FEES'

Carried

34. It appears as though the Finance Committee had its first meeting on 18 November 2002. An email was sent on 15 November 2002 from Nurten Ungun of the National Office to Dan Hill, Iris Knight, Peter Mylan and Rosemary Kelly ([HSUNO.018.0420](#)) regarding 'Finance Committee Meeting' which included an agenda and attached various documents. Amongst the documents that were attached was a document setting out the figures regarding sums currently paid by Branches to the National Office ([HSUNO.018.0422](#)) that were included in the minutes of the National Council meeting on 23 October 2002 ([HSUNO.023.0001](#)). It was noted at the bottom of the

figures provided to the Finance Committee that 'This represents around 6.5% of a members fee coming to the National Office which is approximately half the rate of most unions which contribute between 12% - 15%.'

35. An 'HSUA National Office Budget 2003' ([HSUNO.018.0421](#)) was also attached to the email from Ms Ungun to Finance Committee members on 15 November 2002 ([HSUNO.018.0420](#)). The budget (which Dr Kelly states in a letter dated 30 January 2003 was tabled at the National Executive meeting on 5 and 6 December 2002 ([HSUNO.018.0410](#))) was drawn up for the calendar year of January to December 2003 and shows (amongst other things) the following:
- a. Projected National Office income from capitation fees from the Branches - \$54,796 per month, giving a total of \$657,522 for the year;
 - b. Projected National Office income from payment by Branches of the National Council levy - \$25,403 per month, giving a total of \$304,836 for the year;
 - c. With respect to ACTU affiliation fees:
 - i. Projected National Office income from payment by Branches of ACTU affiliation fees - \$11,495 per month, giving a total of \$137,940 for the year;
 - ii. Project National Office expenses in paying affiliation fees to the ACTU - \$14,830 per month, giving a total of \$177.960 for the year.
36. It is notable with respect to the draft budget that:
- a. The National Office had projected that it would receive income from the National Council levy of \$304,836 for the 2003 calendar year. This seems very likely to be the levy of \$5 per member per year that was agreed upon by National Council at its meeting on 23 July 2002 ([HSUNO.023.0033](#)). This is supported by the fact that the annual return of information that was lodged by the National Secretary on 30 July 2002 ([FWA.004.0194](#)) stated that the total number of members of the HSU was 61,279. A levy of \$5 per member per year on the basis of that membership figure would result in the levy raising \$306,395 per annum for the National Office.
 - b. However, it appears as though this levy was only imposed for one quarter. Given that the resolution that was passed by National Council on 23 July 2002 ([HSUNO.023.0033](#)) stated that the levy was to be imposed 'on a quarterly basis to commence from 1 September 2002', it also appears as though none of the anticipated \$304,836 in income in the 2003 calendar year from the National Council levy was actually received by National Office;
 - c. Projected income from Branches for ACTU affiliation fees is \$40,020 less than the amount that the National Office is projected as paying to the ACTU in affiliation fees. It therefore appears as though the National Office was paying to the ACTU out of its own funds the difference between amounts that it received from the Branches and the amount that it should have received had all of the Branches paid their affiliation fees.

37. The seriousness of the financial position faced by the National Office in late 2002 is reflected in two emails that were sent to Mr Thomson on 19 November 2002 by Dan Hill, Secretary of the Western Australian Branch. The first email was sent to both Mr Thomson and the other members of the Finance Committee ([HSUNO.018.0437](#)). After setting out a list of queries relating to the draft 2002 accounts, the email goes on:

In relation to the clearance audit [which was conducted following the resignation of the former National Secretary, Mr Rob Elliott] we need to know the detail of all trade creditors, including any arrangements that have been made to clear outstanding debts. Whilst clearly we are currently in a tight financial situation, I have no doubt that, by continuing the initiatives you have commenced, we can trade out of this situation. We should however confirm in writing with our major creditors that they will not be taking recovery action and that any scheme of payment arrangements are acceptable to them. I am particularly concerned with your advice that we may have outstanding debts of \$120,000 to the ATO, \$100,000 to Slaters & \$34,000 to HESTA.

Whilst it is clear Craig that you have inherited a mess (the National Executive/Council is ultimately responsible), we need to ensure that we have a full picture of where we are at and what we need to do. Additionally, I believe that we need to review the level of bookkeeping services we currently engage (can we clarify this?) and source out alternative auditors for consideration of the National Executive/Council.

38. The second email sent by Dan Hill to Mr Thomson on 19 November 2002 ([HSUNO.018.0440](#)) was forwarding an email that Mr Hill had received from Chris Panizza, Assistant Secretary of the Western Australian Branch, under the subject heading 'Information re Solvency and Union Accounts'. The body of Mr Panizza's email (which was forwarded to Mr Thomson) reads:

Attached please find a document [extracted from the ASIC website] containing material in regard to solvency and union accounts.

As you can see there are major consequences that arise from trading insolvent. In the information I obtained insolvent is defined in terms of being able to pay your bills rather than having an excess of liabilities over assets. While I believe there is little doubt that the national Union will ultimately be able to pay its bills, the current situation is not without risk. I believe that we need to seek immediate independent advice through the secretary in regard to the issues I raise in the first part of the attached.

We can't afford to pussy foot around.

If we don't take an immediate and proactive approach in this regard, not only are members of the executive put at risk, but the Union is placed at risk from its enemies and competitors. In addition, with out some assurance being available, it would be very easy for any member of the Executive or any Branch to request an investigation of the Financial Management of the Union by the registrar. I would go so far as to suggest that without reasonable assurances from an independent expert, it would be incumbent on members of the Executive to seek such an investigation on behalf of the Branches and members. This is of course no reflection on Craig, he has inherited a far greater mess than anyone had suspected existed. It does raise serious questions in regard to the actions of the previous Secretary.

I strongly encourage you to raise these issues as soon as possible with Craig. In the alternative I am quite happy to raise them.

39. In forwarding this email to Mr Thomson, Mr Hill made the following further comments:

Following discussion with Chris, he has provided the following email and attachments. As already discussed with you I share the concerns raised by Chris and urge you to obtain independent advice regarding solvency and our capacity to pay our debts. This could be done as part of the conduct of the agreed clearance audit and preferably before the December Executive meeting.

40. While FWA has not been provided with any minutes of the National Executive meeting on 5 and 6 December 2002, an agenda for that meeting ([HSUNO.018.0413](#)) records the following regarding capitation fees:

17. Capitation Fees

Attached is a proposed budget. A verbal report of the finance committee meeting shall be given.

Recommendation: That capitation fees and ACTU affiliation fees (combined) should be increased to 18.00 per member.

41. There is no information before FWA regarding whether the recommendation at the National Executive meeting on 5 and 6 December 2002 regarding the increase in capitation fees and ACTU affiliation fees was carried. A reference to capitation fees being at \$18 does appear, however, in minutes of a National Executive meeting on 17 February 2004 ([HSUNO.018.0370](#)) which does suggest that the motion was carried at the meeting on 5 and 6 December 2002.

National Office funding during Mr Thomson's term as National Secretary

2003/2004 financial year

42. The level of capitation fees was next mentioned in minutes of the National Executive meeting on 17 February 2004 ([HSUNO.018.0370](#)), which record:

4. CAPITATION FEES

Motion:

1. That in light of the increasing costs, current levels of funding and the future strategy plan, it is recommended that capitation fees should increase from \$18.00 per member per year to \$18.55 per member per year from 1 July 2004 plus GST subject to further time for consideration of this issue by the branches;
2. A finance sub committee is to meet in March to discuss this matter;
3. A National Executive teleconference is to be held on the 21 April to determine this matter.

Moved: C Thomson
Seconded: Z Mitchell
Motion put to the vote: CARRIED

43. At the next meeting of National Executive on 22 April 2004 a resolution was passed to increase capitation fees ([HSUNO.018.0358](#)):

2. Capitation Fees

Attachment A is a copy of the finance committee minutes of the 26th March 2004.

Resolution:

That in light of increasing costs, current levels of funding and the future strategy plan, capitation fees will increase from \$18.00 per member per year to \$18.55 per member per year from 1 July 2004 plus GST.

Moved: Dan Hill **Seconded:** Chris Brown

Carried

44. The financial report for the year ended 30 June 2004 ([FWA.004.0120](#)) discloses income from capitation fees of \$1,187,496. The operating report that forms part of the financial report states that the number of members of the HSU as at 31 December 2003 was 72,628, suggesting that, on average, the National Office received \$16.35 per member in capitation fees in that financial year. Given that capitation and affiliation fees combined during the 2003/2004 financial year appear to have been set at \$18 per member (see above at paragraph 41 of this chapter), this does suggest that some Branches were not paying all of the capitation fees that were due to the National Office. This is borne out by the fact that notes to the balance sheet disclose a current asset of \$110,904 that was receivable by the National Office in capitation and affiliation fees.
45. The financial report (FWA.004.0120) also discloses that no income was received by the National Office from any National Council levy. The loan by the National Office to the Victoria No.1 Branch had been reduced to \$262,601 through 'loan repayments [that] have been made by the provision of serviced office facilities during the year'.

2004/2005 financial year

46. The issue of the adequacy of capitation fees arose again at the National Executive meeting on 28 February and 1 March 2005 ([HSUNO.018.0335](#)):

Capitation Fees

Craig explained that executive has still reached no solid position on the movement of capitation fees paid to the National Office. The fees moved in line with the CPI last year, Craig suggested that a regular mechanism for the regulation of the fees be implemented.

The finance committee will be meeting on 30 March to discuss the finances and the capitation fee increase to bring to the next Executive.

Report Noted

47. The topic of capitation fees arose again at the special National Executive meeting on 7 April 2005 ([HSUNO.018.0322](#)) which had been convened to discuss the HSU's response to the 'Howard IR Proposals'. While it was not proposed that capitation fees increase, the meeting was told that National Office needed to raise \$50,000 and a proposal was put forward that Branches contribute 10 cents per member per week. The minutes record that:

There was discussion about budget for this issue [of developing an 'HSU Response' to the Work Choices legislation]. The National Secretary indicated that he would not be seeking a rise in capitation fees this year but rather the establishment of a National fighting fund in relation to this issue. He indicated that the National union in addition to providing a large part of its printing and stationery budget it would contribute the order of \$50,000 and was looking to have around 10 cents per week per member contributed from the branches. This would cover costs in terms of internal issues as well as make sure that the HSU contributes its share towards the ACTU paid media campaign.

Some discussion occurred and it was agreed the matter would firstly be referred to the finance committee for discussion and recommendation.

The Executive agreed to pas (sic) a resolution on the issues spoken about over the day which is attached.

48. The resolution that was attached to minutes of the meeting on 7 April 2005 ([HSUNO.026.0070](#)) did not consider capitation fees, a National fighting fund or a contribution of 10 cents per week per member.
49. A table entitled 'Cost Items From Fighting Fund' ([HSUNO.018.0308](#)) was attached to an email of 10 May 2005 ([HSUNO.018.0289](#)) that was sent to members of the Finance Committee. That document sets out the following with respect to the Fighting Fund:

Total Cost	\$500,000.00
less National Office contribution	\$100,000.00
Branches to contribute	\$350,000.00
per year per member	\$5.20
per week per member	\$0.10

50. On the basis of a total HSU membership of 72,628 at \$0.10 per week per member, the document anticipates that \$349,840 will be raised by the Fighting Fund ([HSUNO.018.0308](#)).
51. Despite the fact that the first mention of a budget for the HSU response to Work Choices was at the National Executive meeting on 7 April 2005 ([HSUNO.018.0322](#)), the financial report for the year ended 30 June 2005 ([FWA.004.0101](#)) discloses expenditure by the National Office (in addition to affiliation fees) of \$253,593 on the 'ACTU Industrial Campaign Fund'. This is the first time that money has been disclosed in the accounts as having been spent on the ACTU Industrial Campaign Fund but it is not clear where resources to pay for the campaign fund were derived since the financial report does not disclose any figure for a National Council levy.

The payment to the Campaign Fund was in addition to a payment of \$88,978 in affiliation fees.

52. Further, it is clear that the National Office continued to be owed monies by the Branches in capitation and affiliation fees, despite receiving \$1,187,496 in capitation fees for the financial year. Notes to the financial report disclose a current asset of \$206,249 of capitation and affiliation fees that are receivable from Branches, almost \$100,000 more than had been owed by Branches in the previous financial year.

2005/2006 financial year

53. Although it is not recorded in the minutes how the funds were to be raised, minutes of the National Executive meeting on 6 September 2005 record the following regarding the need to raise \$5.50 per member in 2006 and 2007 ([HSUNO.018.0286](#)):

National IR Campaign Update

The National Secretary gave an updated report on the IR campaign and the day of action set down for the 15th November 2005. Discussion occurred about possible brochures etc. There was also discussion and agreement in relation to the ACTU request for raising an additional \$5.50 per member in 2006 and the same again in 2007.

54. A profit and loss statement ([HSUNO.018.0258](#)) that was attached to an email to finance committee members on 16 March 2006 ([HSUNO.018.0255](#)) shows two major sources of income for the National Office for the period 1 July 2005 through to 15 March 2006:

Total National Council Levy	\$544,002.52
Capitation Fees from Branches	\$1,004,939.27

55. This income figure from capitation fees would be consistent with the capitation fee that was set at \$18.55 per member per year at the National Executive meeting on 22 April 2004 ([HSUNO.018.0358](#)) if the HSU had in the order of 72,628 members (being the membership figure that was used for calculation of the National Fighting Fund figures (see above at paragraphs 49 and 50 of this chapter)).
56. This is the first time, however, that financial reports that were provided to the finance committee have included a figure for income from a National Council levy. It is not clear what makes up this levy given that the last mention of a levy in minutes of National Executive meetings was a decision at the meeting on 25 and 26 February 2003 ([HSUNO.024.0055](#)) that the \$5 levy that was imposed from 1 September 2002 would only be for one quarter. It is possible that the 'levy' is money being raised from the Branches through the fighting fund, although the figure of \$544,002.52 (which was for 36 weeks from 1 July 2005 to 15 March 2006) is already \$90,000 higher than the anticipated amount that would be raised over a full year by charging 10 cents per member per week (see above at paragraphs 49 and 50 of this chapter). Since FWA has not been provided with any National Council minutes between 2003 and 2007, it

is possible that National Council imposed a levy under Rule 8 at the meeting that appears to have been held in early to mid-September 2005.¹⁴⁹

57. Figures that are disclosed in the financial report for the year ended 30 June 2006 ([FWA.004.0063](#)) show that the National Office received a total income during the financial year from the National Council levy of \$540,061, which is almost \$200,000 higher than the \$350,000 that was set out in the table entitled 'Cost Items From Fighting Fund' ([HSUNO.018.0308](#)) that was emailed to finance committee members on 10 May 2005 ([HSUNO.018.0289](#)). The amount that was paid by the National Office to the ACTU Industrial Campaign Fund was \$436,240 (that is, just over \$100,000 less than was raised by the National Council levy). ACTU affiliation fees of \$176,468 were paid by the National Office, being just under \$90,000 more than had been paid in the previous financial year.
58. Further, the amount that was owed by Branches to the National Office in capitation and affiliation fees had increased even further to \$263,899, being only about \$14,000 less than the unpaid capitation and affiliation fees that had been owed by Branches when Mr Thomson first became National Secretary in 2002 (see above at paragraph 14 of this chapter).

2006/2007 financial year

59. Capitation fees were discussed again at a National Executive meeting on 2 February 2007 ([HSUNO.018.0170](#)):

The National Secretary reported that he had not recommended capitation fee increases in the last two years partly because it was expected that any review of the national union would see some realignment of resources. The Goulter report is now complete and has recommendations that would increase the capitation fees for the national office if implemented. That national Secretary indicated that if the Goulter recommendations are not acted upon or acted upon shortly then consideration would have to be given to a small CPI increase in capitation fees.

60. Minutes of the same National Executive meeting on 2 February 2007 ([HSUNO.018.0170](#)) also record the need for the HSU to raise \$200,000 (although, again, the mechanism by which this was proposed to occur is not clear):

h. Election resources and funding

The National Secretary spoke about the need to raise resources for the dental campaign and associated federal election issues dealing with production of common material. He outlined that the union needed to look at raising \$200,000 to properly run the campaigns.

It was agreed this money needed to be looked at and that this matter would be discussed further on the 7th February 2007.

61. At the National Executive meeting on 28 and 29 March 2007 ([HSUNO.018.0151](#)) a resolution was passed that from April 2007 capitation fees be increased to \$19 per member per year (before GST).

¹⁴⁹ Refer to paragraphs 42 and 49.b of chapter 9, in which it is set out that it seems likely that a meeting of National Council was held in early to mid-September 2005.

62. The meeting on 28 and 29 March 2007 was the last meeting of National Executive before the federal election on 24 November 2007.
63. Two sets of financial reports for the year ended 30 June 2007 were lodged with the AIR and FWA. The first financial report contained documents that were unsigned (apart from the auditor's report) and undated and appear to have been prepared while Mr Thomson was National Secretary, although they were lodged by Ms Jackson on 30 April 2009 ([FWA.005.0035](#)). A second financial report containing signed and dated reports and which had been audited by the National Office's new auditors, Clements Dunne & Bell, was lodged on 8 August 2011 ([FWA.009.0001](#)).
64. Many of the figures contained in the two reports for the financial year ended 30 June 2007 are the same. Both reports disclose income for the National Office of \$1,454,154 from capitation fees and \$380,005 from a National Council Levy.
65. Significantly, both reports disclose that the National Office had a current asset of \$518,846 that was receivable from the Branches in unpaid capitation and affiliation fees. It is notable that the sum that had been receivable by the National Office for the year ended 30 June 2002 was almost half that, at \$277,597.
66. Both reports also show that the National Office expended \$185,690 on affiliation fees and \$393,475 on the ACTU Industrial Campaign Fund during the financial year.

National Office income and payments to ACTU 2002-2008

67. A summary of National Office income from capitation fees and the National Council levy and of amounts paid to the ACTU between 30 June 2002 and 30 June 2008 is as follows:

		2002 ¹⁵⁰	2003 ¹⁵¹	2004 ¹⁵²	2005 ¹⁵³	2006 ¹⁵⁴	2007 ¹⁵⁵	2008 ¹⁵⁶
Income	Capitation fees	\$663,572	\$965,268	\$1,187,496	\$1,318,677	\$1,346,517	\$1,465,154	\$1,425,739
	Levy	-	\$76,435	-	\$199,001	\$540,061	\$380,005	\$472,419
	Total income	\$688,380	\$1,085,559	\$1,339,736	\$1,548,762	\$2,048,593	\$2,062,927	\$2,004,086
Expenditure	Affiliation fees	-	\$162,754	\$132,353	\$88,978	\$176,468	\$185,690	\$187,504
	Industrial Campaign	-	-	-	\$253,593	\$436,240	\$393,475	\$362,275
	Total expenditure	\$743,362	\$1,268,419	\$1,186,089	\$1,532,109	\$2,149,609	\$2,101,484	\$2,064,440
Profit /Loss		(\$54,982)	(\$182,860)	\$153,648	\$16,653	(\$101,016)	(\$38,557)	(\$60,354)

Monies owed by Branches to the National Office between 2002 and 2008

68. A comparison of balance sheets for the National Office between 30 June 2002 and 30 June 2008 shows that, up until 30 June 2006, the amounts owing to the National Office by the Branches in unpaid capitation and affiliation fees were either less than or very close to the figure that was owed as at 30 June 2002. The amount owing by the Branches rose sharply, however, between 2006 and 2007 and then remained at that level in 2008:

2002 ¹⁵⁷	\$277,597
2003 ¹⁵⁸	\$53,825

¹⁵⁰ HSUNO.018.0424.

¹⁵¹ Figures for 2003 are taken from comparative figures used in the 2003/2004 financial return (FWA.004.0120).

¹⁵² FWA.004.0120.

¹⁵³ FWA.004.0101.

¹⁵⁴ FWA.004.0063.

¹⁵⁵ These figures were taken from the financial report that was lodged by Ms Jackson on 8 August 2007 (FWA.009.0001).

¹⁵⁶ FWA.009.0024.

¹⁵⁷ HSUNO.018.0424.

¹⁵⁸ Figures for 2003 are taken from comparative figures used in the 2003/2004 financial return (FWA.004.0120).

2004 ¹⁵⁹	\$110,904
2005 ¹⁶⁰	\$206,249
2006 ¹⁶¹	\$263,899
2007 ¹⁶²	\$518,846
2008 ¹⁶³	\$563,705

69. As set out at below at paragraph 77 of this chapter, this is despite the fact that the liability of the National Office to the ACTU for arrears in ACTU affiliation fees had fallen to \$56,466.17 by 20 December 2006 ([HSUNO.018.0189](#)).
70. While it was being paid in kind through the provision of serviced office facilities, the debt from the Victoria No.1 Branch to the National Office steadily declined while Mr Thomson was National Secretary:

2002 ¹⁶⁴	\$430,751
2003 ¹⁶⁵	\$344,601
2004 ¹⁶⁶	\$262,601
2005 ¹⁶⁷	\$180,601
2006 ¹⁶⁸	\$98,601
2007 ¹⁶⁹	\$16,601
2008	-

Overview of National Office expenditure and liabilities between 2002 and 2008

Overall Liabilities

71. Although liabilities to trade creditors declined in the earlier period when Mr Thomson was National Secretary, between 30 June 2006 and 30 June 2007 National Office liabilities to trade creditors rose by \$170,000 to a point where they were higher than they had been as at 30 June 2002. One year later, as at 30 June 2008

¹⁵⁹ FWA.004.0120.

¹⁶⁰ FWA.004.0101.

¹⁶¹ FWA.004.0063.

¹⁶² This figure is taken from the financial report that was lodged by Ms Jackson on 8 August 2007 (FWA.009.0001).

¹⁶³ FWA.009.0024.

¹⁶⁴ HSUNO.018.0424.

¹⁶⁵ Figures for 2003 are taken from comparative figures used in the 2003/2004 financial return (FWA.004.0120).

¹⁶⁶ FWA.004.0120.

¹⁶⁷ FWA.004.0101.

¹⁶⁸ FWA.004.0063.

¹⁶⁹ This figure is taken from the financial report that was lodged by Ms Jackson on 8 August 2007 (FWA.009.0001).

([FWA.009.0024](#)), liabilities to trade creditors were more than \$1 million. In addition, by 30 June 2007 National Office liabilities for employee entitlements were higher than they had been at 30 June 2002:

	Trade creditors	Employee entitlements
2002 ¹⁷⁰	\$503,182	\$222,011
2003 ¹⁷¹	\$445,422	\$203,219
2004 ¹⁷²	\$373,266	\$184,280
2005 ¹⁷³	\$422,035	\$238,596
2006 ¹⁷⁴	\$383,281	\$295,007
2007 ¹⁷⁵	\$552,035	\$266,814
2008 ¹⁷⁶	\$1,009,019	\$46,541

72. It seems clear that the 2008 balance of \$46,541 for accrued employee entitlements does not include any entitlements owed to Mr Thomson. According to a table presented to the meeting of the National Executive held on 18 and 19 March 2008 ([HSUNO.017.0036](#)) the National Office had calculated Mr Thomson's then outstanding annual leave and long service leave entitlements as being worth \$197,877.28. On 13 May 2008 the National Office made payments to Mr Thomson in respect of outstanding annual leave, leave loading, and long service leave totalling \$18,251.44 ([HSUNO.017.0015](#)). This would appear to have left a balance outstanding as at 30 June 2008 of \$179,625.84. It is not clear why this amount is not reflected in the 2008 accounts of the National Office. However the 2008 accounts were not lodged until after the National Office had settled Mr Thomson's claim for payment of outstanding employment entitlements. FWA does not know the basis upon which this claim was settled.

Arrears in ACTU affiliation fees

73. As set out in the table above at paragraph 24 of this chapter, \$200,980.61 was owed by the National Office to the ACTU in unpaid affiliation fees as at 23 July 2002. The balance sheet in the financial report for the year ended 30 June 2002 ([HSUNO.018.0424](#)) does not separately disclose this liability and it presumably makes up part of the \$503,182 that was owing to trade creditors (given that there were no non-current liabilities and the only other current liability was for employee entitlements). A letter dated 11 October 2002 from the ACTU records that the size of

¹⁷⁰ HSUNO.018.0424.

¹⁷¹ Figures for 2003 are taken from comparative figures used in the 2003/2004 financial return (FWA.004.0120).

¹⁷² FWA.004.0120.

¹⁷³ FWA.004.0101.

¹⁷⁴ FWA.004.0063.

¹⁷⁵ These figures are taken from the financial report that was lodged by Ms Jackson on 8 August 2007 (FWA.009.0001).

¹⁷⁶ FWA.009.0024.

the HSU's debt to the ACTU had risen to \$305,532.49 by 11 October 2002
 ([HSUNO.017.0039](#)).

74. On 30 March 2005 Mr Thomson emailed members of the Finance Committee
 ([HSUNO.018.0326](#)) attaching a Balance Sheet as of March 2005
 ([HSUNO.018.0304](#)). The Balance Sheet showed a current liability of \$126,466.17 for
 'ACTU Affiliation Arrears' ([HSUNO.017.0039](#)).
75. A further balance sheet dated 10 May 2005 ([HSUNO.018.0291](#)) that was emailed to
 finance committee members seven months later on 10 May 2005 ([HSUNO.018.0289](#))
 shows that the HSU's liability for ACTU Affiliation Arrears had fallen by \$10,000 to
 \$116,466.17.
76. Ten months later, a balance sheet as at 15 March 2006 ([HSUNO.018.0256](#)) that was
 emailed to members of the finance committee on 16 March 2006 ([HSUNO.018.0255](#))
 shows that the current liability for ACTU Affiliation Arrears had fallen by \$30,000 to
 \$86,466.17.
77. A further balance sheet ([HSUNO.018.0189](#)) that was emailed to members of the
 finance committee on 20 December 2006 ([HSUNO.018.0186](#)) shows that, as at
 November 2006, the current liability of the National Office for ACTU Affiliation Arrears
 had fallen to \$56,466.17, being a further reduction of \$30,000 in 9 months.
78. It appears, however, that the National Office did not reduce its liability to the ACTU
 for arrears in affiliation fees a great deal between December 2006 and March 2008.
 The figure owing as at 20 December 2006 was \$56,466.17 ([HSUNO.018.0189](#)) but
 the level of debt had only fallen to \$38,882.14 by March 2008 (HSUNO.021.0673 -
 see below at paragraph 182 of this chapter), that is by less than \$18,000 in
 15 months.

Particular expenditure items from 2002 to 2009

79. There are some items of expenditure by the National Office that are disclosed in
 financial reports between 30 June 2002 and 30 June 2007 which increased
 considerably from their levels in 2002. Financial reports for the years ended 30 June
 2008 ([FWA.009.0024](#)) and 30 June 2009 ([FWA.009.0047](#)) indicate that expenditure
 in all of these categories except salaries fell sharply after the 2007 financial year:

	National Executive and Council expenses	Printing, stationery & postage	Salaries, wages, allowances & honorary	Travelling & Accommodation
2002 ¹⁷⁷	\$2,020	\$6,217	\$227,863	\$29,284
2003 ¹⁷⁸	\$4,664	\$38,750	\$583,807	\$149,838
2004 ¹⁷⁹	\$39,108	\$27,713	\$481,789	\$137,997

¹⁷⁷ HSUNO.018.0424.

¹⁷⁸ Figures for 2003 are taken from comparative figures used in the 2003/2004 financial return
 (FWA.004.0120).

¹⁷⁹ FWA.004.0120.

Chapter 8 - Mr Thomson's management of the finances of the National Office
 Expenditure of HSU funds on Mr Thomson's campaign for Dobell in priority to other activities
 of the National Office

	National Executive and Council expenses	Printing, stationery & postage	Salaries, wages, allowances & honorarium	Travelling & Accommodation
2005 ¹⁸⁰	\$83,864	\$20,303	\$474,794	\$137,844
2006 ¹⁸¹	\$136,195	\$58,754	\$512,549	\$116,278
2007 ¹⁸²	\$123,841	\$67,094	\$639,397	\$146,278
2008 ¹⁸³	\$81,401	\$37,151	\$626,849	\$43,176
2009 ¹⁸⁴	\$2,607	\$9,917	\$517,387	\$46,828

National Office salaries and wages

80. Looking in particular at the breakdown of salary and wages between 30 June 2002 and 30 June 2008, notes to the financial reports indicate that, while the salaries for elected officials only rose by just over \$35,000 over the five year period to 30 June 2007, the amount paid to other staff rose almost five fold from just under \$100,000 to approaching \$500,000 in that same period:

	Elected Officials	Staff & Other	Honorarium
2002 ¹⁸⁵	\$128,881	\$98,982	-
2003 ¹⁸⁶	\$230,609	\$331,204	\$10,000
2004 ¹⁸⁷	\$153,878	\$318,916	\$10,000
2005 ¹⁸⁸	\$146,445	\$292,543	\$20,000
2006 ¹⁸⁹	\$159,291	\$353,258	\$10,000
2007 ¹⁹⁰	\$165,527	\$473,870	-
2008 ¹⁹¹	\$230,987	\$335,244	\$20,000

81. Dr Kelly stated in interview that she raised concerns about various expenditures of the National Office from time to time, including the level of expenditure on salaries (Kelly PN 385). Dr Kelly raised her concerns in an email to finance committee members on 3 December 2007 ([HSUNO.018.0098](#)). Dr Kelly asked the following:

¹⁸⁰ FWA.004.0101.

¹⁸¹ FWA.004.0063.

¹⁸² These figures are taken from the financial report that was lodged by Ms Jackson on 8 August 2007 (FWA.009.0001).

¹⁸³ FWA.009.0024.

¹⁸⁴ FWA.009.0047.

¹⁸⁵ HSUNO.018.0424.

¹⁸⁶ Figures for 2003 are taken from comparative figures used in the 2003/2004 financial return (FWA.004.0120).

¹⁸⁷ FWA.004.0120.

¹⁸⁸ FWA004.0101.

¹⁸⁹ FWA.004.0063.

¹⁹⁰ These figures are taken from the financial report that was lodged by Ms Jackson on 8 August 2007 (FWA.009.0001).

¹⁹¹ See the financial report for the year ended 30 June 2008 - FWA.009.0024.

I did have a couple more questions re the financial reports, in particular note 11 salary and wages which seems to indicate that the National Secretary's salary increased. Can you advise when the salary was increased and by how much?

Also the staff salaries seem very high considering that Karene Walton went to the ACTU and Mark Robinson went to EMC.

Can you pls give me a breakdown of the salaries by person employed, that would be useful.

82. Documents of finance committee meetings that have been provided do not record any response to Dr Kelly's questions regarding salaries and wages. Notably, even though Dr Kelly had raised questions concerning the financial report, just over an hour after Dr Kelly's email, an email was sent by Belinda Ord to members of the finance committee ([HSUNO.018.0097](#)) cancelling the proposed meeting of the finance committee:

...due to busy schedules etc. We had a finance meeting 15 August, that went over financials for year end 30 June 2007, so there is probably no need to reschedule at this time. Please let me know if you have any queries.

Amounts withdrawn by Mr Thomson as cash advances

83. The amounts withdrawn by Mr Thomson in cash advances on his CBA credit card were not disclosed separately in the HSU's accounts but were 'incorporated in the general ledger of the Union as Commonwealth Bank entries' and were 'attributed to various purposes' (see the letter from Mr Iaan Dick to Ms Jackson dated 12 May 2008 ([HSUNO.018.0023](#))).
84. Annexure A sets out details of Mr Thomson's cash withdrawals on CBA Mastercard statements between 2002 and 2007 that have been provided to FWA. FWA's addition of sums withdrawn as cash advances by Mr Thomson set out in his CBA Mastercard statements that have been provided to FWA shows that the amount of cash advances that were withdrawn also increased considerably after 2003.

Increase in National Office expenditure from 2005 to 2006

85. As the table above at paragraph 67 of this chapter shows, the level of National Office expenditure was fairly constant at around \$1.2 million for years ended 30 June 2003 and 30 June 2004. Expenditure rose by just under \$350,000 in the next financial year. There was a much larger growth in total expenditure of \$617,500, however, between years ended 30 June 2005 and 30 June 2006. Total expenditure rose to around \$2.1 million for year ended 30 June 2006 and remained at that level for the years ended 30 June 2007 and 30 June 2008.

86. Part of this increase between the 2005 and 2006 figures is accounted for by increased expenditure for the following items:

Payments to ACTU in affiliation fees and to Industrial Campaign Fund	\$270,137
Legal fees	\$163,074
Consultancy fees	\$25,225
Holiday Pay	\$20,509
National Council and Executive	\$52,331
Total:	\$531,276

87. The remaining amount of just over \$86,000 in increased expenditure in the year ended 30 June 2006 could arguably relate, at least in part, to Mr Thomson's decision in around November 2005 to establish a second National Office to Sydney, to live on the Central Coast and to employ Ms Stevens. In particular, a proportion of the following increases in expenditure may reflect those decisions:

Rent and occupancy	\$32,475
Photocopies lease & charges	\$3,796
Computer expenses	\$5,754
Salaries and wages - staff	\$60,715
Payroll tax	\$8,165
Motor vehicle expenses	\$28,619

88. Although it is not possible to quantify, it is reasonable to presume that at least part of the increased expenditure of the National Office in the 2005/2006 financial year also included other costs associated with the second office in Sydney, such as computer and photocopier expenses. Similarly, payment of a salary to Ms Stevens must have increased the National Office's liability for payroll tax.

Increase in Motor Vehicle Expenses

89. There is a large jump in expenditure on petrol by Mr Thomson between the 2005 and 2006 calendar years. Mr Thomson's level of expenditure on petrol in 2007 is maintained at the 2006 level. Further, Ms Stevens and Mr Burke between them spent almost \$6,000 on petrol in 2007.

90. The following table sets out expenditure on petrol by Mr Thomson in 2002 to 2007, Ms Stevens in 2005 and 2007 and Mr Burke in 2007:

			Total
Mr Thomson	2002	\$563.72	
	2003	\$1,823.79	
	2004	\$1,617.70	
	2005	\$2,727.82	
	2006	\$7,277.08	
	2007	\$6,940.87	\$20,950.93
Ms Stevens	2005	\$85.22	
	2006	\$2,558.56	
	2007	\$2,504.03	\$5,147.81
Mr Burke	2007	\$3,328.87	\$3,328.87
Grand Total:			\$29,427.61

91. Annexure F sets out each of the transactions charged to Mr Thomson's Diners Club card for purchases at petrol stations between 2002 and 2007. Annexure G sets out each of the transactions charged to Diners Club cards for purchases by Ms Stevens and Mr Burke respectively at petrol stations.

Maintenance of 2006 expenditure levels in 2007 and 2008

92. On one view, it seems likely that Mr Thomson employed Ms Stevens with a view to building his profile on the Central Coast to enhance his chances of being elected to Parliament and it seems at least possible that Mr Thomson's decision to relocate to New South Wales and open an office of the National Office in Sydney was influenced by his intention to seek pre-selection for a NSW seat in Federal parliament. It is not possible to say with any certainty, however, why Mr Thomson decided to move to live in New South Wales and to open a second office in Sydney.
93. It is nevertheless clear that Mr Thomson spent increasing amounts of National Office funds on the Central Coast of New South Wales throughout 2006 and 2007 at the same time as he was seeking ALP pre-selection (in March 2007) and then subsequent election to the seat of Dobell in late November 2007.
94. It would therefore be expected that this increasing expenditure in Dobell would be reflected in corresponding increases in total expenditure of the National Office and by increasingly large operating losses. As the table above at paragraph 67 of this chapter shows, however, this was not the case. Total expenditure of the National Office remained relatively static at around \$2.1 million in years ended 30 June 2006, 2007 and 2008 and the operating loss actually reduced from \$101,016 for year ended 30 June 2006 to \$60,354 for year ended 30 June 2008.

95. As the table above at paragraph 67 of this chapter also shows, the level of National Office income in years ended 30 June 2006, 2007 and 2008 remained at around \$1.35 million to \$1.45 million. Further, the figures at paragraph 68 of this chapter show that the level of unpaid capitation and affiliation fees by the Branches rose between 2006 and 2007 and then remained at much the same level for year ended 30 June 2008, meaning that the income of the National Office was less than it should have been.
96. The sharp increase in National Office liabilities between 30 June 2006 and 30 June 2008 is significant in assessing how Mr Thomson funded his election campaign. As set out above in the table at paragraph 71 of this chapter, the liability of the National Office to trade creditors in the two years between June 2006 and June 2008 rose from \$383,281 to \$1,009,019. In other words, Mr Thomson funded at least part of his campaign in Dobell not by increasing the National Office's income from the Branches or by increasing the size of the operating loss but by increasingly allowing National Office creditors to remain unpaid, either in full or in part.
97. This analysis is borne out by a detailed examination of MYOB data that is available to FWA for the period from 1 July 2006 through to 4 March 2008 and from the transactional records that are increasingly available during that same period.

July 2006 to March 2008 - a closer examination

98. FWA has been provided with MYOB data from the National Office for the period from 1 July 2006 through to 4 March 2008 ([HSUNO.029.0001](#)). This enables a closer examination of cash flows and financial transactions of the National Office during this period. A much larger number of transactional documents during this time are also available from HSU records.

Fluctuations in National Office cash flows

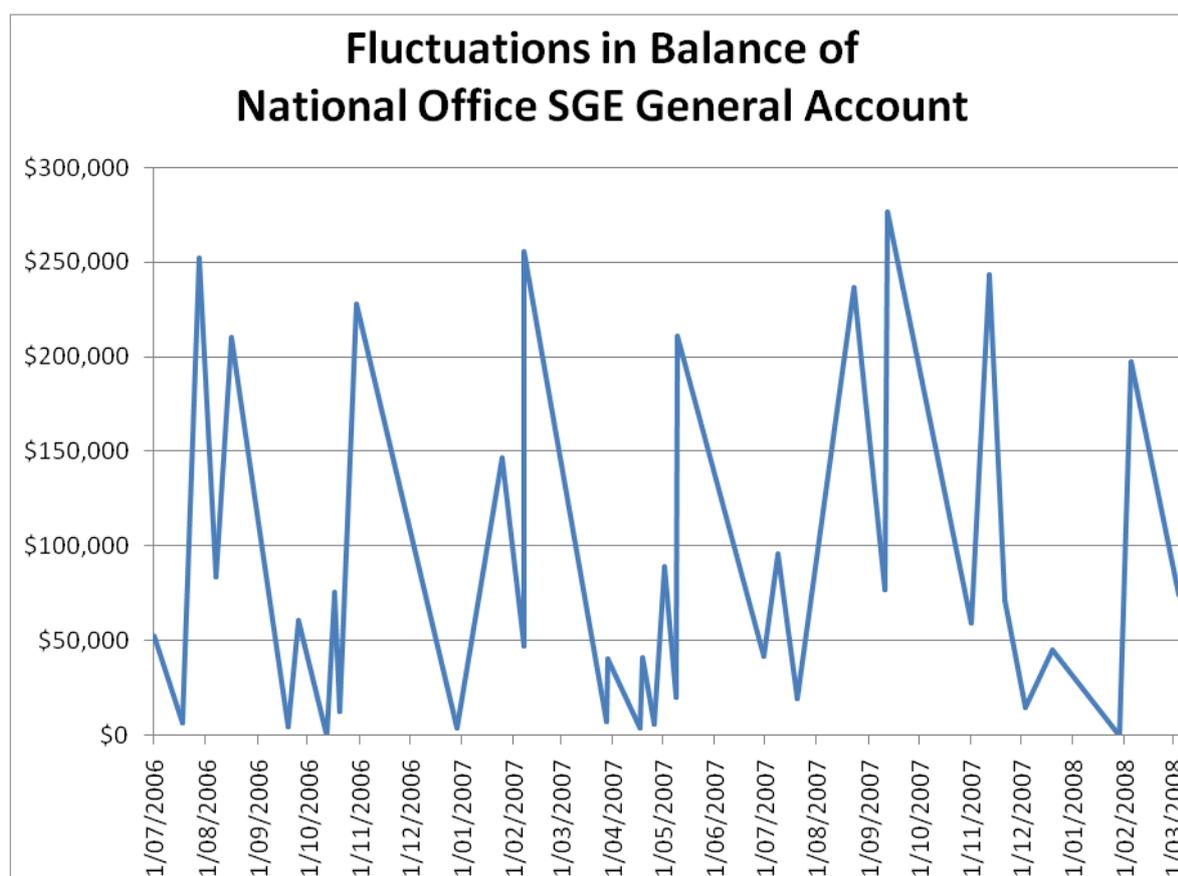
99. Ms Ord has described to FWA in interview the difficulties which the National Office experienced from time to time in paying its bills as and when they fell due (Ord (1) PN 110):

...Craig would have a look at the finances from time to time to see what bills we had to pay, and it wasn't, it wasn't - it was more likely to occur when we didn't have much available, okay, so, like a decision would be made as to pay these ones but we might have to hold off on those, or whatever. It's not that people weren't going to be paid; it just might have been put off as I guess most businesses have to operate at some point in time
100. Mr Thomson also stated that invoices were paid when the National Office had funds available (Thomson PN 1226):

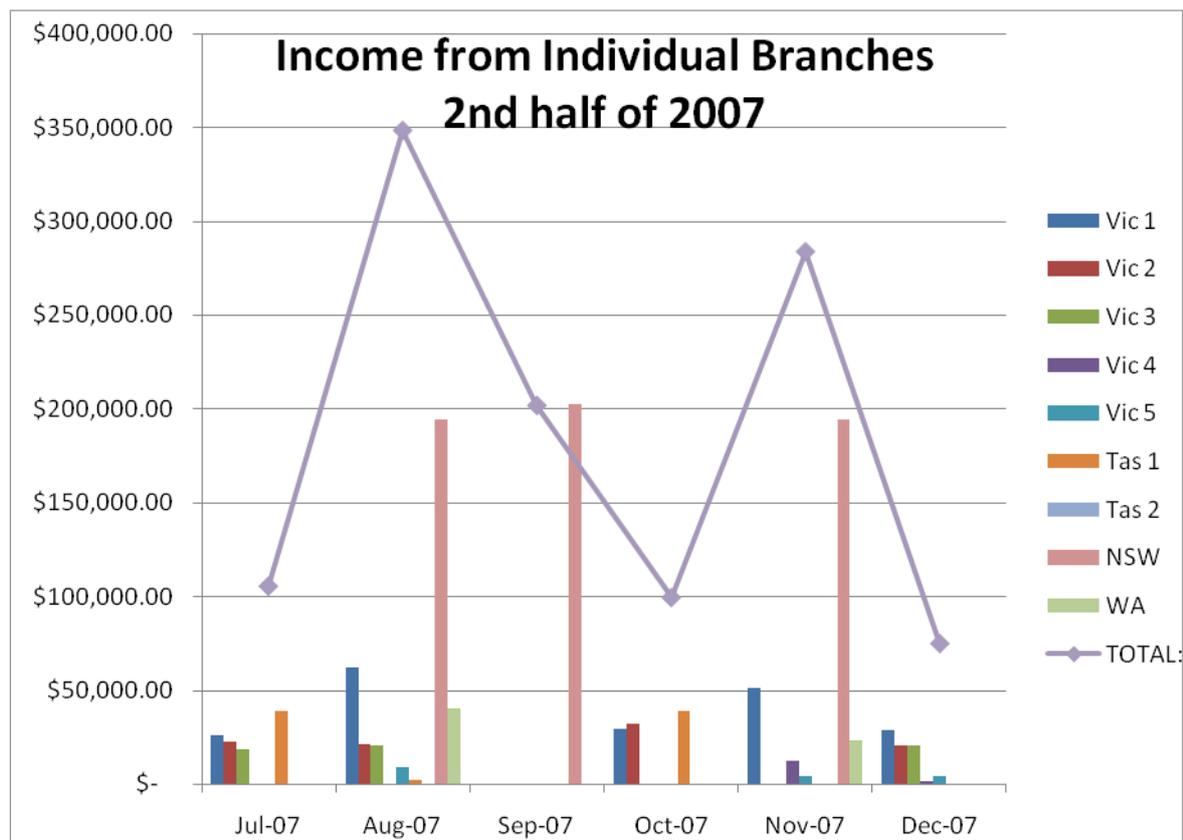
We didn't have a very big petty cash float, and because we only got paid, you know, pretty much - well, monthly was the most frequent from a couple of the branches, but it was - quarterly was the - more often. We didn't have money that was there to dip into all the time. The credit cards, through however you used them, were paid off as we got money coming in, and that was how our - as were our other accounts that needed to be

done. It wasn't a situation of having a large bank of money that could be used easily to do that...

101. The following graph illustrates Mr Thomson's point that the National Office 'didn't have money that was there to dip into all the time'. This graph was generated by FWA from MYOB data that was supplied by the HSU ([HSUNO.029.0001](#)) and shows fluctuations in the balance of the National Office's SGE General Account between 1 July 2006 and 13 December 2007:



102. As the table set out above at paragraph 67 of this chapter shows, financial reports that have been lodged with the Australian Industrial Registry indicate that the vast majority (in fact almost the sole source) of income of the National Office was payments by the Branches for capitation fees and the National Council levy. That income, however, was received by the National Office very sporadically. Of the Branches that had the largest number of members and therefore contributed the most, the Victoria No.1 and No.2 Branches usually paid monthly, Tasmania No.1 paid every two months or so, Victoria No.3 and Western Australia generally paid quarterly and the NSW Branch (which was by far the single biggest contributor to the income of the National Office) paid every two or three months ([HSUNO.029.0001](#)).
103. As this graph illustrates, it was a good month for cash flows if both Victoria No.1 and the NSW Branch paid the National Office but there was a noticeable dip in income if this was not the case:



104. It is also interesting to note that only nine of the 11 Branches of the HSU were contributing to the income of the National Office in this six month period. MYOB data indicates that no payments were received at all from either the South Australian Branch or the Queensland Branch between 1 July 2006 and 14 December 2007 ([HSUNO.029.0001](#)). Information from financial reports lodged with the Australian Industrial Registry indicates that no income was received from either of these Branches in the financial years ended 30 June 2005 ([FWA.004.0101](#) - see note 3), 30 June 2006 ([FWA.004.0063](#) - see note 3) or 30 June 2007 ([FWA.009.0001](#) - see note 3). In the year ended 30 June 2008 there were still no contributions from the Queensland Branch although the South Australian Branch did pay \$5,539 in capitation fees ([FWA.009.0024](#) - see note 3). The number of members in South Australia and Queensland combined as at 31 December 2007 was, however, only 893 ([FWA.004.0026](#) at 37). Given this small number, the lack of income from those two Branches was not a particularly significant matter.

105. Of more significance is the fact that, as set out above at paragraph 68 of this chapter, there was a sharp rise in the amount owing by the Branches overall to the National Office between 2006 and 2007. The liability of Branches to the National Office rose from \$263,899 as at 30 June 2006 to \$518,846¹⁹² as at 30 June 2007. By 30 June 2008 ([FWA.009.0024](#)) the amount receivable by the National Office in capitation and affiliation fees from the Branches had risen slightly to \$563,705, indicating that the situation did not improve in the 2007/2008 financial year.

¹⁹² This figure is taken from the financial report that was lodged by Ms Jackson on 8 August 2007 ([FWA.009.0001](#)).

106. This information suggests that the National Office was almost wholly reliant upon the Branches for its income but that there were real peaks and troughs in the income of the National Office that were determined by whether Branches had paid their capitation and affiliation fees and, if so, which Branches. Further, even though all of the large Branches were paying capitation and affiliation fees, outstanding liabilities for capitation and affiliation fees show that not all Branches were paying all of their liabilities to the National Office.

Payment of bills as and when they fell due in 2007

107. Documents that have been viewed by FWA indicate that the National Office was not paying all of its bills as and when they fell due in 2007 and early 2008, as evidenced by:
- a. A tax invoice from the ACTU ([HSUNO.006.0390](#)) dated 4 April 2007 for \$51,624.19 in affiliation fees for the 2nd quarter of 2007 states that the terms are '14 days'. Information is set out below at paragraphs 116 and 117 of this chapter about payment of the outstanding amount between 25 June 2007 and 20 November 2007;
 - b. Accommodation costs of \$4,922 from University House at the Australian National University in Canberra were billed ([HSUNO.010.0189](#)) at the conclusion of National Conference (which was held between 7 and 9 May 2007) but were not paid until 28 August 2007 ([HSUNO.008.0005](#));
 - c. Australia Post issued an invoice on 6 June 2007 ([WIT.WIL.001.0284](#)) to 'Craig Thomson - ALP Candidate, Federal Seat of Dobell' for \$7,253.17. Payment was due by 20 June 2007 but was not made by the National Office until 12 July 2007;
 - d. A notice dated 22 August 2007 regarding a cheque for \$635 from the HSU to The Heath Family Trust that was dishonoured by the Commonwealth Bank ([HSUNO.006.0159](#));
 - e. Invoices for overdue amounts from Lyreco as follows:
 - i. \$799.45 on 20 September 2007, which included an overdue amount of \$549.09 ([HSUNO.006.0226](#));
 - ii. \$513.10 on 9 January 2008 ([HSUNO.007.0264](#)) which had been billed to the National Office on 30 November 2007 ([HSUNO.007.0265](#));
 - iii. A letter dated 8 February 2008 attaching copies of 'overdue invoices for November that required payment within 5 working days' ([HSUNO.007.0263](#));
 - f. Reminder notices from Konica Minolta for an overdue amount of \$253.34 on 8 September 2007 ([HSUNO.006.0266](#)) and again on 11 October 2007 ([HSUNO.006.0265](#));
 - g. A reminder notice from John Murphy of counsel dated 6 February 2008 for an invoice of \$770 that had been issued on 21 November 2007 ([HSUNO.006.0117](#));

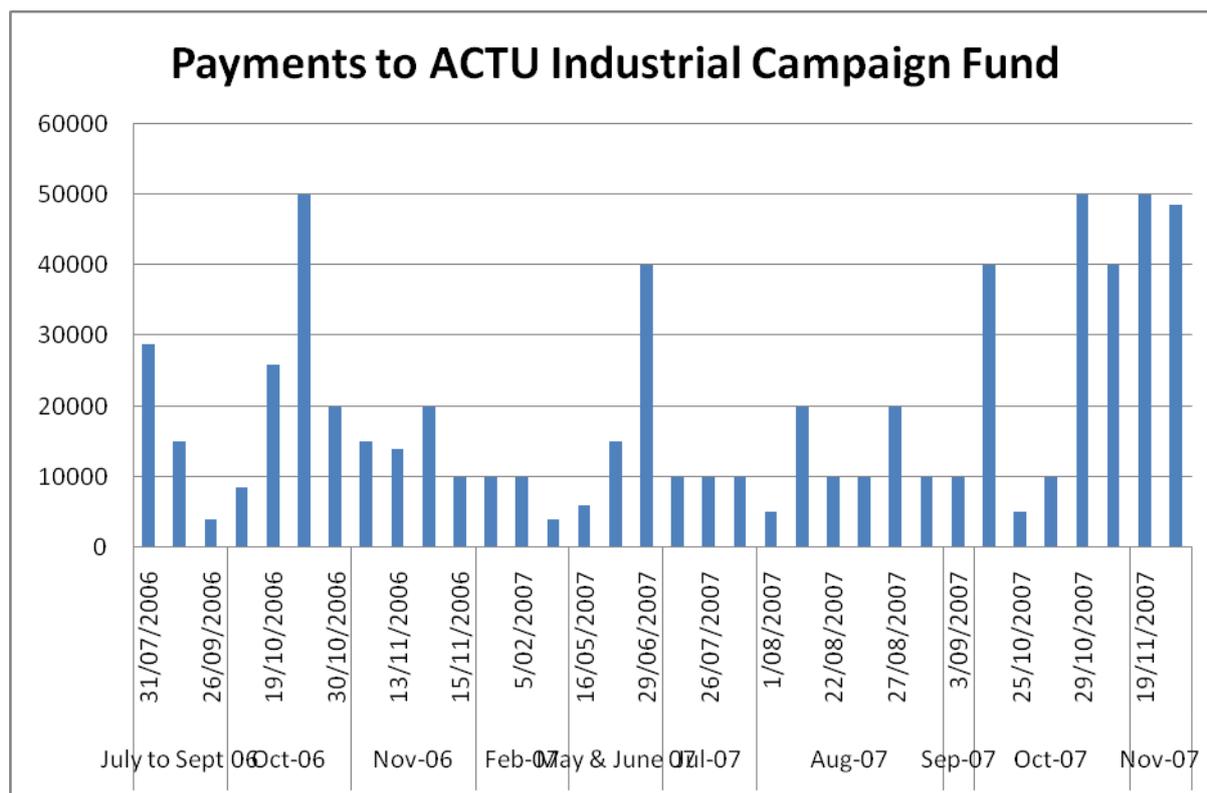
- h. A letter from University of Canberra dated 4 January 2008 regarding an outstanding debt that was now more than 90 days overdue ([HSUNO.012.0273](#));
- i. A letter from Fry's Self Storage dated 31 March 2008 regarding rental arrears of \$157 that were 30 days overdue ([HSUNO.012.0031](#)); and
- j. A notice dated 8 April 2008 regarding an overdue account of \$1,198.34 from Telstra ([HSUNO.012.0081](#)).

Payments to ACTU

Industrial Campaign Fund

- 108. FWA has viewed two invoices that were issued to the National Office by the ACTU Trade Union Industrial Campaign for \$398,502.50, one of which was issued on 10 January 2007 ([HSUNO.006.0139](#)) and the other on 15 January 2008 ([HSUNO.017.0038](#)). Both invoices stated that their terms required payment within 14 days.
- 109. The evidence before FWA indicates that all of the amounts that were payable to the ACTU in 2007 for the Industrial Campaign Fund had been paid by 20 November 2007 (being the date of the last payment that is recorded as having been made by the National Office in the MYOB data that is available to FWA).¹⁹³ A document entitled 'Aged Payables' that was presented to National Executive on 18 March 2008 ([HSUNO.017.0062](#)) states that, as at 17 March 2008, \$398,502.50 had been outstanding to the ACTU Trade Union Industrial Campaign for 61-90 days. No amounts were outstanding for 90+ days. Another document entitled 'HSUA' ([HSUNO.018.0076](#)) that was also presented at that meeting gives a breakdown of the amounts owing to the ACTU and includes the figure of \$398,502.50 for 2008 but no amount for 2007.
- 110. Despite terms of payment requiring payment to the ACTU Industrial Campaign Fund within 14 days of the invoice being issued, the MYOB data indicates that in the second half of 2006 and throughout 2007 fairly regular payments were made in small amounts, with all but five of the 30 payments that were made in the period up until 29 October 2007 being between \$5,000 and \$20,000 ([HSUNO.029.0001](#)). In a period of just under five weeks between 17 October and 20 November 2007, however, a total of \$243,502 was paid to the ACTU Industrial Campaign Fund, which constitutes 55% of the total amount of \$443,502.50 that was paid to the Industrial Campaign Fund in the 2007 calendar year ([HSUNO.029.0001](#)).
- 111. The following graph, which was generated by FWA from MYOB data supplied by the HSU ([HSUNO.029.0001](#)), shows fluctuation in payments to the ACTU Industrial Campaign Fund between 1 July 2006 and 20 November 2007:

¹⁹³ The last entry in the MYOB data is on 4 March 2008. It is possible that a payment was made between 5 March 2008 and the date of preparation of documents for the National Executive meeting on 17 March 2008.



Affiliation fees

112. In contrast to payments for the Industrial Campaign Fund, the National Office had not paid all of its liabilities to the ACTU for affiliation fees by the time of Mr Thomson's resignation on 14 December 2007. The document entitled 'Aged Payables' that is set out below at paragraph 178 of this chapter that was presented to National Executive on 18 March 2008 ([HSUNO.017.0062](#)) states that, as at 17 March 2008, \$173,841.53 was payable to the ACTU in affiliation fees and that \$121,130.52 of that figure had been owing for 90+ days (that is, since Mr Thomson's resignation in mid-December 2007). In other words, the HSU had an outstanding debt to the ACTU at the date of Mr Thomson's resignation of \$121,130.52 in unpaid affiliation fees.
113. A second document that was circulated at the National Executive meeting on 18 and 19 March 2008 that was entitled 'HSUA' ([HSUNO.018.0076](#)) gives a breakdown of the amounts owing to the ACTU. As set out below at paragraph 182 of this chapter, \$84,248.38 was outstanding in unpaid affiliation fees for the 3rd and 4th quarters of 2007, with a further \$38,882.14 in outstanding affiliation fees from 2002.
114. Documents before FWA strongly suggest that outstanding ACTU affiliation fees for the 2nd quarter of 2007 were paid off in the final six months of 2007, with the final payment being made four days before Mr Thomson's resignation in December 2007.
115. The ACTU issued tax invoice number 00004838 to the HSU on 4 April 2007 for \$51,624.19 for 'Affiliation fees quarter ending 30/06/07 72455 members @ .1725c per member per quarter' ([HSUNO.006.0390](#)). The terms of payment were 14 days.

116. Hand written annotations to that invoice (which are verified by transactions that are recorded in the General Ledger ([HSUNO.029.0001](#))) indicate that the following payments were made:

25/6/07	pd EFT	\$10,000
29/6/07	pd EFT	\$10,000
28/8/07	pd EFT	\$6,000
3/9/07	EFT	\$10,000

After these four payments, \$15,624.19 remained outstanding.

117. An electronic banking transaction record ([HSUNO.006.0389](#)) indicates that \$15,624.19 was paid to the ACTU on 10 December 2007 for 'Purchase #00004838'. This purchase identification number is the same as the invoice number of the ACTU tax invoice dated 4 April 2007 ([HSUNO.006.0390](#)), strongly suggesting that this was the final payment necessary to meet all of the HSU's liabilities to the ACTU for affiliation fees for the 2nd quarter of 2007.
118. The General Ledger for '01/07/2007 To 31/12/2007' ([HSUNO.008.0068](#)) indicates that no other payments were made to the ACTU for affiliation fees before Mr Thomson's resignation on 14 December 2007.

Comparison of CBA Mastercards and Diners Club cards

119. As set out above at paragraph 100 of this chapter, Mr Thomson has told FWA in interview that credit card accounts were paid off 'as we got money coming in'.
120. There are some noticeable differences, however, between the CBA Mastercards and the Diners Club cards that were held by National Office employees with respect to who was issued with cards, how frequently cards were used, what the cards were used for and how frequently the amounts owing on the cards were paid.

Who was issued with cards?

121. Details of the Diners Club cards and CBA Mastercards that were issued to National Office staff are set out at paragraphs 74 to 77 on pages 222 and 224 in chapter 5.
122. Consolidated reports of the CBA Mastercards from 2006 and 2007 indicate that, at this time, they were only held by three employees of the National Office, namely:
- Mr Thomson (\$15,000 card limit);¹⁹⁴
 - Mark Robinson (\$10,000 card limit);¹⁹⁵ and
 - Karene Walton (\$10,000 card limit).¹⁹⁶
123. It seems likely that Mr Thomson was, at least for part of 2007, the only National Office employee with a CBA Mastercard. Ms Walton ceased employment with the

¹⁹⁴For example see HSUNO.021.0597.

¹⁹⁵For example see HSUNO.021.0597.

¹⁹⁶For example see HSUNO.021.0597.

National Office in April 2007 and annual leave and long service leave calculations of liabilities of the National Office as at 6 December 2007 ([HSUNO.017.0008](#) and [HSUNO.017.0026](#) respectively) do not include Mark Robinson, suggesting that he was no longer a National Office employee. There is no information before FWA, however, regarding the date of Mr Robinson's resignation.

124. In contrast, Diners Club cards appear to have been far more widely held by National Office employees, with every employee having been issued with a card.
125. FWA has viewed statements of Diners Club cards that were issued to:
- a. Mr Thomson;¹⁹⁷
 - b. Criselee Stevens¹⁹⁸
 - c. Matthew Burke¹⁹⁹
 - d. Karene Walton,²⁰⁰
 - e. Karinda Flavell²⁰¹
 - f. Struan Robertson;²⁰²
 - g. Mark Robinson,²⁰³ and
 - h. Mark McLeay.²⁰⁴

How frequently were cards used?

126. Of the totals charged to the CBA Mastercards each month, for those months where the 'Business Card Summary of Spend' report is available (which summarises totals spent by each individual), it seems that Mr Thomson was responsible for virtually all of the charges each month:

		Balance of individual cards		
		Mark Robinson	Craig Thomson	Karene Walton
28 May 2005	HSUNO.010.0071	\$353.12	\$3,185.55	\$85.50
28 Mar 2006	HSUNO.010.0031	\$199.02	\$3,140.68	-
28 April 2006	HSUNO.010.0056	\$46.94	\$2,889.25	-
27 May 2006	HSUNO.010.0023	\$38.20	\$2,082.50	-
27 July 2006	HSUNO.010.0046	\$33.93	\$2,558.65	-
27 Feb 2007	HSUNO.001.0039	\$304.38	\$2,661.50	\$50.00
27 April 2007	HSUNO.001.0049	\$3.79	\$5,816.70	-

¹⁹⁷ For example see HSUNO.015.0152.

¹⁹⁸ For example see HSUNO.014.0253.

¹⁹⁹ For example see HSUNO.005.0020.

²⁰⁰ For example see HSUNO.021.0383.

²⁰¹ For example see HSUNO.002.0358.

²⁰² For example see HSUNO.007.0044.

²⁰³ For example see HSUNO.005.0097.

²⁰⁴ For example see HSUNO.012.0297.

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127. In contrast, this table illustrates that substantial charges were made to Diners Club cards by almost all card holders at various times between April and November 2007 (with the exception of Karene Walton who was no longer an employee of the HSU. The only charges of any size to her card were for road tolls):

Statement Date			Individual Charges	Total payment to Diners Club
20 April 07	Matthew Burke	HSUNO.014.0107	\$359.20	
	Criselee Stevens	HSUNO.014.0238	\$2,839.15	
	Craig Thomson	HSUNO.015.0184	\$8,410.97	
	5 unknown cardholders		\$11,584.81	\$23,194.13 ²⁰⁵
20 May 07	Matthew Burke	HSUNO.014.0111	\$1,971.48	
	Criselee Stevens	HSUNO.014.0242	\$2,265.55	
	Craig Thomson	HSUNO.015.0198	\$7,295.55	
	3 unknown cardholders		\$8,609.59	\$20,142.17 ²⁰⁶
20 Jun 07	Matthew Burke	HSUNO.014.0116	\$1,190.63	
	Karinda Flavell	HSUNO.005.0068	\$1,473.22	
	Mark McLeay	HSUNO.005.0075	\$3,349.09	
	Criselee Stevens	HSUNO.014.0246	\$511.33	
	Craig Thomson	HSUNO.015.0212	\$6,919.47	
	Karene Walton	HSUNO.005.0091	\$130.75	\$13,574.49
Jul 07	Matthew Burke	HSUNO.014.0121	\$690.58	
	Karinda Flavell	HSUNO.005.0068	\$1,240.85	
	Mark McLeay	HSUNO.005.0075	\$3,844.83	
	Criselee Stevens	HSUNO.014.0250	\$651.56	
	Craig Thomson	HSUNO.015.0224	\$1,556.46	
	Karene Walton	HSUNO.005.0091	\$0.75	
	1 unknown cardholder		\$65.65	\$8,051.47 ²⁰⁷
Aug 07	Matthew Burke	HSUNO.014.0125	\$676.18	
	Karinda Flavell	HSUNO.005.0113	\$1,775.45	
	Mark McLeay	HSUNO.005.0102	\$3,728.56	
	Criselee Stevens	HSUNO.014.0253	\$455.37	
	Craig Thomson	HSUNO.015.0236	\$5,496.34	

²⁰⁵ National Office MYOB data (WIT.WIL.001.0082) shows that 8 separate transactions on 8 May 2007 paid this total amount to Diners Club Master Trust.

²⁰⁶ National Office MYOB data (WIT.WIL.001.0082) shows that 6 separate transactions on 5 June 2007 paid this total amount to Diners Club Master Trust.

²⁰⁷ National Office MYOB data (HSUNO.029.0001) shows that on 8 August 2007 a payment was made to Diners Club Master Trust for \$65.65 for an unknown cardholder.

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Statement Date			Individual Charges	Total payment to Diners Club
	Karene Walton	HSUNO.005.0133	\$130.00	\$12,261.90
20 Sep 07	Matthew Burke	HSUNO.014.0130	\$767.21	
	Karinda Flavell	HSUNO.006.0164	\$1,919.43	
	Mark McLeay	HSUNO.005.0144	\$255.35	
	Criselee Stevens	HSUNO.014.0256	\$299.88	
	Craig Thomson	HSUNO.015.0246	\$2,385.67	
	Karene Walton	HSUNO.005.0159	\$0.75	\$5,629.04
20 Oct 07	Matthew Burke	HSUNO.014.0137	\$1,150.29	
	Karinda Flavell	HSUNO.005.0201	\$1,886.30	
	Mark McLeay	HSUNO.005.0192	\$2,903.51	
	Criselee Stevens	HSUNO.014.0262	\$731.50 ²⁰⁸	
	Craig Thomson	HSUNO.015.0254	\$1,696.73	
	Karene Walton	HSUNO.005.0176	\$130.00	\$8,384.96 ²⁰⁹
20 Nov 07	Matthew Burke	HSUNO.014.0141	\$2,637.55	
	Karinda Flavell	HSUNO.005.0216	\$1,742.73	
	Mark McLeay	HSUNO.005.0223	\$1,223.79	
	Criselee Stevens	HSUNO.014.0167	\$2,012.64	
	Craig Thomson	HSUNO.015.0040	\$1,618.69	\$9,238.90
	Total of payments for April to November 2007			\$100,480.06

How frequently were balances on the cards paid off?

128. As set out in the table above at paragraph 127 of this chapter, with the exception of \$731.50 which was the total due in Criselee Stevens' statement of 20 October 2007, all charges to Diners Club cards were paid off in full each month.
129. There seems to be a distinctly different pattern of payment of amounts owing for charges to the CBA Mastercards, however, which were paid off in full (or even in part) far less frequently. FWA has been able to view most of the consolidated reports from the Commonwealth Bank which record details of charges to, and payments for, the group of credit cards held by various employees of the National Office from time to time from March 2006 to December 2007.
130. The only consolidated report in 2005 that has been viewed is a report dated 28 May 2005 ([HSUNO.010.0071](#)) which indicates that the opening balance of \$4,933.90 had been paid off in full the previous month by the National Office. The next available consolidated report is dated 28 March 2006 ([HSUNO.010.0031](#)) and, again, it

²⁰⁸ This amount was not paid but was carried over to the following statement - see HSUNO.014.0167.

²⁰⁹ This figure included a payment of \$618.13 on 12 November 2007 for an unknown cardholder (HSUNO.005.0183).

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indicates that the opening balance of \$2,415.06 had been paid off in full the previous month.

131. The next available consolidated report is dated 28 April 2006 ([HSUNO.010.0056](#)). Many more consolidated reports are available from this point onwards. The statements suggest a pattern whereby charges were often not paid off in full (or at all) for a number of months but then one large payment (which was in the vicinity of \$20,000 on a number of occasions) would be made to clear outstanding amounts (and, in the case of February 2007, so that the CBA credit facility was more than \$5,000 in credit):

Report Date	Opening Balance (\$)	New Charges (\$)	Payments (\$)	Interest (\$)	Closing Balance (\$)
April 2006 ²¹⁰	3,378.82	2,936.19	0.00	53.46	6,368.47
May 2006 ²¹¹	6,468.47	2,145.70	3,378.82	71.78	5,207.13
July 2006 ²¹²	7,403.97	2,592.58	0.00	90.77	10,087.32
August 2006 ²¹³	10,087.32	2,924.95	10,087.32	95.38	3,020.33
February 2007 ²¹⁴	10,296.55	3,015.88	18,741.52	32.47	-5,396.62
April 2007 ²¹⁵	-2,445.11	5,820.49	0.00	10.70	3,386.08
June 2007 ²¹⁶	6,361.44	14,647.13	0.00	197.80	21,206.37
July 2007 ²¹⁷	21,206.37	2,795.41	21,206.37	112.89	2,908.30
August 2007 ²¹⁸	2,908.30	3,398.44	0.00	54.76	6,361.50
September 2007 ²¹⁹	6,361.50	2,464.60	0.00	82.52	8,908.62
October 2007 ²²⁰	8,908.62	6,984.34	0.00	138.75	16,031.71
November 2007 ²²¹	16,031.71	5,396.26	22,283.97	167.44	-688.56
December 2007 ²²²	688.56	59.95	0.00	0.00	-628.61

132. It is not clear why the National Office paid the full amounts due on Diners Club card statements for each month from April 2007 through to November 2007 (which amounted to a total of \$100,480.06 over eight months) but during that same period

²¹⁰ HSUNO.010.0056.
²¹¹ HSUNO.010.0023.
²¹² HSUNO.010.0046.
²¹³ HSUNO.010.0076.
²¹⁴ HSUNO.001.0039.
²¹⁵ HSUNO.001.0049.
²¹⁶ HSUNO.001.0108.
²¹⁷ HSUNO.001.0120.
²¹⁸ HSUNO.001.0073.
²¹⁹ HSUNO.001.0115.
²²⁰ HSUNO.001.0126.
²²¹ HSUNO.001.0100.
²²² HSUNO.001.0136.

the National Office only made two payments totalling \$43,490.34 to the CBA Mastercard accounts ([HSUNO.029.0001](#)).

HSU Records concerning payments to Commonwealth Bank of Australia

133. The HSU has provided FWA with one bank transaction confirmation document from 'sge credit union *inet*' ([HSUNO.001.0272](#)) evidencing a payment to the Commonwealth Bank of Australia Card Services. The transaction was the payment on 11 July 2007 of \$21,206.37 which appears in the table at paragraph 131 of this chapter. This bank transaction confirmation document indicates that the HSU's member number was 709291 and that payment was made from an HSU account which is identified as 'Account 709291S1 Access Account'. Rather curiously, however, this payment of \$21,206.37 to Commonwealth Bank of Australia Card Services is not also recorded in the MYOB General Ledger for 1 July 2007 to 31 December 2007 ([HSUNO.008.0068](#)).
134. On exactly the same date of 11 July 2007, however, the MYOB General Ledger does record a payment to the 'Commonwealth Bank Of Aust' ([HSUNO.008.0068](#)) but for a different amount, namely \$22,456.84. The bank transaction confirmation document ([HSUNO.010.0079](#)) states that payment was made to 'Commonwealth Bank of Aust, Items Processing Centre' and lists the payment as being for:

Purchase #00005230	9/7/2007	\$7,611.91
Purchase #00000054	23/7/2007	\$14,844.93

The MYOB Cash Disbursements Journal for 1 July 2007 to 31 December 2007 ([HSUNO.008.0005](#) at 0007) records these two amounts as payable to 'Trade Creditors' without any further annotation.

135. Similarly, the consolidated report for November 2007 for the CBA Mastercard accounts ([HSUNO.001.0100](#)) records a payment of \$22,283.97. As with the payment in July, however, this payment of \$22,283.97 to Commonwealth Bank of Australia Card Services is not also recorded in the MYOB General Ledger for 1 July 2007 to 31 December 2007 ([HSUNO.008.0068](#)). The MYOB General Ledger does, however, record a payment to the 'Commonwealth Bank Of Aust' ([HSUNO.008.0068](#)) for a different amount, namely \$21,417.97 on 19 November 2007. The bank transaction confirmation document ([HSUNO.001.0202](#)) states that payment was made to 'Commonwealth Bank of Aust, Items Processing Centre' and lists the payment as being for:²²³

Purchase # [illegible]	9/7/2007	\$709.27
Purchase #00222421	28/08/07	\$3,398.19
Purchase #00222424	28/09/2007	\$4,743.60
Purchase #00222425	28/10/2007	\$4,690.37

²²³ While parts of the document are illegible, confirmation of the breakdown of individual amounts is given by the Cash Disbursements Journal 01/07/2007 To 31/12/2007 (HSUNO.008.0005 at 0043).

Purchase # [illegible]	28/11/2007	\$4,808.33
Purchase # [illegible]	28/12/2007	\$3,068.21

The MYOB Cash Disbursements Journal for 1 July 2007 to 31 December 2007 ([HSUNO.008.0005](#) at 0043) records these six amounts as payable to 'Trade Creditors' without any further annotation.

136. The payment on 11 July 2007 to Commonwealth Bank of Australia Card Services was recorded on a bank transaction confirmation document with a banner 'sge credit union *inet*' ([HSUNO.001.0272](#)). FWA has viewed 19 other bank transaction confirmation documents²²⁴ that also have a banner for 'sge credit union *inet*' and that record electronic payments from the SGE 'Access Account'. In contrast to the payment to Commonwealth Bank of Australia Card Services on 11 July 2007, all of those 19 other transactions were also entered in the National Office's General Ledger ([HSUNO.008.0068](#)).²²⁵
137. It is not clear why the two payments to the Commonwealth Bank of Australia Card Services for the CBA Mastercard accounts in July and November 2007 are not recorded in the General Ledger. From the few other relevant documents that have been viewed by FWA, it would appear that historically payments to the CBA Mastercard accounts were entered in the General Ledger:
- a. The consolidated report for the CBA Mastercard accounts indicate that in August 2006 a payment of \$10,087.32 was made by the National Office ([HSUNO.010.0076](#)). This agrees with information recorded in the MYOB General Ledger, which indicates that on 17 August 2006 two payments of \$4,318.99 and \$5,768.33 (totalling \$10,087.32) were made to 'Commonwealth Bank Of Aust' ([HSUNO.003.0173](#)); and
 - b. The consolidated report for the CBA Mastercard accounts indicate that in February 2007 the accounts had an opening balance of \$10,296.55 ([HSUNO.001.0039](#)). The MYOB General Ledger records that on 13 February 2007 the amount of \$10,296.55 was paid to 'Commonwealth Bank Of Aust' ([HSUNO.003.0244](#)).

What did Mr Thomson use his CBA Mastercard for?

138. The analysis set out under this heading provides a broad overview of the categories of expenditure that Mr Thomson charged to his CBA Mastercard in particular in 2005, 2006 and 2007.
139. Mr Thomson told FWA in interview that CBA Mastercards were issued to some National Office staff because 'Diners weren't as widely accepted a card and Mastercard was far more widely accepted. So we had CBA Mastercards for, I think,

²²⁴ HSUNO.005.0067, HSUNO.014.0261, HSUNO.005.0163, HSUNO.005.0149, HSUNO.005.0143, HSUNO.005.0019, HSUNO.006.0173, HSUNO.006.0192, HSUNO.006.0216, HSUNO.006.0136, HSUNO.006.0183, HSUNO.006.0185, HSUNO.006.0046, HSUNO.006.0188, HSUNO.009.0277, HSUNO.006.0125, HSUNO.006.0165, HSUNO.006.0168, HSUNO.006.0354 and HSUNO.006.0396.

²²⁵ One transaction on 7 December 2006 (HSUNO.009.0277) appears in the MYOB general ledger for the 2006/07 financial year (WIT.WIL.001.0082).

myself and three of the staff members who were more likely to use it' (Thomson PN 1143). Mr Thomson further explained that 'They were also the people who were more likely to independently travel than anyone else' (Thomson PN 1153). Mr Thomson stated that no instructions were given to staff about the circumstances in which the Diners Club card or CBA Mastercard should be used (Thomson PN 1163).

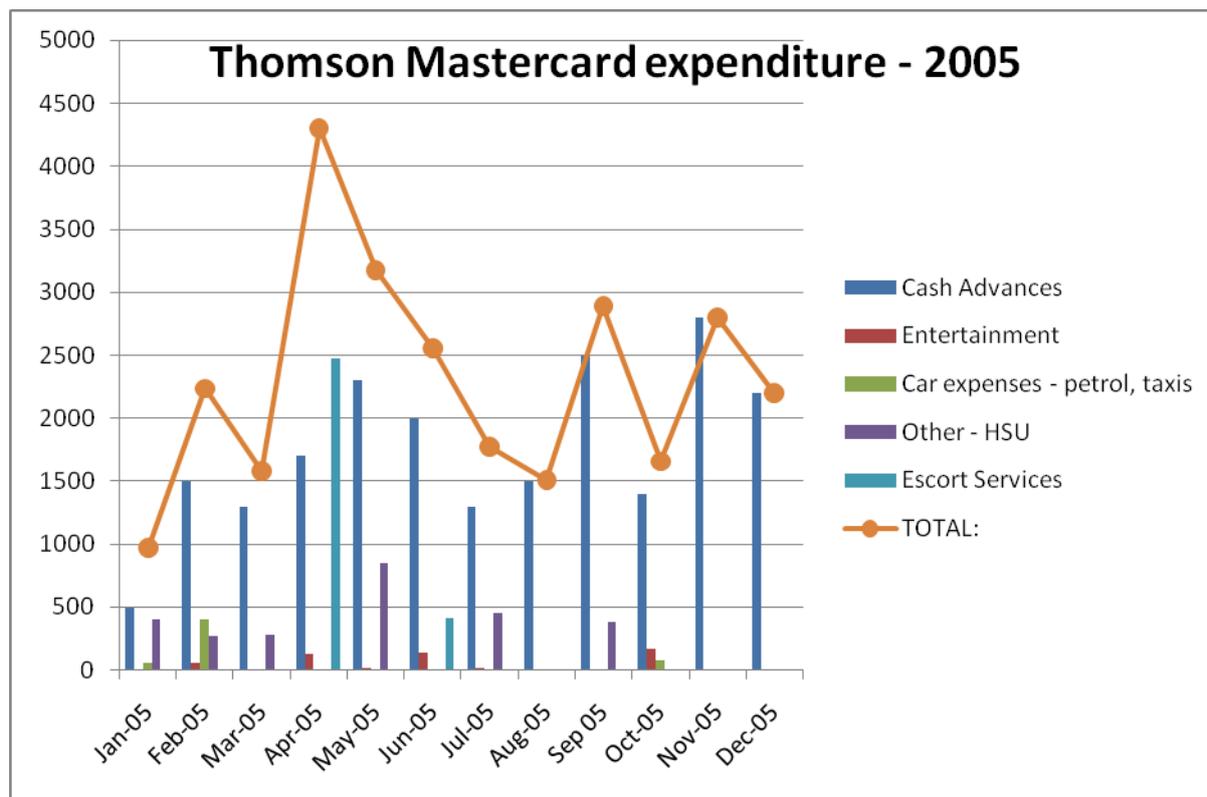
140. Mr Thomson was asked in interview about whether there were any general policies in relation to cash withdrawals. Mr Thomson's response was 'Only that I was the only one who was to do it. We didn't allow anyone else' (Thomson PN 1197). Mr Thomson made that policy because 'it helped with control' (Thomson PN 1199 - 12020).

141. It was put to Mr Thomson in interview that he used his CBA Mastercard 'to try to in some way keep expenditure away from the union's knowledge, and in terms of the latter charge [for printing and at Falcon Long Jetty] that you're expending money on your election campaign' (Thomson PN 1374). Mr Thomson replied (Thomson PN 1375):

Well, it doesn't keep away from the union's knowledge, it gets put on through the union's accounts, so it doesn't matter how it's spent, it still ends up there the same way. Where we spent money on the election campaign, it's been known, it hasn't been a secret issue in any sense. It was an election campaign where unionists probably spent more than they've ever spent and probably will not spend that much again, because of the issues that were there, and because the categorisation of Your Rights at Work has been a political issue, it meant that there was far more that previously we normally wouldn't have perhaps categorised in that way that go into those things. Central Coast, there's two seats, as well, by the way, not just my seat. We did win them both.

142. It is clear from each of the graphs below that the majority of expenditure on Mr Thomson's CBA Mastercard was in cash advances. Such cash advances accounted for more than 70% of the charges in 10 out of 12 months during 2005, and in 8 out of 12 months during 2006. The overall percentage of such withdrawals declined during 2007 (although they still exceeded 50% of total charges in 6 out of 12 months during 2007), not because the dollar value of the cash advances declined but because the number of charges in other categories rose sharply. Almost all of these additional charges in 2007 were incurred on the Central Coast or on matters related to Mr Thomson's campaign in the seat of Dobell. Details of each transaction that is summarised in the three graphs that appear in this paragraph and at paragraphs 146 and 151 of this chapter are set out in Annexure H.

CBA Mastercard expenditure in 2005

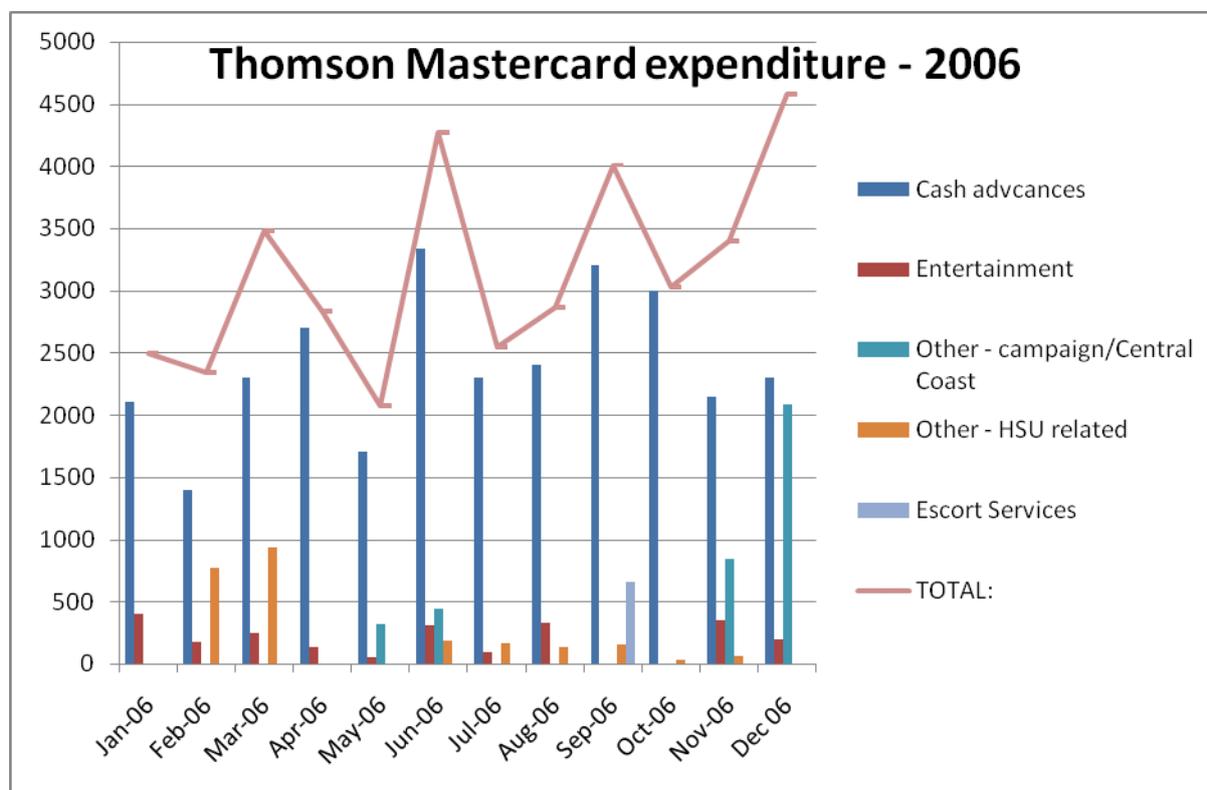


143. In every month of 2005 except April, more than 50% of the charges to Mr Thomson's CBA Mastercard were for cash advances. In August, November and December 2005 more than 99% of charges to the CBA Mastercard were cash advances. The total amount withdrawn by Mr Thomson in cash advances on his CBA Mastercard in 2005 was \$21,000.
144. In April 2005 more was charged on escort services (\$2,475) than was taken out in cash advances (\$1,700).
145. Mr Thomson charged very little to his CBA Mastercard for dining/entertainment or car expenses. Slightly more was spent on other matters related to the business of the HSU, with charges in January, February, March, May, July and September being made at the Australian Industrial Registry ([HSUNO.014.0037](#)), the Law Society of New South Wales ([HSUNO.014.0040](#)), Internat Immobiliare ([HSUNO.010.0073](#)),²²⁶ Australia Post ([HSUNO.014.0046](#)) and for computer software ([HSUNO.014.0048](#)).

²²⁶ FWA has been unable to identify this business.

CBA Mastercard expenditure in 2006

146. A similar pattern can be seen for 2006:



147. In each month in 2006 cash advances account for the majority of charges to Mr Thomson's CBA Mastercard. For half of the year (namely, January, April, May, August, September and October 2006) cash advances accounted for 80% or more of the charges. The total amount withdrawn in cash advances in 2006 was \$28,890. Mr Thomson was of the view that the sharp increase in the level of cash advances in 2006 as compared with 2005 and 2007 may have been explained by the amount of travel he undertook in 2006 (Thomson PN 1312).

148. As in 2005, dining/entertainment accounted for very few charges in 2006. Comparatively low charges were made concerning matters related to the business of the HSU at Hawkesford's International ([HSUNO.014.0056](#)),²²⁷ Harris and Adams bodyworks for car expenses ([HSUNO.010.0013](#)),²²⁸ Google adwords ([HSUNO.001.0280](#)) and web hosting ([HSUNO.010.0013](#)).

149. For the first time, the 2006 CBA Mastercard charges included expenditure on the Central Coast. Charges on 19 May 2006 at Gosford City Council ([HSUNO.014.0061](#)) and on 27 May 2006 for party hire ([HSUNO.014.0062](#)) related to the launch of Coastal Voice, a Central Coast community group of which Mr Thomson was the President. In November 2006 Mr Thomson charged \$840 to his CBA Mastercard at The Good Guys in Erina ([HSUNO.014.0074](#)) but he was unable to recall this

²²⁷ Mr Thomson stated in interview that this charged related to hiring a bus for a rally associated with a protest outside Tony Abbott's office (Thomson PN 1336 - 1338).

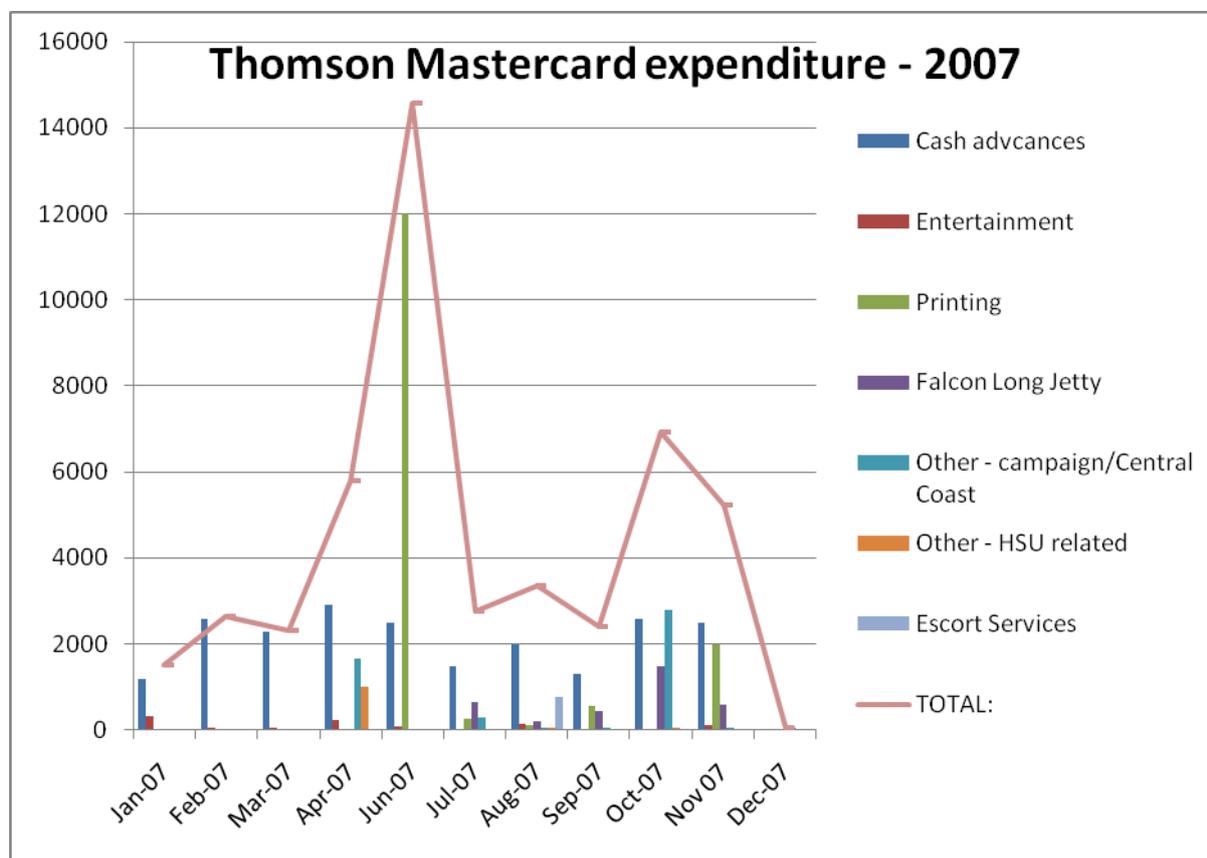
²²⁸ Mr Thomson stated in interview that this charged related to vehicle repair works on his leased vehicle (Thomson PN 1340).

transaction in interview (Thomson PN 1340). Mr Thomson subsequently charged \$2,050 to his CBA Mastercard at Golden Years Collectables in Erina on 25 November 2006 ([HSUNO.014.0081](#)), which he stated in interview was a donation to the ALP of memorabilia for an auction (Thomson PN 1342 - 1344).

150. On 26 August 2006, \$660 was charged to Mr Thomson's CBA Mastercard at Staff Call, which has been identified as a brothel called 'A Touch of Class' which operates at 377 Riley Street, Surry Hills ([HSUNO.014.0069](#)).

CBA Mastercard expenditure in 2007

151. There was a noticeable change in 2007 in the charges that Mr Thomson made to his CBA Mastercard. While Mr Thomson continued to make regular cash withdrawals, charges on the Central Coast of New South Wales increased considerably from 2006 levels.



152. Mr Thomson withdrew a total of \$21,400 on his CBA Mastercard in cash advances in 2007 (see Annexure H), which was a very similar figure to the amount withdrawn in 2005. It is notable, however, that this figure is almost certainly an underestimate since FWA has not been provided with Mr Thomson's CBA Mastercard statement for May 2007. Further, it should be noted that no cash withdrawals are shown on Mr Thomson's CBA Mastercard statement for December 2007. The figure of \$21,400 therefore accounts for Mr Thomson's cash withdrawals in a 10 month period rather than for a year.

153. Apart from the continuing high level of cash withdrawals, the level of expenditure on printing was very high in 2007 with a total of \$14,947.10 being charged to Mr Thomson's CBA Mastercard for printing (see Annexure H). Mr Thomson was asked in interview about \$12,647 that was charged to his CBA Mastercard at The Entrance Print between 26 May and 13 November 2007. Mr Thomson replied that (Thomson PN 921):
- They would be a variety of things. Some of the earlier ones probably aren't electoral issues but I would imagine that some of the later ones probably are. Having said that, some of them - without knowing what it is, they could also well be Your Rights at Work election stuff but, you know, clearly the latter stuff was in the context of an election campaign, that material.
154. Mr Thomson has identified \$1,053 that was spent at Bing Lee in Erina on 17 April 2007 as being for a portable air conditioner for his campaign office in Long Jetty ([HSUNO.001.0265](#), Thomson PN 432-434). Mr Thomson also identified a charge of \$2,739 on 12 October 2007 at Nova 1069 as being an electoral expense charged at the Central Coast radio station Star FM ([HSUNO.001.0127](#), Thomson PN 1355-1362). Other regular (monthly) charges on the Central Coast to Mr Thomson's CBA Mastercard were by Central Coast Internet ([HSUNO.001.0122](#)).
155. Between July and November 2007, when Mr Thomson's election campaign was almost certainly gaining momentum, he also charged \$3,395.07 at Falcon Long Jetty (see Annexure H). Mr Thomson was unable to identify in interview what those charges related to, although he agreed that Falcon Long Jetty may have been a petrol station just next to his campaign office. When it was put to him in interview that it seems to be a very large sum for petrol, particularly given that National Office employees charged petrol to their Diners Club cards on a regular basis, Mr Thomson was not able to explain the expenditure (Thomson PN 951 - 963).
156. A total of \$770 was charged at Keywed Pty Ltd on 16 August 2007. Keywed has been identified as Sydney Outcalls Network ([HSUNO.001.0321](#)).

Observations regarding credit cards

157. Information set out above suggests the following:
- a. Diners Clubs cards were held far more widely amongst National Office employees than were CBA Mastercards;
 - b. From the limited information that has been viewed in documents that are available to FWA, Mr Thomson was responsible for almost all of the charges that were made to CBA Mastercards. In contrast, all employees charged (sometimes quite substantial) amounts to their Diners Club cards;
 - c. Mr Thomson was the only person permitted (under a policy that he developed himself) to make cash withdrawals on the CBA Mastercard;
 - d. The vast majority of charges by Mr Thomson to his CBA Mastercard were for cash withdrawals or matters related to his campaign for ALP pre-selection, and subsequently for election, in Dobell;

- e. Diners Club cards were paid off in full by the National Office each month. In contrast, during 2007 the CBA Mastercard account was only paid three times with the outstanding balance carrying over from one month to the next. A large payment of \$22,283.97 was, however, paid to the CBA Mastercard accounts in November 2007, resulting in the cards not only being paid off in full but being \$688.56 in credit ([HSUNO.029.0001](#));
- f. The two payments to Commonwealth Bank of Australia Card Services in July and November 2007 were not entered into the General Ledger.

Payments to the Australian Taxation Office

158. Business Activity Statements (**BAS**) and Instalment Activity Statements (**IAS**) that were provided by the HSU to FWA indicate that the HSU remitted 'pay as you go' (**PAYG**) taxation to the Australian Taxation Office (**ATO**) on a monthly basis. The balance of goods and services tax (**GST**) that was owing to the ATO was remitted quarterly.
159. The following table sets out amounts that were due to be paid to the ATO (as derived from IAS and BAS) together with information that has been derived from MYOB data ([HSUNO.029.0001](#)) regarding payments to the ATO. Figures denoted with an asterisk indicate that a BAS (as distinct from an IAS) was lodged, meaning that both (one month's) PAYG and (quarterly) GST were payable:

Payment for	Due date	Amount due	Casebook ID	Date of payment	Amount paid
Apr to Jun 06	28 Jul 06	\$29,900*	HSUNO.003.0149	31 Jul 06	\$29,900
July 06	21 Aug 06	\$15,075	HSUNO.003.0152	12 Sep 06	\$15,075
August 06	21 Sep 06	\$14,401	HSUNO.003.0169	19 Sep 06	\$14,401
Jul to Sep 06	28 Oct 06	\$29,987*	HSUNO.003.0181	16 Oct 06	\$29,987
Oct 06	21 Nov 06	\$15,436	HSUNO.003.0186	20 Nov 06	\$15,436
Nov 06	21 Dec 06 (estimated)		No documents available	20 Dec 06	\$10,926
Oct to Dec 06	28 Feb 07	\$48,282*	HSUNO.003.0194	20 Feb 06	\$48,282
Jan 07	21 Feb 07 (estimated)		No documents available	20 Feb 06	\$10,839
Feb 07	21 Mar 07 (estimated)		No documents available	26 Mar 07	\$15,489
Jan to Mar 07	28 Apr 07	\$35,891*	HSUNO.003.0249	3 May 07	\$35,891
April 07	22 May 07	\$11,824	HSUNO.003.0239	21 May 07	\$11,824
May 07	21 Jun 07	\$36,994	HSUNO.003.0235	11 Jul 07	\$16,994
				16 Jul 07	\$10,000
				23 Jul 07	\$10,000
Apr to June 07	30 Jul 07	\$39,044*	HSUNO.003.0216		
July 07	21 Aug 07		No documents		

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Payment for	Due date	Amount due	Casebook ID	Date of payment	Amount paid
	(estimated)		available		
				24 Aug 07	\$10,000
				27 Aug 07	\$29,044
				27 Aug 07	\$2,000
				27 Aug 07	\$14,465
August 07	21 Sep 07	\$11,532	HSUNO.010.0213	3 Sep 07	\$11,532
				3 Sep 07	\$220
Jul to Sep 07	29 Oct 07	*	HSUNO.006.0371		
October 07	21 Nov 07	\$14,388	HSUNO.006.0337	19 Nov 07	\$14,388
				26 Nov 07	\$51,702
November 07	21 Dec 07	\$18,850	HSUNO.007.0115	31 Jan 08	\$18,850
Oct to Dec 07	28 Feb 08	\$26,847	HSUNO.007.0295	12 Feb 08	\$26,847

160. The ATO imposed a penalty of \$220 upon the National Office ([HSUNO.010.0165](#)) in a notice dated 28 August 2007. The notice related to lodgement of the June 2007 BAS, which was due on 30 July 2007 but which was not received by the ATO until 17 August 2007.²²⁹ The second payment on 3 September 2007 of \$220 that is itemised in the table in paragraph 159 above would appear to be payment of this penalty.
161. The table above at paragraph 159 of this chapter suggests that, generally speaking, between July 2006 and May 2007 amounts that were payable to the ATO were paid on time or fairly shortly thereafter. From that point onwards, however, payments were not necessarily made on time or in full.
162. The amount of \$36,994 that was due on 21 June 2007 ([HSUNO.003.0235](#)) was paid in three instalments on 11, 16 and 23 July 2007.
163. While \$39,044 was due on 30 July 2007 ([HSUNO.003.0216](#)), no payments at all were made to the ATO until late August. It appears as though the \$39,044 was paid in two instalments of \$10,000 on 24 August 2007 and \$29,044 (as one of three payments) on 27 August 2007 ([HSUNO.029.0001](#)). Two further payments totalling \$16,465 were made on 27 August 2007, making the total of payments on that date \$55,509 ([HSUNO.029.0001](#)).
164. As only the first page of the BAS ([HSUNO.006.0371](#)) has been provided to FWA it is not possible to determine the amount, although a payment was due to the ATO on 29 October 2007. MYOB data ([HSUNO.029.0001](#)) indicates that no payments were made to the ATO until 19 November 2007 (on which date the October PAYG amount of \$14,388 was paid). It seems likely that the payment that was due on 29 October 2007 was not paid for a further week until 26 November 2007, when MYOB records ([HSUNO.029.0001](#)) indicates that a payment of \$51,702 was made to the ATO.

²²⁹ Note that the date upon which the BAS statement was lodged with the ATO does not necessarily coincide with the date upon which the National Office paid sums owing to the ATO.

Given that the amount that was due on 29 October 2007 was for one month's PAYG (September 2007) plus three months' GST (July to September 2007), the relatively large size of this payment on 26 November 2007 also suggests that it was payment of the amount that was due on 29 October 2007.

165. In the three months in the second half of 2007 in which payments to the ATO were not made on time (being June, July and October 2007) National Office income from the Branches was low. While the Victoria No.1 Branch made two payments to the National Office on 7 and 20 June 2007 totalling \$56,544.66 ([HSUNO.029.0001](#)), the NSW Branch did not make any payments to the National Office in June 2007. Further, as the graph above at paragraph 103 of this chapter shows, no payments were received from either the Victoria No.1 Branch or the NSW Branch in July or October 2007.
166. The following three tables below at paragraphs 167, 169 and 171 of this chapter extract information from MYOB data ([HSUNO.029.0001](#)) regarding transactions over \$5,000 (and a small number of other significant transactions) of the National Office between the dates on which payments were due to the ATO in June, July and October 2007 and the dates upon which payments were actually made. An asterisk denotes that several transactions were paid to the same payee on that date and that an aggregate figure has been included in the tables.
167. In each of the three tables, the one recurring liability of the National Office (which was in the order of \$7,000 per week) was payment of wages to National Office staff.

21 June to 23 July 2007

Date	Description	Income	Expenditure	Ending Balance
21 Jun 07	Payment due to ATO (of \$36,994)			
	ACTU Education Campaign Centre		\$10,000	\$49,583.41
22 Jun 07	Victoria No.2 Branch	\$12,674.99		\$62,258.40
25 Jun 07	ACTU ²³⁰		\$10,000	\$50,263.27
	Victoria No.4 Branch	\$16,284.54		\$66,547.81
26 Jun 07	Payroll		\$6,922.15	\$59,625.66
27 Jun 07	Tasmania No.1 Branch	\$43,608.49		\$103,234.15
	State Revenue Office	\$8,393.86		\$111,628.01
29 Jun 07	ACTU Trade Union Industrial Campaign Fund		\$20,000	
	ACTU Trade Union Industrial Campaign Fund		\$20,000	
	ACTU ²³¹		\$10,000	

²³⁰ An annotation on an invoice received from the ACTU (HSUNO.006.0390) indicates that this was part payment of ACTU affiliation fees for the quarter ending 30 June 2007. The affiliation fees totalled \$51,624.19 for the quarter. The invoice had been issued on 4 April 2007 and payment had been due within 14 days (that is, by 18 April 2007).

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Date	Description	Income	Expenditure	Ending Balance
	Diners Club Master Trust		\$13,574.49*	\$43,992.97
2 Jul 07	Victoria No.3 Branch	\$18,524		\$62,519.68
3 Jul 07	Payroll		\$6,600.71	\$55,918.97
9 Jul 07	HESTA [superannuation]	\$40,000		\$95,918.08
10 Jul 07	Payroll		\$6,981.27	\$88,937.70
11 Jul 07	ATO		\$16,994	\$71,943.70
	Commonwealth Bank of Aust		\$22,456.84	\$48,923.59
12 Jul 07	Australia Post		\$7,253.17	\$40,250.61
16 Jul 07	ATO		\$10,000	\$30,250.61
17 Jul 07	Payroll		\$6,981.27	\$23,478.34
20 Jul 07	Victoria No.2 Branch	\$11,016.50		\$30,425.99
23 Jul 07	ATO		\$10,000	\$20,425.99

168. On and from 21 June 2007, the National Office had an outstanding liability to the ATO for \$36,994. It is of note that:
- a. The following payments were made before payments to the ATO:
 - i. A total of \$40,000 to the ACTU Industrial Campaign Fund;
 - ii. A total of \$20,000 in ACTU affiliation fees; and
 - iii. \$13,574.49 to Diners Club Master Trust;
 - b. by paying the ATO in instalments (with the liability to the ATO remaining at \$20,000 after the first payment on 11 July 2007), the National Office was able to pay \$22,256.84 to the Commonwealth Bank on 11 July 2007;
 - c. a payment of \$7,253.17 was made to Australia Post on 12 July 2007 (while \$20,000 was still outstanding to the ATO). The Australia Post liability appears to have arisen from an invoice that was issued on 6 June 2007 ([WIT.WIL.001.0284](#)) to 'Craig Thomson - ALP Candidate, Federal Seat of Dobell'. Payment had been due by 20 June 2007. As discussed under the heading 'Postage expenses for the Dobell Campaign' at page 643 in chapter 7, it seems probable that this invoice related to purchases associated with the campaign in Dobell; and
 - d. the ending balance of \$20,425.99 on 23 July 2007 indicates that, had the National Office not received a payment from HESTA superannuation of \$40,000 on 9 July 2007, there would have been insufficient funds to make all of the payments for wages, the Commonwealth Bank and the ATO by 23 July 2007.

²³¹ An annotation on the same invoice (HSUNO.006.0390) indicates that this was a further part payment of ACTU affiliation fees for the quarter ending 30 June 2007.

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169. The National Office also failed to pay \$39,044 to the ATO when it was due on 30 July 2007. This sum was not paid in full until 27 August 2007:

30 July to 27 August 2007

Date	Description	Income	Expenditure	Ending Balance
30 Jul 07	Payment due to ATO (\$39,044)			
	ACTU Trade Union Industrial Campaign Fund		\$10,000	\$55,828.15
31 Jul 07	Payroll		\$7,496.69	\$48,066.30
1 Aug 07	ACTU Trade Union Industrial Campaign Fund		\$5,000	\$38,343.08
	Victoria No.3 Branch	\$19,546.73		\$57,889.81
2 Aug 07	Victoria No.5 Branch	\$8,852.18		\$67,659.50
6 Aug 07	Karene Walton		\$6,250	\$61,409.50
7 Aug 07	Payroll		\$7,086.74	\$54,322.76
8 Aug 07	Diners Club Master Trust		\$8,051.47*	\$46,271.29
9 Aug 07	Victoria No.1 Branch	\$26,082.83		\$70,587.87
13 Aug 07	ACTU Trade Union Industrial Campaign Fund		\$20,000	\$49,866.04
14 Aug 07	Payroll		\$7,086.74	\$41,366.80
20 Aug 07	ACTU		\$3,300	\$30,741.01
	Western Australian Branch	\$40,208.45		\$70,949.46
	Victoria No.2 Branch	\$10,343.76		\$81,293.22
	Victoria No.2 Branch	\$11,016.50		\$92,309.72
21 Aug 07	McLellands Lawyers		\$10,000	\$82,309.72
22 Aug 07	ACTU Trade Union Industrial Campaign Fund		\$10,000	\$72,046.34
	Dads in Education		\$2,500	\$62,219.00
	Payroll		\$7,086.74	\$55,132.26
23 Aug 07	Dads in Education		\$2,500	\$52,347.58
	ACTU Trade Union Industrial Campaign Fund		\$10,000	\$42,347.58
	NSW Branch	\$194,014.70		\$236,362.28
24 Aug 07	ATO		\$10,000	\$226,362.28
27 Aug 07	ATO		\$29,044	\$195,921.39
	ATO		\$2,000	\$193,921.39
	ATO		\$14,465	\$179,456.39

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170. On and from 30 July 2007, the National Office had an outstanding liability to the ATO for \$39,044. It is of note that:
- a. The following payments were made before any payments to the ATO:
 - i. A total of \$58,300 to the ACTU;
 - ii. \$8,051.47 to Diners Club Master Trust; and
 - iii. \$10,000 to McLellands Lawyers;
 - b. two payments totalling \$5,000 on 22 and 23 August 2007 were made to Dads in Education before any payments to the ATO. Mr Thomson purported to authorise these payments to Dads in Education for the purpose of advancing his campaign in the seat of Dobell (these payments are discussed at paragraphs 563 to 584 of chapter 6); and
 - c. no payments were made to the ATO until after the NSW Branch had paid capitation fees of \$194,014.70 to the National Office on 23 August 2007.
171. Similarly, a payment that was due to the ATO on 29 October 2007 (see [HSUNO.010.0213](#)) was not paid on that date:

29 October to 26 November 2007

Date	Description	Income	Expenditure	Ending Balance
29 Oct 07	Payment due to ATO			
	ACTU Trade Union Industrial Campaign Fund		\$50,000	\$138,588.44
	Essential Media Communications		\$6,600	\$131,988.44
30 Oct 07	Karene Walton		\$6,250	\$123,959.46
	ACTU Trade Union Industrial Campaign Fund		\$40,000	\$82,587.71
	Payroll		\$7,086.74	\$75,500.37
31 Oct 07	Essential Media Communications		\$13,646.60	\$58,084.93
2 Nov 07	Victoria No.1 Branch	\$25,597.27		\$84,767
6 Nov 07	Payroll		\$7,086.74	\$77,680.26
12 Nov 07	Diners Club Master Trust		\$8,384.96*	
	Central Coast Radio Centre		\$14,647.60*	
	NSW Branch	\$194,014.70		\$243,381.69
13 Nov 07	Payroll		\$7,086.74	\$234,948.55
19 Nov 07	ACTU Trade Union Industrial Campaign Fund		\$50,000	\$173,713.10
	Commonwealth Bank of Australia		\$21,417.97	\$152,295.13
	ATO		\$14,388	\$131,718.93

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Date	Description	Income	Expenditure	Ending Balance
20 Nov 11	ACTU Trade Union Industrial Campaign Fund		\$48,502.50	\$81,618.35
	Payroll		\$7,086.74	\$73,657.01
21 Nov 11	Victoria No.4 Branch	\$12,077.62		\$83,253.04
22 Nov 11	Western Australian Branch	\$22,838.48		\$106,091.52
26 Nov 11	ATO		\$51,702	\$50,026.55

172. On and from 29 October 2007, the National Office had an outstanding liability to the ATO for an unknown amount:
- a. As set out above at paragraph 164 of this chapter, the payment of \$14,388 on 19 November 2007 appears to have been payment of PAYG for the month of October. It therefore seems likely that the amount of \$51,702 that was paid on 26 November 2011 was the amount that had been due on 29 October 2007;
 - b. The following payments were made before the payments to the ATO on 26 November 2007:
 - i. A total of \$188,502.50 to the ACTU;
 - ii. \$8,384.96 to Diners Club Master Trust; and
 - iii. \$21,417.97 to Commonwealth Bank;
 - c. A total of \$20,246.60 was paid to Essential Media Communications on 29 and 31 October 2007 before any payments to the ATO. The National Office appears to have incurred expenditure with Essential Media Communications as part of the dental campaign that was considered by National Executive;
 - d. \$14,647.60 was paid to Central Coast Radio on 12 November before any payments were made to the ATO. Mr Thomson agreed in interview (Thomson PN 899 - 919) that these payments were for campaign advertisements that Mr Thomson had commissioned in relation to his own political campaign for election to the seat of Dobell.

Priority given to payments on the Central Coast

173. Some of the information already set out in this Schedule indicates that priority was given to payment of debts incurred on the Central Coast ahead of other liabilities of the National Office.
174. In order to provide some sort of overview of expenditure throughout 2007 by various people on the Central Coast or on the campaign in Dobell, set out below is a chronological list of some of the amounts that were paid by the National Office in 2007 (either by payment of credit card accounts or by payment of an invoice directly). While this is not intended to be an exhaustive list of all of the transactions on the Central Coast or that were related to the campaign in Dobell, it provides a chronological illustration of the regularity and size of charges.

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175. All of these charges had been paid by the National Office prior to Mr Thomson's resignation on 14 December 2007:

Date	Description	Amount	Method of payment	Casebook ID
3 Jan 07	Postshop, Bay Village	\$198.00	Diners ²³²	HSUNO.015.0152
8 Jan 07	Entrance Hotel	\$400.00	Mastercard ²³³	HSUNO.014.0085
3 Feb 07	Dick Smith, Bateau Bay	\$50.96	Diners	HSUNO.015.0162
7 Feb 07	Postshop, Gorokan	\$100.00	CS Diners ²³⁴	HSUNO.014.0231
8 Feb 07	Officeworks	\$696.04	CS Diners	HSUNO.014.0231
15 Feb 07	Telstra	\$225.77	CS Diners	HSUNO.014.0231
19 Mar 07	Qantas flight for Matthew Burke Sydney to Canberra return	\$292.38	Diners	HSUNO.015.0184
20 Mar 07	Qantas Holidays Domestic for Matthew Burke	\$200.00	Diners	HSUNO.015.0184
24 Mar 07	The Beachcomber Resort	\$572.50	CS Diners	HSUNO.014.0238
9 Apr 07	Devine Restaurant	\$150.00	Mastercard	HSUNO.001.0265
11 Apr 07	Officeworks	\$1,587.93	CS Diners	HSUNO.014.0238
15 Apr 07	Telstra Shop, Erina	\$611.10	Mastercard	HSUNO.001.0265
17 Apr 07	Bing Lee Electrics, Erina	\$1,053.00	Mastercard	HSUNO.001.0265
21 Apr 07	Bunnings, Tuggerah	\$453.33	CS Diners	HSUNO.014.0242
23 Apr 07	Wotif.com	\$307.15	MB Diners ²³⁵	HSUNO.014.0111
23 Apr 07	Wotif.com	\$166.15	MB Diners	HSUNO.014.0111
24 Apr 07	Wotif.com	\$937.15	CS Diners	HSUNO.014.0242
29 Apr 07	Crowne Plaza, Darling Harbour	\$229.20	CS Diners	HSUNO.014.0242
29 Apr 07	Wotif.com	\$162.15	MB Diners	HSUNO.014.0111
30 Apr 07	MD Webhosting	\$118.80	MB Diners	HSUNO.014.0111
5 May 07	Dick Smith, Bateau Bay	\$127.92	Diners	HSUNO.015.0198
6 May 07	Dick Smith, Bateau Bay	\$108.98	Diners	HSUNO.015.0198
15 May 07	Dick Smith, Bateau Bay	\$361.42	MB Diners	HSUNO.014.0111
26 May	The Entrance Print,	\$1,884.00	Mastercard	HSUNO.001.0110

²³² All transactions in this table that are identified as 'Diners' were charged to Mr Thomson's Diners Club card.

²³³ All transactions in this table that are identified as 'Mastercard' were charged to Mr Thomson's CBA Mastercard.

²³⁴ Criselee Stevens' Diners Club card

²³⁵ Matthew Burke's Diners Club card

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Date	Description	Amount	Method of payment	Casebook ID
07	Long Jetty			
31 May 07	PK Printing, Tuggerah	\$821.70	Mastercard	HSUNO.001.0110
	The Entrance Print, Long Jetty	\$2,623.00	Mastercard	HSUNO.001.0110
	LBH Promotions, Kanwal	\$1,478.40	Mastercard	HSUNO.001.0110
31 May 07	Quay West Resort, Magenta Shores	\$200.00	Diners	HSUNO.015.0212
	Dick Smith, Bateau Bay	\$97.92	Diners	HSUNO.015.0212
7 Jun 07	The Entrance Print, Long Jetty	\$1,108.00	Mastercard	HSUNO.001.0110
	Onde Ristorante	\$150.00	Diners	HSUNO.015.0212
8 Jun 07	Reef Restaurant and Grill, Terrigal	\$150.00	Diners	HSUNO.015.0212
13 Jun 07	The Entrance Print, Long Jetty	\$2,129.00	Mastercard	HSUNO.001.0110
18 Jun 07	The Entrance Print, Long Jetty	\$1,300.00	Mastercard	HSUNO.001.0110
	The Entrance Print, Long Jetty	\$657.00	Mastercard	HSUNO.001.0110
26 Jun 07	Interflora	\$191.55	CS Diners	HSUNO.005.0062
12 Jul 07	Australia Post	\$7,253.17	SGE	HSUNO.001.0301
	DP Parish	\$671.88	SGE	HSUNO.001.0167
13 Jul 07	Dick Smith, Bateau Bay	\$33.96	Diners	HSUNO.015.0289
14 Jul 07	Quay West Resort, Magenta Shores	\$200.00	Diners	HSUNO.015.0289
18 Jul 07	The Entrance Print, Long Jetty	\$280.00	Mastercard	HSUNO.001.0349
20 Jul 07	Falcon, Long Jetty	\$201.46	Mastercard	HSUNO.001.0349
	Falcon, Long Jetty	\$454.00	Mastercard	HSUNO.001.0349
23 Jul 07	Central Coast internet, Berkeley Vale	\$301.75	Mastercard	HSUNO.001.0349
27 Jul 07	Dick Smith, Bateau Bay	\$26.50	Diners	HSUNO.005.0122
30 Jul 07	Tuggerah Lakes Memorial Club	\$150.00	Mastercard	HSUNO.001.0094
31 Jul 07	Letterbox Restaurant, Terrigal (note: this is Mr Thomson's 43rd birthday)	\$200.00	Diners	HSUNO.005.0122

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Date	Description	Amount	Method of payment	Casebook ID
2 Aug 07	The Entrance Print, Long Jetty	\$115.00	Mastercard	HSUNO.001.0313
3 Aug 07	Central Coast internet, Berkeley Vale	\$59.95	Mastercard	HSUNO.001.0313
10 Aug 07	Falcon, Long Jetty	\$215.72	Mastercard	HSUNO.001.0313
11 Aug 07	Noosa Blue Resort	\$199.00	CS Diners	HSUNO.014.0253
12 AUG 07	DP Parish	\$72.28	SGE	HSUNO.001.0199
13 Aug 07	DP Parish	\$72.98	SGE	HSUNO.008.0068
22 Aug 07	Dads in Education	\$2,500.00	SGE	HSUNO.001.0189
	Ritters Hardware	\$179.95	MB Diners	HSUNO.005.0020
23 Aug 07	Dads in Education	\$2,500.00	SGE	HSUNO.001.0410
3 Sep 07	Falcon, Long Jetty	\$448.40	Mastercard	HSUNO.001.0116
12 Sep 07	DP Parish	\$79.28	SGE	HSUNO.008.0068
14 Aug 07	The Entrance Print, Long Jetty	\$551.00	Mastercard	HSUNO.001.0116
17 Sep 07	Dick Smith, Bateau Bay	\$51.46	Diners	HSUNO.015.0246
19 Sep 07	Tandy Electronics	\$136.00	MB Diners	HSUNO.005.0020
19 Sep 07	Dick Smith Electronics	\$136.00	MB Diners	HSUNO.005.0020
27 Sep 07	Falcon, Long Jetty	\$836.54	Mastercard	HSUNO.001.0127
	Wotif.com	\$206.15	CS Diners	HSUNO.014.0262
3 Oct 07	Telstra Shop	\$679.00	MB Diners	HSUNO.014.0137
5 Oct 07	Central Coast internet	\$59.95	Mastercard	HSUNO.001.0127
9 Oct 07	DP Parish	\$526.80	SGE	HSUNO.005.0140
12 Oct 07	Nova 1069 (Star FM)	\$2,739.00	Mastercard	HSUNO.001.0127
	Dick Smith, Bateau Bay	\$252.00	CS Diners	HSUNO.005.0044
16 Oct 07	Falcon, Long Jetty	\$655.60	Mastercard	HSUNO.001.0127
25 Oct 07	Wotif.com	\$96.15	MB Diners	HSUNO.005.0014
29 Oct 07	NRMA Hut - Burke car insurance	\$1,089.58	MB Diners	HSUNO.005.0014
30 Oct 07	Telstra Shop - Burke mobile telephone	\$679.00	MB Diners	HSUNO.005.0014
31 Oct 07	Falcon, Long Jetty	\$583.35	Mastercard	HSUNO.014.0103
	Road Traffic Authority (NSW) - Burke car registration	\$394.00	MB Diners	HSUNO.005.0014
7 Nov 07	Bateau Bay Hotel	\$94.00	Mastercard	HSUNO.014.0103

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Date	Description	Amount	Method of payment	Casebook ID
8 Nov 07	Digical, Bateau Bay	\$414.00	CS Diners	HSUNO.014.0265
12 Nov 07	Central Coast radio	\$2,895.20	Mastercard	HSUNO.001.0174
12 Nov 07	Central Coast radio	\$3,722.40	Mastercard	HSUNO.001.0182
12 Nov 07	Central Coast radio	\$1,996.50	Mastercard	HSUNO.001.0180
12 Nov 07	Central Coast radio	\$1,540.00	Mastercard	HSUNO.001.0170
12 Nov 07	Central Coast radio	\$4,493.50	Mastercard	HSUNO.001.0176
12 Nov 2007	DP Parish	\$72.28	SGE	HSUNO.008.0068
13 Nov 07	The Entrance Print, Long Jetty	\$2,000.00	Mastercard	HSUNO.014.0103
15 Nov 07	Dick Smith, Bateau Bay	\$129.89	CS Diners	HSUNO.014.0265
17 Nov 07	The Entrance Hotel	\$581.10	Diners	HSUNO.015.0263
21 Nov 07	Bunnings, Tuggerah	\$134.00	MB Diners	HSUNO.005.0006
	Telstra T Shop, Erina	\$679.00	Diners	HSUNO.005.0229
25 Nov 07	Quay West Resort Magenta Shores	\$160.00	Diners	HSUNO.005.0229
26 Nov 07	Dick Smith, Penrith Plaza	\$159.00	MB Diners	HSUNO.005.0006
3 Dec 07	Dads in Education	\$5,000.00	SGE	HSUNO.001.0186
4 Dec 07	Letterbox Restaurant, Terrigal	\$160.00	Diners	HSUNO.005.0229
5 Dec 07	Dick Smith, Bateau Bay	\$326.95	CS Diners	HSUNO.014.0269
11 Dec 07	Central Coast internet	\$59.95	Mastercard	HSUNO.001.0137
13 Dec 07	DP Parish	\$79.28	SGE	HSUNO.008.0068
14 Dec 07	Dick Smith, Bateau Bay	\$199.90	Diners	HSUNO.005.0229
2007	Petrol charges by Thomson	\$6,940.87	Diners	See Annexure F
	Petrol charges by Stevens	\$2,504.03	Diners	See Annexure G
	Petrol charges by Burke	\$3,287.87	Diners	See Annexure G
	Total:	\$80,923.58		

176. The figures in the table above do not include amounts for other charges related to Mr Thomson's campaign in Dobell such as Ms Stevens' salary (which was \$45,000 per annum from 6 March 2006 ([HSUNO.022.0018](#))) and Mr Burke's salary until his resignation on 6 April 2007.
177. Petrol charges by Mr Thomson, Ms Stevens and Mr Burke are recorded in Annexures F and G.

Financial Position in early 2008

178. The full extent of the outstanding debts of the National Office by early 2008 is set out in a document that was circulated for viewing by members of National Executive in preparation for a meeting on 18 and 19 March 2008.²³⁶ That document sets out (then) current debts of the National Office including entitlements owed to Mr Thomson. The document was dated 17 March 2008 and concerned 'Aged Payables' which had been outstanding for 30, 60, 90 and 90+ days ([HSUNO.017.0036](#)). The document showed that the total sum owing to creditors of the National Office (including Mr Thomson) was \$854,515.90. Of the \$656,638.62 that was owing to creditors other than Mr Thomson, the following liabilities had been owing for between 61 and 90 days or for more than 90 days:

		61-90 days	90+ days
ACTU – Affiliation Fees	\$173,841.53	\$52,711.01	\$121,130.52
ACTU Trade Union Industrial Camp	\$398,502.50	\$398,502.50	
Ashington Real Estate	\$1,541.83	-	\$1,541.83
Branded Products	\$10,857.00	-	\$10,857.00
Central Coast Rugby League Inc	\$39,000.00	-	\$39,000.00
Essential Media Communications	\$9,044.20	-	\$9,044.20
Labor Leaders Forum	\$3,000.00	-	\$3,000.00
Melcis Cleaning Services	\$192.50	\$192.50	-
Steven Moore	\$1,230.00	-	\$1,230.00

179. The totals owed in each of these categories were:

Total:	\$656,638.62	\$451,375.71	\$185,174.94
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180. The following information was set out at the bottom of the document regarding amounts owed to Mr Thomson ([HSUNO.017.0036](#)):

Craig Thomson	
Annual leave entitlement	\$110,606.08
Long service Leave	\$87,271.20
	\$197,877.28

181. These figures for annual leave and long service leave liability to Mr Thomson accord with calculations that were made as at 6 December 2007 for all of the employees of the National Office (see [HSUNO.017.0008](#) and [HSUNO.017.0013](#) respectively). Those figures show that, at the time of his resignation, the vast majority of the annual

²³⁶ The document was provided in response to a Notice to Produce Documents that was issued by FWA on 26 May 2010 (HSUNO.017.0062)

leave liability of the National Office was to Mr Thomson and that the only liability of the National Office for long service leave was to Mr Thomson:

	Annual leave provision	Long service Leave provision
Karinda Flavell	\$10,671.54	-
Craig Thomson	\$110,418.40	\$87,271.20
Mark McLeay	\$708.48	-
Belinda Ord	\$2,413.32	-
Crisse Stevens	\$9,852.64	-
Ruth Kershaw	\$4,554.00	-
Katie Hall	\$7,103.70	-
	\$145,722.70	\$87,271.20

182. Also circulated for viewing by National Executive members at the meeting on 18 and 19 March 2008 was a document entitled 'HSUA' which set out amounts that the ACTU considered were outstanding in ACTU affiliation fees ([HSUNO.021.0673](#)).²³⁷ That document sets out the following:

HSUA (All figures GST inclusive)			
2008	Levy		\$398,502.50 ²³⁸
2008	Affiliation Fees	1 st qtr	\$52,711.01
2007	Affiliation Fees	4 th qtr	\$51,624.19
		3 rd qtr	\$30,624.19
2002	Affiliation Fees		\$38,882.14
	Total Affiliation		\$173,841.53
	Total Affiliation & Levy		\$572,344.03
	Affiliation fees		
			72,455 members @ \$0.7125c per qtr (\$2.85 per yr)
	Levy		
			72,455 members @ \$5.50 per year

²³⁷ The document was provided in response to a Notice to Produce Documents that was issued by FWA on 26 May 2010 (HSUNO.017.0062).

²³⁸ A tax invoice for this amount from the ACTU Trade Union Industrial Campaign is document HSUNO.017.0038.

183. The first page of that same document ([HSUNO.018.0076](#)) contains discussion of the financial position of the National Office:

Explanatory Note to Cash Flows

There is an immediate obligation on the HSU to pay trade creditors and Mr Thomson of some \$420,000.

The HSU National body does not have this money. Scenario 1A represents the cash shortfall without any loans or levies if HSU did pay the amounts owed (which it cannot).

The practical consequences are that a number of the creditors will commence legal action for recovery of the debts (the National Secretary already has threats of legal action). As the National Funds are unable to meet the obligations, the assets of other manifestations of the HSU (ie. Branches) are exposed to the legal recovery process.

As the National Office needs an immediate injection of funds, the options are a levy on branches, an increase in capitation fees, or a loan from branches.

Although a levy or an increase in capitation fees would increase the end financial position of the National Office, a levy has to be approved by National Council and that process may take longer than is available.

An increase in capitation fees will not operate until after 30 June 2008, which is too late to overcome the immediate problem, although will be necessary in the longer term to fund ongoing activities and any expansion of National Office activity. The National HSU is unable to raise a loan in its own right because it does not directly have assets, and its cash flow is inadequate to repay any loan.

An immediate solution is for the branches to make a loan to the National Fund in such proportion as can be agreed and delivered (having regard to the financial resources of branches). A loan would have to be followed by an increase in capitation fees in order to repay the loan.

...

The forecasts include a considerable reassessment of budgeted expenses over and above salaries and associated costs, and ACTU affiliation fees. This is a reduction of almost half, from \$535,000 for the 6 months ended 31 Dec 2007 to a revised budget of \$587,000 for all of 207/08 (sic). (For the financial period ended 31 Dec 2007, the National Office recorded a deficit of \$241,000).

184. A separate document ([HSUNO.012.0326](#)) entitled 'Payments made by HSU Vic 3 Branch for National Office' which is dated 28 March 2008 indicates that the following National Office debts were paid by the Victoria No.3 Branch:

Branded Products	\$10,857.00
Australian National University	\$28,029.00
Emerald Hill Cafe	\$249.75
Melbourne Central Exec Suites	\$2,031.48
Diners Club – 9990	\$100.75
Diners Club – 0122	\$281.27
Diners Club – 0130	\$4,639.61
Diners Club – 0155	\$3,790.00
Flavell Termination	\$15,357.34
Telstra Mobile	\$1,947.86
	\$57,284.06

Mr Thomson's submissions

185. With respect to findings 154 to 156, Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that he denies contravening any of subsections 285(1), 286(1) and 287(1) of the RAO Schedule. Mr Thomson denies prioritising expenditure on the Dobell campaign over National Office expenses. As submitted at paragraphs 4.a to 4.c at page 120 in chapter 3, Mr Thomson contributed to the substantial decrease in debt owed by the HSU during his time as National Secretary.

Conclusions

186. Mr Thomson and Dr Kelly respectively described National Office finances as being 'woeful' (Thomson PN 227) and 'not in good shape' (Kelly PN 120) in late 2002. This is supported by the financial report for the year ended 30 June 2002 which indicated that the Branches owed the National Office \$277,597 in unpaid capitation and affiliation fees and that the Victoria No.1 Branch had an outstanding loan from the National Office of \$430,751. The HSU did not pay any affiliation fees at all to the ACTU in that year. As set out above at paragraph 67 of this chapter, National Office income in that year was only about one third of the income that it received five years later in the year ended 30 June 2007. The National Office made an operating loss for the year ended 30 June 2002 of \$54,982.
187. On the whole the financial position of the National Office improved between 2002 and 2006:
- Amounts owing by the Branches declined to \$110,904 by 30 June 2004, although they rose again to just below the 2002 level by 30 June 2006, when the figure owing by the Branches was \$263,899;

- b. The total income of the National Office rose considerably from \$688,380 for year ended 30 June 2002 to just over \$2 million for year ended 30 June 2006. This is partly a reflection of the imposition of a National Council levy, although the levy was only relatively modest in years ended 30 June 2003 and 2005 and there was no levy at all in the year ended 30 June 2004;
 - c. Although it was paid down in kind, the National Office nevertheless also received the benefit of \$82,000 per annum in services provided by the Victoria No.1 Branch. This resulted in the loan to the Branch reducing to \$98,601 as at 30 June 2006 and to \$16,601 by 30 June 2007;
 - d. Liabilities to trade creditors had fallen from \$503,182 as at 30 June 2002 to \$383,281 by 30 June 2006. The liability to the ACTU for arrears in affiliation fees from 2002 had been reduced to \$56,466.17 by November 2006;
 - e. As set out above in paragraph 79 of this chapter, this improvement in the National Office's financial position occurred despite marked increases in expenditure in some categories. National Executive and National Council expenses increased from only \$2,020 as at 30 June 2006 to \$136,195 for year ended 30 June 2006. Although the salary of the National Secretary increased by only \$30,000 in that same period, salaries paid to other National Office staff rose from \$98,982 for year ended 30 June 2002 to \$353,258 for year ended 30 June 2006. There were similarly large increases in amounts spent on printing, stationery and postal and on travelling and accommodation over the same period;
 - f. The HSU also paid substantially more to the ACTU Industrial Campaign Fund in the year ended 30 June 2006, having paid \$436,240 as compared with \$253,593 in the previous financial year. This was offset, however, by an increase in the income received by the National Office through the Levy from \$199,001 in year ended 30 June 2005 to \$540,061 in year ended 30 June 2006.
188. Between 2006 and late 2007, however, the financial position of the National Office appeared to decline until it had reached a point in March 2008 where National Executive was, in a situation reminiscent of 2002, once again threatened with legal action by unpaid creditors ([HSUNO.018.0076](#)). The total amount owed to unpaid creditors as at 17 March 2008 was \$656,638.62 ([HSUNO.017.0062](#)). The financial report for the year ended 30 June 2008 ([FWA.009.0024](#)) indicates that by 30 June 2008 the National office had a liability to unpaid trade creditors of \$1,009,019.
189. It is clear from information set out above at paragraph 107 of this chapter that the National Office was not paying all of its bills as and when they fell due in 2007. This was not the case across the board, however, with some liabilities regularly being paid as and when they fell due, others being paid off in full by the time of Mr Thomson's resignation while others were paid only in part or not at all:
- a. Although payments were made in numerous (often small) amounts, information set out at paragraphs 108 to 111 of this chapter indicates that by 20 November 2007 all of the HSU's liability to the ACTU for the Industrial Campaign Fund for 2007 had been met;

- b. Even so, as set out at paragraph 110 of this chapter, between 17 October and 20 November 2007 alone a total of \$243,502 was paid to the ACTU Industrial Campaign Fund, which constitutes 55% of the total amount of \$443,502.50 that was paid to the Industrial Campaign Fund in the 2007 calendar year. This suggests that Mr Thomson delayed payment of more than half of the amount that was owing in order to maintain cash reserves for other expenditure;
- c. In contrast, information set out at paragraphs 112 to 118 of this chapter indicates that by 10 December 2007 (being four days before Mr Thomson's resignation) the National Office paid the remainder of its liability in ACTU affiliation fees for the 2nd quarter of 2007. No payments were made while Mr Thomson was National Secretary in meeting the HSU's liability to the ACTU in affiliation fees for the 3rd and 4th quarters of 2007;
- d. As set out at paragraphs 127 and 128 of this chapter, all charges to Diners Club cards were paid off in full each month. While there is no information before FWA regarding why this occurred, it is possible that it simply related to the fact that each individual card holder received a statement each month on which was recorded the balance due to the previous month, whether payment had been made and any outstanding liabilities. It therefore would have been apparent to all of the employees of the National Office (since they all held Diners Club cards) if their monthly charges were not being paid off;
- e. In contrast, as set out at paragraphs 131 and 132 of this chapter, balances on the CBA Mastercard accounts were only paid off twice between April and November 2007:
 - i. As has also been set out at paragraphs 138 to 156 of this chapter, Mr Thomson appears to have been the only National Office employee who used his CBA Mastercard extensively and he was certainly the only employee who used it to make cash advances. By far the vast majority of Mr Thomson's charges to his CBA Mastercard were for cash advances or for expenditure on the Central Coast.
 - ii. Neither the National Office auditor nor any members of National Executive were aware of Mr Thomson's CBA Mastercard prior to his resignation. It seems likely that Mr Thomson was the only National Office employee who held a CBA Mastercard for at least part of 2007 (see paragraph 123 of this chapter), meaning that it is possible that the only two people who were aware of expenditure on Mr Thomson's CBA Mastercard were Ms Ord (who processed payments and entered them into MYOB) and Mr Thomson himself.
 - iii. This suggests that Mr Thomson allowed liabilities on his CBA Mastercard for charges on the Central Coast and cash advances to accumulate for a number of months at a time in order to maintain cash reserves for other expenditure. While the exact date of payment of the CBA Mastercard account in November 2007 is unknown, as the table at paragraph 131 of this chapter indicates it also appears that Mr Thomson ensured that all charges to his CBA Mastercard were paid off in full prior to his resignation

- as National Secretary, even though the National Office continued to have outstanding liabilities to other trade creditors.
- iv. The charges on the Central Coast that are set out in the table at paragraph 175 had all been paid by the date of Mr Thomson's resignation, despite the fact that the National Office continued to have outstanding liabilities to other trade creditors. This expenditure included not only charges to credit cards but also payments from the SGE account for matters related to Mr Thomson's campaign (such as for Australia Post, Dads in Education, Central Coast Radio and costs associated with Mr Parish's bus);
 - v. Information set out at paragraphs 158 to 172 of this chapter indicates that liabilities to the ATO were not paid when they fell due on 21 June 2007, 30 July 2007 and 29 October 2007 and that other payments on the Central Coast and that were associated with Mr Thomson's campaign in Dobell were paid in priority to the debt to the ATO. This suggests that Mr Thomson delayed payment to the ATO on three occasions in the second half of 2007 in order to meet other expenses.
190. There is no evidence before FWA that, despite the inability of the National Office to meet its liabilities as and when they fell due, Mr Thomson drew the deteriorating state of the finances of the National Office to the attention of National Council or National Executive or sought their intervention or guidance. Indeed, Mr Thomson continues to deny that the National Office's financial situation was deteriorating during this period even now, in the face of all of the evidence put to him in my letter dated 12 December 2011 (FWA.018.0001).
191. A reasonable person in Mr Thomson's position as National Secretary in his circumstances would have ensured that all of the liabilities of the National Office were met as and when they were due or, in circumstances where the National Office had insufficient income to meet all of its liabilities as and when they fell due, would have reported such a matter to the National Executive in a timely manner. Further, a reasonable person would not have used the funds of the National Office to meet expenditure on their own election campaign in preference to discharging other financial liabilities of the National Office without the prior authority of National Council or National Executive.

Findings 154 to 156 - Expenditure of HSU funds on Mr Thomson's campaign for Dobell in priority to other activities of the National Office

- 154.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by:
- expending funds of the HSU on his own campaign in Dobell without the authority of National Council or National Executive;
 - expending such funds on his campaign in priority to expending funds on carrying out the objects of the HSU; and
 - failing to draw the deteriorating state of the National Office's financial position to the attention of National Council or National Executive.
- 155.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith and for the best interests of the HSU by:
- expending funds of the HSU on his own campaign in Dobell without the authority of National Council or National Executive;
 - expending such funds on his campaign in priority to expending funds on carrying out the objects of the HSU; and
 - failing to draw the deteriorating state of the National Office's financial position to the attention of National Council or National Executive.
- 156.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely to enhance his prospects of becoming elected to the Federal seat of Dobell, by:
- expending funds of the HSU on his own campaign in Dobell without the authority of National Council or National Executive; and
 - expending such funds on his campaign in priority to expending funds on carrying out the objects of the HSU.

PART 3:

MATTERS CONCERNING

THE NATIONAL OFFICE REPORTING UNIT,

MS JACKSON,

MR WILLIAMSON AND

MR DICK

Chapter 9 - Contraventions by the National Office reporting unit

1. This chapter concerns contraventions by the reporting unit that is constituted by the National Office of the HSU during the period in which Mr Thomson was National Secretary of the HSU.
2. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2.
3. As set out at paragraph 201 of chapter 1, on 15 December 2011 a letter that was addressed to the National Office reporting unit (FWA.016.0001) and supporting documents (FWA.016.0004, FWA.016.0096, FWA.016.0118 and FWA.016.0152) were served upon Ms Jackson. The letter advised the National Office that I had reached a preliminary view that it was open to me to make adverse findings in respect of various conduct that had been the subject of the Inquiry and Investigation. Responses were invited from the National Office by 27 January 2012.
4. On 16 January 2012 I received a letter from Slater & Gordon, solicitors, (FWA.022.0477) advising that they act on behalf of the National Office of the HSU and that they had been instructed by National Executive to respond to my letter of 14 December 2011 (FWA.016.0001, FWA.016.0004, FWA.016.0096, FWA.016.0118 and FWA.016.0152). The letter raised three preliminary matters:
 - a. In the opinion of Slater & Gordon, my letter of 14 December 2011 did not (with the exception of allegations 12 and 14) contain statements of my 'preliminary findings'. Rather, in each case 'there is a statement of an allegation and then some narrative text which recites various circumstances and observations, but that narrative text does not lead to any logical conclusion, nor, in particular, to any statement of a 'preliminary finding'.
 - b. FWA was requested to provide indexes to the three folders of materials that were provided in the letter of 14 December 2011; and
 - c. FWA was requested to provide unredacted copies of transcripts of interviews (in place of redacted copies which had been provided in my letter of 14 December 2011).
5. On 17 January 2012 I responded to Slater & Gordon (FWA.022.0433). In my response:
 - a. I advised that my preliminary findings in relation to the National Office are set out in Schedule 1 to my letter of 14 December 2011 in tables which appear throughout that Schedule. Each preliminary finding is numbered and appears in a table under a heading which identifies that the table sets out one or more alleged contraventions. I also provided relevant page references for each of the alleged contraventions.

- b. I enclosed an index to transcripts contained in folder 1 (FWA.022.0435), which had been omitted in error from the folder that accompanied my letter of 14 December 2011.
- c. Although indexes had not previously been prepared for the remaining folders, having regard to Slater & Gordon's request, I enclosed indexes to folder 2 (FWA.022.0436) and folder 3 (FWA.022.0447) that I had prepared since my letter of 14 December 2011.
- d. I advised that I had considered the request to be provided with unredacted copies of transcripts of interview and that it was not necessary for me to provide unredacted documents which contain material which is not relevant to my proposed findings. Further, given the extensive volume of material, it is not appropriate for me to do so. When providing the National Office with copies of relevant portions of transcripts of interview with my letter of 14 December 2011, I was conscious of the need to ensure that relevant transcripts were not redacted in a way which presented relevant material devoid of its context.
- e. I provided a copy of a document (FWA.022.0459) that had inadvertently been omitted from the folder of materials that was provided under cover of my letter of 14 December 2011.

Submissions regarding the 'scope' of the National Office response

6. On 24 January 2012 I received a further letter from Slater & Gordon on behalf of the National Office (FWA.022.0484) which raised a preliminary matter about the 'scope' of their response on behalf of the National Office and then set out submissions regarding particular allegations that had been put to the National Office.
7. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) made the following preliminary points under the heading 'Scope of Response':
 4. We and our client have understood your letter as offering our client an opportunity to provide comment before you commit yourself to any particular findings and report to the General Manager in connection with your investigation. In particular, we understand that you have offered our client the opportunity to put to you any submissions for the purpose of seeking to persuade you to depart from the proposed findings of contravention set out in Schedule 1 [to my letter of 14 December 2011].
 5. The 14 December [2011] letter describes further steps which may be taken once you make findings. In particular, you say that the General Manager may take certain steps in light of any findings, those steps being the possible exercise of powers under section 336(2) of the *Fair Work (Registered Organisations) Act 2009* (RO Act).
 6. For the purposes of preparing the present response, we and our client have assumed that our client is not presently being asked to make submissions or provide material directed to the questions of whether, and if so, how, any power under 336(1) and/or (2) of the RO Act ought be exercised, in light of any findings at the conclusion of the investigation. In other words, we have assumed that your present request is the first stage in a process which will have at least two stages (assuming that findings of contravention are ultimately made): the first and current stage is that of seeking our client's input on the question of contravention; the second stage will be that of seeking our client's input on the question of remedial action.

7. Consistent with those assumptions, this letter does not address questions related to appropriate remedial action. We consider that it would be appropriate for you to receive our client's submissions as to remedial action only after findings have been made. We would have substantial submissions to make at that stage, concerning among other things matters to do with mitigation, our client's cooperation with your investigation, steps taken by our client following its own investigations, the nature of the interests to be protected by the relevant rules and statutory provisions, and the proper exercise of the General Manager's discretion generally.
 8. If you or the General Manager have a different view about the steps either of you envisage taking upon the conclusion of your investigation, and in particular if you are not presently minded to afford the further opportunity for submissions as to remedial action, please let us know immediately, so that we may advise our client and communicate with you further in that regard.
8. In paragraph 7, Slater & Gordon indicate that they would have 'substantial submissions' to make about any 'remedial action' which I (or you, as General Manager) may take under subsection 336(1) and (2) of the RO Act. Slater & Gordon ask in paragraph 8 of their letter to be notified immediately if I (or the General Manager) have a different view about the steps that one or both of us envisages taking upon the conclusion of the Investigation, and in particular if I (or we) are not presently minded to afford a further opportunity to the National Office for submissions as to remedial action.
9. In my view the requests set out in paragraphs 7 and 8 of Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) are misconceived insofar as they concern my powers, as the Delegate of the General Manager, under subsection 336(1) of the RO Act. Subsection 336(1) provides as follows:

336 Action following an investigation

 - (1) If, at the conclusion of an investigation, the General Manager is satisfied that the reporting unit concerned has contravened:
 - (a) a provision of Part 3 of Chapter 8; or
 - (b) the reporting guidelines; or
 - (c) a provision of the regulations; or
 - (d) a rule of the reporting unit relating to the finances or financial administration of the reporting unit;

the General Manager must notify the reporting unit accordingly.
10. I do not have any discretion under subsection 336(1) regarding whether I notify the reporting unit as set out in that subsection. Rather, the subsection is written in mandatory terms which require that, should I be satisfied of the matters set out in paragraphs (a) to (d), I **must** notify the reporting unit accordingly (emphasis added). There is, in my view, no requirement within subsection 336(1) that I invite submissions from the reporting unit regarding whether or not I should issue a notice to the reporting unit.
11. I am also of the view that Slater & Gordon's request is misconstrued insofar as it concerns actions under subsection 336(2) of the RO Act, which provides as follows:

- (2) In addition to taking action under subsection (1), the Industrial Registrar may do either or both of the following:
- (a) issue a notice to the organisation requesting that the organisation 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 Director of Public Prosecutions for action in relation to possible criminal offences.
12. Unlike the powers in subsection 336(1), the powers under subsection 336(2) of the RO Act, by virtue of subsection 343A(2), cannot be delegated. That is, the powers reside with the General Manager. As a result, once I have provided you with my report regarding this Investigation, I have no further powers to discharge in this matter. It will be a matter for you, as General Manager, to determine whether you wish to, or indeed whether you have the power to, invite submissions from the National Office regarding the exercise of your powers under subsection 336(2).
13. On 25 January 2012 I sent a letter to Slater & Gordon (FWA.022.0466) in response to their letter of 24 January 2012. In that letter I confirmed that the National Office was not being invited in my letter of 14 December 2011 (FWA.022.0484) to make any submissions or to provide material directed towards the question of whether, and if so, how, any power conferred under subsection 336(1) and (2) of the RO Act should be exercised in light of any findings which I may make at the end of my Investigation. I noted that I have not been delegated the power conferred by subsection 336(2) of the RO Act (and indeed that this power is not capable of delegation).
14. I also advised Slater & Gordon that, at the conclusion of my investigation, subsection 336(1) of the RO Act requires me to notify the National Office if I am satisfied that it has contravened one of more provisions described in paragraphs 336(1)(a) to (d). I also advised that I intend to provide a report on my investigation to the General Manager of FWA, for the purpose of enabling the General Manager to exercise any powers under subsection 336(2) of the RO Act. Further, since I have no discretion under subsection 336(1) of the RO Act about whether to notify the National Office if I am satisfied that a contravention has occurred, I would not envisage providing the National Office with a further opportunity to make a submission about whether such a notification should occur.
15. My letter of 25 January 2012 also advised Slater & Gordon that, once I have provided a report on my investigation to the General Manager, and issued any notification to the National Office under subsection 336(1) of the RO Act, my investigation will be complete. The question of what, if any, action ought to be taken under subsection 336(2) is a question for the General Manager alone.

National Council

Composition of National Council - Rule 20

16. Rule 20²³⁹ provides that the National Council shall consist of the Officers of the HSU, and, delegates elected by and from each Branch on the basis of one delegate for every 1,000 members or part thereof. Sub-rule 20(d) provides that the Officers of the HSU shall be ex-officio members of any committee or sub-committee of the National Council or National Executive.
17. An annual return of information ([FWA.004.0194](#)) that had been signed by Mr Rob Elliott, as National Secretary, on 30 July 2002 and that was lodged with the AIR under subsection 268(3) of the WR Act on 2 August 2002 stated that the total number of members of the HSU was 61,279. The annual return also listed the names of 74 National Council members, six of whom were Officers of the HSU under Rule 19. The remaining 68 members of National Council were Branch delegates.²⁴⁰
18. An annual return of information that was lodged with the AIR on 11 June 2004 ([FWA.004.0183](#)) under section 230 of the RAO Schedule stated that the total number of members of the HSU was 65,972 ([FWA.004.0184](#)). The annual return of information for 2006 ([FWA.004.0045](#)), which was lodged with the AIR by Mr Thomson on 8 November 2007 ([FWA.004.0043](#)), states that, as at 31 December 2005, the HSU had 75,957 members. The return lists the names of 73 members who are delegates to National Council.

Powers of National Council

Powers and Duties of National Council - Rule 21

19. The National Council is the supreme governing body of the HSU. Rule 21²⁴¹ relevantly provides:

The National Council shall, subject to these Rules and the control by the members as hereinafter mentioned, be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, shall in particular have power:-

...

- (c) to fix the remuneration and terms and conditions of employment of the Officers of the Union;

...

²³⁹ This rule was numbered Rule 21 between 30 March 2006 and 8 June 2006

²⁴⁰ A rough calculation might suggest that a total membership of just over 61,000 would result in there being 61 delegates to National Council. The Rules, however, provide for the election of delegates to National Council on the basis of one delegate for every 1,000 members **or part thereof**. As a result, for example, even though the Victoria No.2 Branch had a membership of just over 5,000 (being 5,012), it was entitled under Rule 20 to elect 6 delegates to National Council. Seven of the 11 Branches were entitled to elect one delegate to represent 'part' of 1,000 members, resulting in a total of 68 delegates to National Council.

²⁴¹ This Rule was numbered Rule 22 between 30 March 2006 and 8 June 2006.

- (e) to appoint and remove such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary and to fix the remuneration and terms and conditions of employment of the same;
- ...
- (i) to appoint a National Auditor and to fix the remuneration to be paid to the same;
- (j) to delegate its authority on all routine or other matters to the National Executive;
- (k) to establish any committees or sub-committees as it may from time to time determine provided that any such committee or sub-committee shall not exercise any executive powers but shall have and exercise only advisory powers;
- ...
- (n) to dispose of or transfer any of the funds of the Union or any securities in which the funds of the Union have been invested.
- (o) All decisions of the National Council shall be final and shall remain in force unless and until varied, amended or rescinded by it or by a plebiscite of members of the Union.²⁴²
- ...

Levies - Rule 9

20. Rule 9²⁴³ empowers the National Council to impose levies upon any one or more Branches or upon the members of any specific category of the membership of the HSU provided that such levy may only be imposed by a two-thirds majority of the National Council and provided that such a levy shall not be imposed in a harsh or discriminatory manner.

Capitation fees - Sub-rule 36(c)

21. Sub-rule 36(c)²⁴⁴ provides that each Branch shall pay annually to the National Council capitation fees (which includes the Branches proportion of the HSU's affiliation fee to the ACTU) being such amount per financial member as decided from time to time by two-thirds vote of National Council. Such capitation fees shall apply equally to Branches.

National Executive

Composition of National Executive - Rule 26

22. Rule 26²⁴⁵ provides that the National Executive shall consist of the Officers of the HSU and the Branch Secretary of each Branch.

²⁴² The words contained in sub-paragraph (o) appeared in the rulebook at the end of Rule 21 as at 16 August 2002 but were not set out in a separately numbered paragraph. The numbering of this paragraph as sub-paragraph 21(o) was introduced with rule changes that were certified on 9 June 2006.

²⁴³ This rule was numbered Rule 10 between 30 March 2006 and 8 June 2006.

²⁴⁴ This rule was numbered Sub-rule 37(c) between 30 March 2006 and 8 June 2006.

²⁴⁵ This rule was numbered Rule 27 between 30 March 2006 and 8 June 2006.

23. Sub-rule 48(a) provided for the following Branches when Mr Thomson became National Secretary in August 2002:
- a. Victoria No.1
 - b. Victoria No.2
 - c. Victoria No.3
 - d. Victoria No.4
 - e. Victoria No.5
 - f. Tasmania No.1
 - g. Tasmania No.2
 - h. New South Wales
 - i. South Australia
 - j. Queensland
 - k. Western Australia

Powers of National Executive - Rule 27

24. The powers of the National Executive are conferred by Rule 27²⁴⁶ which provides:
- (a) The National Executive shall, subject to these Rules and to the decisions of National Council and to the control of members as hereinafter mentioned, have power (in addition to powers conferred on it elsewhere in these Rules) to conduct and manage the affairs of the Union including the power to set the wages and conditions of the National Office Staff and between meetings of the National Council may exercise all the powers of National Council except the power to grant life membership and the power to make, add to, amend, rescind and/or otherwise alter these Rules. Provided that none of the powers of the National Executive shall enable the National Executive to alter an Entrenched Rule as defined herein.
 - (b) Where, at a meeting of the National Executive, delegates representing not less than four branches so request, a decision of that meeting shall be forthwith referred to the Committees of the branches for consideration and should the Committees of not less than five branches request the National Secretary in writing or by telegram within fourteen days of such National Executive meeting that the decision of the National Executive not be implemented, then no action shall be taken on that decision until and unless ratified by the National Council either at a meeting of the National Council or pursuant to Rule 25 of these Rules as if the National Executive had determined that the matter required a decision of the National Council.
 - (c) The National Council may review any act or decision of the National Executive.

²⁴⁶ This rule was numbered Rule 28 between 30 March 2006 and 8 June 2006.

Meetings of National Council

Evidence

25. The following matters are relevant to Finding 157 - Failure to hold meetings of National Council, which is set out below at page 837.

Meetings of National Council - Rule 22

26. When Mr Thomson became National Secretary in August 2002, Rule 22 provided that National Council would meet in October 2000 and thereafter biennially in the month of October.
27. With alterations to the Rules that were certified under section 159 of the RAO Schedule on 30 March 2006, requirements regarding the holding of meetings of National Council were set out in Rule 23. The newly certified provisions required meetings of National Council to be held annually in the month of September, October or November. Special meetings of National Council could also be held by resolution of National Council or National Executive or by a decision of the National Secretary in conjunction with the National President.
28. With the renumbering of Rules that occurred as a result of certification of further Rule alterations on 9 June 2006, the requirements regarding meetings of National Council (which remained in place for the remainder of Mr Thomson's period as National Secretary) were set out in Rule 22. Sub-rule 22(a) requires National Council to meet annually in September, October or November. In addition, Sub-rule 22(b) provides that special meetings of the National Council shall be held by resolution of the National Council or National Executive or by decision of the National Secretary in conjunction with the National President.

Decisions between meetings of National Council - Rule 25

29. Rule 25²⁴⁷ provides two methods by which the National Council can determine matters requiring decision in between National Council meetings. Sub-rule 25(b) provides for a matter to be submitted to the National Council for decision by postal, email or other ballot.²⁴⁸ Sub-rule 25(c) provides for a matter to be determined by a meeting of National Council conducted by telephone.

Compliance with Rules 22 and 25

30. On 20 December 2010 I issued a Notice to Produce Documents to the National Secretary, Ms Jackson, seeking, amongst other things, any minutes or other documents recording or evidencing meetings of National Council between 16 August 2002 and 1 March 2008. In a response to that Notice dated 11 March 2011 ([WIT.JAC.003.0089](#)), Ms Jackson advised FWA that the HSU had already provided to FWA all such documents in its possession. During interview (Jackson (2) PN 15 - 16) Ms Jackson confirmed to FWA that the National Office does not hold any minutes

²⁴⁷ This rule was numbered Rule 26 between 30 March 2006 and 8 June 2006.

²⁴⁸ Prior to 30 March 2006, this Sub-rule provided for submission of a decision to National Council by 'post, lettergram or telegram'.

of meetings of National Council between 16 August 2002 and 1 March 2008 other than minutes from three meetings that occurred in 2002, which had been provided to FWA. Ms Jackson advised FWA, however, that National Council did meet after 2002.

31. During interview Mr Thomson (Thomson PN 139) stated that minutes of National Council meetings were kept in the National Office premises in Melbourne 'right next to the minutes of the executive'. Mr Williamson also advised FWA in interview (Thomson PN 50) that, while he could not recall whether they were signed by him as National President, minutes of National Council meetings were kept in a lever arch folder.
32. Mr Thomson has told FWA in interview that (Thomson PN 61-62):

...When I got there [to the National Office], there had been very few national executive meetings that had ever been held. In the last three or four years they were held on an issue basis which tended to be a crisis basis or for a particular purpose rather than regular meetings. So I committed to making sure that we had three executive meetings a year and a fourth one in conjunction with a national council meeting which again didn't used to meet.

I made the national council into a conference which was the first time that we had ever had a national conference as well...
33. The minutes of the National Council meeting held on 23 July 2002 ([HSUNO.023.0033](#)) record a resolution that 'the 'Role and Function of National Office' document be adopted and endorsed'.
34. The minutes for the National Executive meeting on 19 September 2002 ([HSUNO.018.0461](#)) record that, after speaking about the endorsement by the last meeting of National Council of the document 'Role and Function of the National Office', a resolution was passed that Mr Thomson prepare '[a] paper setting out possible mechanisms, costs and agendas for a National Delegates meeting. [And t]hat such a report, or that part of the report that is completed, be presented to a National Executive for further discussion.'
35. Mr Thomson stated in interview that he 'made the national council into a conference', which suggests that National Council meetings were replaced by meetings of National Conference. A discussion paper that was circulated at about this time within National Council ([HSUNO.023.0071](#)), however, proposed that a National Conference of Officials and Delegates be held annually in conjunction with, rather than instead of, meetings of National Council. The paper proposed that the number of attendees of such a conference be increased to about 250 (it appears that National Council comprised approximately 70 delegates at the time) with the conference to take place over four days. The first day of the meeting would be the 'National Officials Conference' with days two and three being 'an expanded National Council meeting with Branches entitled to 4 Delegates per thousand members'. The full 'conference' of 250 persons would participate in elections of Office Holders (rather than the approximately 70 National Council delegates). The paper also recommended that the National Office organise all costs involved in the conference including airfares and accommodation and invoice each Branch on a pro-rata basis for the Conference. The minutes of the National Council meeting of 23 October 2002 ([HSUNO.023.0001](#))

record that this paper had been produced in response to a resolution of the National Executive requiring the National Secretary to prepare a paper setting out possible mechanisms, costs and agendas for a National Delegates meeting (which is clearly a reference to the resolution passed by the National Executive on 19 September 2002). The minutes record that National Council passed a motion that the National Secretary's report be adopted in principle subject to further reports regarding the financing of the conference.

36. The terminology that was used in the discussion paper ([HSUNO.023.0071](#)) is somewhat loose. Nevertheless, the 'National Conference Proposal' uses language which distinguishes between the 'Council' and the 'extra day at the start of the Council for a National Officials Conference'. Further, '[d]ay 2 and 3 could see an expanded National Council meeting'. While both were being held over the same four day period, it does seem that there was a distinction in the proposal between meetings of the 'Council' and of the 'Conference' and that the use of 'Council' and 'Conference' were not necessarily interchangeable.
37. Although I have not been provided with any minutes of National Council meetings between 2003 and 2007, it does appear from minutes of National Executive meetings while Mr Thomson was National Secretary that meetings were held that were variously referred to as 'National Council' and/or 'National Conference'.
38. The minutes of the National Executive meeting held on 31 July 2003 ([HSUNO.018.0385](#)) record that a resolution was carried that the National Council meeting scheduled for October 2003 not go ahead. The resolution cited as one of the reasons for cancelling this meeting the 'advent of the National Officials and Staff Conference'. Under the terms of Sub-rules 22(a) and (b) at that time, the next meeting of National Council was not to occur until October 2004 in any event.
39. The minutes of the National Executive meeting held on 17 February 2004 ([HSUNO.018.0370](#)) record the passage of resolutions that:
 - a. a National officials and staff forum be held every two years on the days preceding the ACTU Organising Conference;
 - b. the National Council be held every two years on a rotating basis; and
 - c. the National Council meeting include additional non voting delegates chosen by the respective Branch committees of management based upon one delegate per thousand members.
40. The minutes of the National Executive meeting on 14 and 15 July 2004 ([HSUNO.018.0357](#)) record that the National Secretary distributed and spoke to a 'draft copy of the agenda for this year's Council/Conference in Sydney'. The following resolution was also passed concerning 'cost equalization of airfares':

That in relation to airfares for elected Branch delegates to National Council (including National Officers), the National office shall book all airfares and aggregate the total cost. That total cost shall then be divided by the number of elected delegates and National Officers attending the National Council/Conference from each particular Branch so that each Branch will be charged that same rate for airfares per delegate regardless of the destination from which they have travelled.

41. The minutes of the National Executive meeting on 14 and 15 July 2004 ([HSUNO.018.0357](#)) do not disclose the date of the Council/Conference in question. Earlier minutes of a National Executive meeting on 17 December 2003 ([HSUNO.018.0377](#)), however, record the passage of a resolution that a National Council meeting be held from 19 to 21 October 2004 in Sydney. Further reference was made to a National Council meeting on 19th and 20th October 2004 in minutes of the National Executive meeting on 14 October 2004 ([HSUNO.018.0345](#)).
42. Minutes of a National Executive meeting on 6 September 2005 ([HSUNO.018.0286](#)) record that '[t]he National Secretary outlined the program for the national council/conference over the next three days'. Further, an email from Ms Ord dated 16 September 2005 ([HSUNO.018.0203](#)) to the members of the Finance Committee states that it attaches an 'excel spreadsheet which should cover issues raised at National Conference'.
43. Two sets of National Executive minutes from meetings in 2006 make reference to a National Council meeting that was to be held during 2006. Minutes of the meeting on 15 and 16 May 2006 ([HSUNO.018.0259](#)) refer to a report regarding an 'internal review' that 'is on track to be produced and debated at this year's council meeting.' Minutes of a National Executive meeting on 7 and 8 August 2006 ([HSUNO.018.0220](#)) also set out a 'draft plan for conference' on '13th September' to '15th September'.
44. It appears that a separate 'Conference' may also have been held in March 2006 since Mr Thomson submitted a 'Memorandum' claiming a \$500 cash withdrawal as a 'business expense' for the 'HSU Conference' in Sydney from 12 to 14 March 2006 ([HSUNO.010.0011](#)).
45. Minutes of a National Executive meeting on 23 October 2006 ([HSUNO.018.0200](#)) record that 'It was also agreed that the Special National Council meeting would be held on the 28th and 29th march (sic) 2007 in Perth with Branches bearing the costs of transport and accommodation.'
46. The minutes of the National Executive meeting held on 2 February 2007 ([HSUNO.018.0170](#)), however, suggest that the meeting in Perth did not go ahead. They record that it was agreed that a series of informal discussions take place between Mr Thomson and some of the Branch Secretaries over some issues of the Goulter Report and that:

Bearing this in mind it was agreed that the special February Executive meeting be forgone and that the Special Council Meeting set down for March in Perth be postponed to the 8th, 9th and 10th in Canberra. The NSW branch volunteered to assist the national office in arranging the Council/conference. It was agreed that this meeting would also replace the traditional September Council and Conference.
47. While the month to which the National Council meeting was to be postponed was not minuted in the 2 February 2007 meeting, the 'Action Arising' list attached to those minutes includes 'Special National conference in march (sic) be deferred until the 8th, 9th, and 10th may (sic) in Canberra. This conference to also be in lieu of the traditional September conference' ([HSUNO.018.0170](#)). Minutes of a subsequent National Executive meeting on 28 and 29 March 2007 ([HSUNO.018.0151](#)) also record that '[t]he National Secretary outlined the program for the national Conference in Canberra in May.'

48. Further information suggesting that a National Council and/or Conference meeting may have been held in March 2007 in Canberra comes from an invoice for \$4,922 that was sent by University House at The Australian National University in Canberra to the National Office for accommodation between 6 and 9 May 2007 ([HSUNO.010.0189](#)). In addition, Hyatt Catering at Parliament House in Canberra was paid a total of \$14,786 on 30 April 2007 and 1 May 2007 ([HSUNO.008.0005](#)). In interview, while not being certain, Mr Williamson suggested that perhaps the payment to Hyatt Catering was for the National Council meeting that was held at a function that was attended at Parliament House (Williamson PN 108). In interview Mr Thomson stated that the payment to Hyatt Catering was for a dinner at Parliament House for persons attending National Council (Thomson PN 1467).
49. Despite the requirements of the Rules from time to time that National Council meetings be held in October 2004, between September and November 2006 and between September and November 2007, none of the documents or information provided to FWA demonstrates that a meeting of National Council was, in fact, held at any of these times. It does appear that meetings may have taken place in October 2004, September 2005, September 2006 and May 2007 but there is no evidence before FWA that these meetings were properly constituted National Council meetings. Further, the terminology used in National Executive minutes and other National Office documents in reference to these meetings is certainly ambiguous:
- a. The meeting of 19 to 21 October 2004 is referred to as both 'Council/Conference' ([HSUNO.018.0357](#)) and as 'National Council' ([HSUNO.018.0377](#)) and ([HSUNO.018.0345](#));
 - b. The meeting of 6 September 2005 is referred to as 'national council/conference' (see [HSUNO.018.0286](#)) as well as 'National Conference' ([HSUNO.018.0203](#));
 - c. The meeting of 13 to 15 September 2006 is referred to in one set of minutes as 'this year's council meeting' ([HSUNO.018.0259](#)) and in another as 'conference' ([HSUNO.018.0220](#));
 - d. A memorandum that was submitted by Mr Thomson regarding a \$500 cash withdrawal refers to the 'HSU Conference' that was also held in March 2006 (see [HSUNO.010.0011](#)); and
 - e. The meeting from 8 to 10 May 2007 in Canberra is referred to in one set of minutes as 'Special National Council' ([HSUNO.018.0200](#)) and in another as a 'Special National conference' that is being held in lieu of the 'traditional September conference' ([HSUNO.018.0170](#)).
50. It is unclear whether these meetings were properly constituted meetings of National Council in accordance with Rule 22 because:
- a. where these meetings are designated as being of 'National Conference' rather than of 'National Council', this suggests that they are references to the National officials and staff forum authorised by the National Executive on 17 February 2004, rather than to the National Council created by the Rules;
 - b. no minutes of these meetings (or indeed, of any meeting of National Council in 2004, 2005, 2006 or 2007) have been produced by the National Office, despite

- FWA having formally required production of all such minutes by the National Office;
- c. there was no requirement under Rule 22 as then in force for a National Council meeting to be held in 2005 (although this could have been a Special National Council meeting under Sub-rule 22(b));
 - d. While Special Meetings could be held at other times under Sub-rule 22(b), Rule 22 required National Council to meet in the month of September, October or November 2007. No information has been provided to FWA (either in documents or in interview) that a National Council meeting was held in accordance with this requirement in 2007 and, in fact, minutes of the National Executive meeting on 2 February 2007 ([HSUNO.018.0170](#)) record that the meeting in May 2007 was to be held 'in lieu' of the 'traditional' September meeting;
 - e. On the basis of the resolutions of National Executive seen by FWA regarding the creation of a National Conference meeting it appears that any such meeting would not meet the requirements of Rule 22 for a meeting of National Council. In particular:
 - i. the paper circulated within National Council in September 2002 proposed that all 250 'delegates' to a National Conference would participate in the election of National Office holders, rather than the approximately 70 National Councillors required by Rule 20;
 - ii. the minutes of the National Executive meeting held on 17 February 2004 records the passage of a resolution that the National Council meeting include additional non-voting delegates chosen by the respective Branches. The terms of that resolution suggest that such delegates may not have been elected, as required by Rule 20.

Submissions by the National Office

51. On 16 January 2012 I received the letter from Slater & Gordon, solicitors, (FWA.022.0477) which is referred to in paragraph 4 of this chapter.
52. On 17 January 2012 I sent the response to Slater & Gordon (FWA.022.0433) which is referred to in paragraph 5 of this chapter.
53. In their letter of 24 January 2012 (FWA.022.0484) Slater and Gordon state that:

A General Manager Investigation may be conducted into the question of whether certain rules of a reporting unit, but not all of such rules, have been contravened. The relevant subset of rules is those rules 'relating to the finances or financial administration of the reporting unit': 331(1)(d). Rule 22 is not a rule relating to the National Office's finances or financial administration; it is a rule relating to the convening of meetings and to the business to be transacted at such meetings. While the business to be transacted at such meetings may, from time to time, include matters concerning the finances or financial administration of the National Office, that is an incidental or subsidiary feature which does not determine the character of the rule as being a rule relating to the finances or financial administration of the National Office.

Conclusions

Is Rule 22 a rule 'relating to the finances or financial administration' of the National Office within the meaning of paragraph 331(1)(d) of the RO Act?

54. Rule 21 provides that the National Council is the supreme governing body of the Union which has that "management and control of the affairs of the Union". Rule 21 further provides that, without limiting the generality of that power, the National Council has powers including:
- ...
 - (c) to determine and direct the policy of the Union in all matters affecting the National Council or the Union as a whole
 - ...
 - (e) to appoint and remove such National Industrial Officers and Research Officers and other types of category of officials as it deems necessary and to fix the remuneration and terms and conditions of employment of the same
 - (i) to appoint a National Auditor and to fix the remuneration to be paid to the same;
 - (j) to delegate its authority on all routine or other matters to the National Executive;
 - ...
 - (k) to establish any committees or sub-committees as it may from time to time determine provided that any such committee or sub-committee shall not exercise any executive powers but shall have and exercise only advisory powers
 - ...
 - (m) to direct the investment of the funds of the Union
 - (n) to dispose of or transfer any of the funds of the Union or any securities in which the funds of the Union have been invested.
55. The Macquarie Dictionary definition (Fourth Edition) of 'relate' includes:
1. to bring into or establish association, connection or relation
 - ...
 3. to have some relation to.
56. 'Finance' includes, relevantly:
1. The management of public revenues; the conduct or transaction of money matters generally, especially such as affect the public, as in the fields of banking and investment.
 2. (*plural*) Pecuniary resources, as of a sovereign, state, company, or an individual; revenue
 - ...
 4. to manage financially.
 5. to conduct financial operations; manage finances.
57. 'Administration' is defined as including:
- noun* 1. The management or direction of any office or employment.
- ...

Analysis

Definitions

58. The dictionary definitions set out in paragraphs 55 to 57 above assist in framing the question which I must determine, namely "Does Rule 22 have some relation to the financial management or direction of the National Office?"
59. As noted in 2009 by the Court of Criminal Appeal in *Taylor v The Queen*,²⁴⁹ there is "ample" judicial authority regarding the phrase "relating to".²⁵⁰ After citing various judicial pronouncements regarding the width of 'relating to', the Court of Criminal Appeal concluded that the position judicially adopted is that construction of the phrase is determined by the statutory context and purpose.²⁵¹
60. Notably, in *Butler v Johnston*²⁵² Blackburn, Gallop and Neaves JJ observed that the phrase "in respect of" is of "wide import" and also cautioned:
- It is clear that the words "in respect of" can convey a meaning of wide import, but their exact width will depend upon the context in which they appear. Reference to individual cases on different statutes is of little assistance in determining their particular meaning. The Court has to construe the meaning of the words with reference to the purpose or object underlying the legislation in which they appear (s 15AA of the *Acts Interpretation Act 1901* (Cth)).²⁵³
61. This was echoed by the Federal Court in *Hatfield v Health Insurance Commission*.²⁵⁴ Of the terms 'relating to', 'in relation to', 'in connection with' and 'in respect of' Davies J stated:
- The terms may have a very wide operation but they do not usually carry the widest possible ambit for they are subject to the context in which they are used, to the words with which they are associated and to the object or purpose of the statutory provision in which they appear.²⁵⁵

The RO Act

62. While it is generally given a wide interpretation, the proper construction of the phrase 'relating to' in Rule 22 is to be determined by reference to the object and purpose of the RO Act.
63. Section 5(1) of the RO Act provides that the intention in enacting the RO Act is "to enhance relations within workplaces between federal system employers and employees and to reduce the adverse effects of industrial disputation".
64. Section 5(2) of the RO Act provides that these relations will be enhanced and adverse effects will be reduced if registered organisations are required to meet the standards of the RO Act.

²⁴⁹ [2009] NSWCCA 180.

²⁵⁰ *Ibid* at 41.

²⁵¹ *Ibid* at 42.

²⁵² (1984) 6 ALD 518.

²⁵³ *Ibid* at 522.

²⁵⁴ (1987) 15 FCR 487.

²⁵⁵ *Ibid* at 107.

65. The standards are set out in section 5(3) of the RO Act and include to:
- (a) ensure that registered organisations are representative of, and accountable to, their members, and are able to operate effectively;
 - ...
 - (c) encourage the efficient management of organisations and high standards of accountability of organisation to their members; and
 - (d) provide for the democratic functioning and control of organisations.

Construction

66. The authorities examined in paragraphs 59 to 61 above indicate that the term 'relating to' is a broad concept to be determined in light of the statutory context within which it operates. Whether Rule 22 'relates to' the financial administration of the Union must be ascertained by reference to the objects and purposes of the RO Act. The standards set out at paragraphs 5(3)(a), (c) and (d) of the RO Act emphasise the critical role of the RO Act in ensuring the accountability of registered organisations to their members. Also of paramount importance to the RO Act is ensuring the efficient management of registered organisations.
67. The powers of the National Council at Sub-rules 21 (a) to (e), (i) to (k), (m) and (n), which are set out at paragraph 54 above, all relate directly to the financial administration of the Union.
68. Significantly, the National Council cannot discharge those powers otherwise than in accordance with a meeting that is constituted under Rule 22.
69. The National Office contends that National Council meetings may from 'from time to time' transact business including that related to the financial administration of the National Office. The fact that matters pertaining to the financial administration of the National Office may not constitute the majority of matters considered at National Council meetings is not determinative of the question. Such a construction fails to have regard to the supremacy of the National Council as the body with ultimate responsibility for National Office finances and the fact that meetings are the sole forum through which it may exercise its powers to supervise those finances.
70. Further, to relegate financial administration as an incidental or subsidiary feature of Rule 22 fails to have regard to the National Council's responsibility as the supreme governing body in ensuring the Union meets the standards required by the RO Act. The Union's accountability and efficiency is partially dependent upon the proper financial administration of the National Office. As the National Council can only discharge this obligation through meetings convened under Rule 22, that rule must relate to the financial administration of the National Office.
71. In my view, Rule 22 is a rule 'relating to the finances or financial administration' of the National Office, as set out in paragraph 331(1)(d) of the RO Act. Such a construction is consistent with the ordinary meaning of paragraph 331(1)(d), judicial authority regarding the meaning of 'relating to' and related expressions and with the legislative purpose of the RO Act.

Finding 157 - Failure to hold meetings of National Council

- 157.** The National Office contravened Rule 22 by failing to hold properly constituted meetings of National Council:
- in October 2004;
 - between September and November 2006; and
 - between September and November 2007.

Failure to approve employment

72. The following matters are relevant to:
- a. Findings 158 to 161 - Failure to approve terms and conditions of employment of Mr Robertson, Ms Ord, Ms Rodgers, Ms Flavell, Ms Hall and Mr McLeay which are set out below at page 841; and
 - b. Finding 162 - Failure to approve employment of Mr Burke and Ms Stevens, which is set out below at page 843.

Power to employ National Office staff and to fix remuneration and conditions

73. The provisions of the Rules regarding the power to employ National Office staff and to fix their remuneration and conditions is set out at paragraphs 3 to 6 on page 163 in chapter 4.
74. Information regarding the capacity of the National Secretary to appoint staff of the National Office under Sub-rule 32(n) is set out at paragraphs 3 to 17 of chapter 4.
75. Information regarding the determination of wages and conditions of National Office staff is set out at paragraphs 18 to 25 in chapter 4.

Consideration of Mr Thomson's submissions regarding the power to appoint National Office staff and to determine their wages and conditions

76. Paragraphs 88 and 108 of chapter 3 set out submissions on behalf of Mr Thomson about the power to appoint staff of the National Office, and to determine their wages and conditions. Paragraphs 89 to 107 and 109 to 113 of chapter 3 set out my consideration of those submissions, and this issue. In summary, I consider that:
- a. Sub-rule 21(e) specifically empowers National Council to 'appoint ... such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary';
 - b. National Executive is also empowered by Sub-rule 27(a) not only to 'set the wages and conditions of the National Office staff' but also to 'appoint ... such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary';
 - c. The Rules do not specifically empower the National Secretary to appoint National Office staff. Rather, Sub-rule 32(n) requires the National Secretary

between meetings of National Executive to 'control and conduct the business of the Union'. Notably, however, the Rules do not state that the National Secretary shall, between meetings of the National Executive, exercise all of the powers of National Executive;

- d. At least in some instances, a decision to employ an official on behalf of the National Office could be part of the systematic, repetitive and continuous business of the Union within the meaning of Sub-rule 32(n) and, insofar as the employee must be paid, be (a commitment to incur) expenditure for the general administration of the Union or for purposes reasonably incidental thereto, within the meaning of Sub-rule 36(b); and
- e. I do not consider that (at least as a matter of strict construction) National Council or National Executive must give their prior approval to the appointment of National Office staff or to the determination (or alteration) of their wages and conditions. In contrast to the requirement in Sub-rule 36(b) regarding the 'prior authority' of expenditure that is not on the general administration of the Union, the Rules do not specify such a requirement in relation to the appointment of National Office staff. Rather, in my view the National Secretary would be permitted by the requirement in Sub-rule 32(n) that he 'conduct' the business of the Union between meetings of National Executive to engage staff subject always to subsequent consideration by National Council or National Executive. Following this line of reasoning, the National Secretary would also be able to determine wages and conditions of National Office staff subject always to the consideration of those wages and conditions by National Council or National Executive.

Failure to approve employment of Mr Robertson, Ms Ord, Ms Rodgers, Ms Flavell, Ms Hall and Mr McLeay

Evidence

77. A review of minutes of National Executive meetings reveals that on most occasions National Executive did not pass resolutions either approving the appointment, or setting wages and conditions, of National Office employees.

Mark Robinson and Karene Walton

78. The employment of Karene Walton is discussed in detail in chapter 4 under the heading 'Payment of \$25,000 per annum to Karene Walton' at page 185.
79. The National Executive minutes of the meeting held on 19 September 2002 ([HSUNO.018.0461](#)) record Mr Thomson reporting that a selection committee has chosen Mark Robinson for the position of Media and Policy Officer, and Karene Walton for the position of Coordinator-Organisation and Training. A structure chart contained in the same minutes shows that, apart from these two roles, and the role of National Secretary, the only other member of National Office staff was the Personal Assistant to the National Secretary (at the time, Ms Nurten Ungen who was already

employed by the National Office when Mr Thomson became National Secretary). The minutes record that a resolution was carried approving the appointment of Mark Robinson as Media and Policy Officer and Karene Walton as Coordinator - Organising and Training. The minutes also record the carriage of a resolution setting the salaries of Mr Robinson and Ms Walton.

80. The National Council minutes of the meeting of 23 October 2002 ([HSUNO.023.0001](#)) record Mr Thomson reporting the appointment of Mr Robinson and Ms Walton. The minutes record a resolution moved by Mr Thomson (and carried) '[t]hat the Operations and Staffing Report [which contained this information] is for information purposes only.'
81. These are the only resolutions passed while Mr Thomson was National Secretary which specifically authorise or ratify the employment and the determination of wages and conditions of National Office employees.

Struan Robertson

82. Information about the employment of Struan Robertson is set out in chapter 4 at paragraph 152 on page 197.

Belinda Ord

83. Information about the employment of Belinda Ord is set out in chapter 4 at paragraphs 188 to 193 on page 203.

Nicole Rodger

84. Information about the employment of Nicole Rodger is set out in chapter 4 at paragraphs 153 to 156 at page 198.

Karinda Flavell

85. Information about the employment of Karinda Flavell is set out in chapter 4 at paragraphs 157 to 160 at page 198.

Katie Hall

86. Information about the employment of Katie Hall is set out in chapter 4 at paragraphs 161 to 173 on pages 199 and 200.

Mark McLeay

87. Information about the employment of Mark McLeay is set out in chapter 4 at paragraphs 174 to 177 at page 200.

Submissions by the National Office

88. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions concerning matters that are the subject of Findings 158 to 161 - Failure to approve terms and conditions of employment of Mr Robertson, Ms Ord, Ms Rodgers, Ms Flavell, Ms Hall and Mr McLeay.

Conclusions

89. I accept that each of Struan Robertson, Belinda Ord, Nicole Rodger, Karinda Falvell, Katie Hall and Mark McLeay were not Officers of the Union for the purpose of Sub-rule 21(c) and that accordingly their employment does not contravene this Sub-rule.
90. For the reasons set out at paragraphs 3 to 17 of chapter 4, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office without obtaining the approval of either National Council or National Executive to do so unless the appointment of such staff can properly be characterised as the 'business of the Union' between National Executive meetings. Further, the National Secretary is required to report his employment of staff on behalf of the National Office to National Executive.
91. On the basis of the evidence before me, I accept that the employment of each of Mr Robertson, Ms Ord, Ms Rodger, Ms Flavell and Mr McLeay was within Mr Thomson's power under Sub-rule 32(n) to control and conduct the business of the Union between National Executive meetings. It appears that each of these persons was engaged (at least primarily) on the ordinary, everyday business of the National Office.
92. Minutes of National Executive meetings indicate that the National Secretary informed a meeting of National Executive of his employment of both Struan Robertson (see paragraph 152 of chapter 4) and Mark McLeay (see paragraph 175 of chapter 4).
93. Minutes do not record that National Executive was informed of the employment of Nicole Rodger or Karinda Flavell (see paragraphs 155 and 159 of chapter 4).
94. I consider that the employment of Ms Hall was not within Mr Thomson's power to control and conduct the business of the Union within the meaning of Sub-rule 32(n). Unlike Mr Robertson, Ms Rodger, Ms Flavell and Mr McLeay, Ms Hall was engaged for the purpose of assisting in a federal election campaign in the electorate of La Trobe, which was not a purpose that could be characterised as the 'business of the Union' even though I accept that Ms Hall's employment would have been within the power of National Council or National Executive. While minutes of the National Executive meeting on 7 August 2006 do record that Katie Hall had been appointed by the National Office and was working in La Trobe (see paragraphs 164, 165 and 172 of chapter 4), they do not record that National Executive authorised her employment or her wages and conditions (see paragraphs 172 and 173 of chapter 4).
95. As set out at paragraphs 18 and 19 of chapter 4, the power conferred on the National Secretary by Sub-rule 32(n) could extend, at most, to setting wages and conditions of National Office employees on an interim basis, until such matters have been reported by the National Secretary to National Executive.
96. Minutes do not record that the National Secretary reported to National Executive regarding the remuneration and conditions of employment any of Mr Robertson, Ms Rodger, Ms Flavell, Mr McLeay, Ms Hall or Ms Ord (see, in particular, paragraphs 152, 155, 159, 165, 172 to 173, 177, 189 and 193 of chapter 4 respectively). It appears that he did not do so.

Findings 158 to 161 - Failure to approve terms and conditions of employment of Mr Robertson, Ms Ord, Ms Rodgers, Ms Flavell, Ms Hall and Mr McLeay

- 158.** The National Office has contravened Sub-rules 21(e) and 27(a) by employing and setting wages and conditions of each of Nicole Rodger and Karinda Flavell in circumstances where the National Secretary had not reported to National Executive that the National Office had done so.
- 159.** The National Office has contravened Sub-rule 27(a) by setting wages and conditions for each of Struan Robertson, Mark McLeay and Belinda Ord in circumstances where the National Secretary had not reported to National Executive that the National Office had done so.
- 160.** The National Office has contravened Sub-rule 27(a) by increasing Belinda Ord's salary with effect from 6 March 2006 in circumstances where the National Secretary had not reported to National Executive that the National Office had done so.
- 161.** The National Office has contravened Sub-rule 21(e) by employing Katie Hall when neither National Council nor National Executive had authorised her employment, and her employment was not part of the business of the Union.

Failure to approve employment of Mr Burke and Ms Stevens

Evidence

97. Matters set out at paragraphs 98 to 105 below are relevant to Finding 162 - Failure to approve employment of Mr Burke and Ms Stevens, which is set out below at page 843.

Matthew Burke

98. Detailed information about the employment of Matthew Burke is set out in chapter 4 under the heading 'Employment of Matthew Burke' from pages 176 to 184.

Criselee Stevens

99. Detailed information about the employment of Criselee Stevens is set out in chapter 4 under the heading 'Employment of Criselee Stevens' on pages 167 to 173.
100. I have considered information that has been given to me by members of the National Executive regarding their knowledge of Ms Stevens' employment and her role as an employee of the National Office.
101. While information provided by Ms Jackson suggests that Ms Stevens may have worked on the Your Rights at Work campaign at some point in her employment, Mr Thomson has given evidence that she was originally employed as a participant in the ACTU's 'organising works' program and not as part of the National Office's

campaign opposing Work Choices. Mr Thomson has acknowledged that, as a participant in the organising works program, he viewed the employment of Ms Stevens differently to other National Office employees. Mr Thomson did not believe that it was necessary for National Council or National Executive to approve Ms Stevens wages and conditions because 'the rate of pay and the terms for Crissie were set by the ACTU. There was no real role for the union' (Thomson PN 836). Mr Thomson also expressed the view (Thomson PN 507) that Ms Stevens' employment fell into a different category because it was 'for a fixed period while she did the [ACTU] course' and 'it was relatively cheap, I think it's you know, something like \$35,000 a year'.

102. Even if it is accepted that it was unlikely that National Council or National Executive would have wanted to pay Ms Stevens more than the rate set by the ACTU (particularly given that her position was 'experimental in a lot of senses' (Thomson PN 836)), Mr Thomson's explanations that the fixed term nature and relatively low cost of Ms Stevens employment somehow changed the requirements regarding authorisation by National Council or National Executive of Ms Stevens employment demonstrate a fundamental misunderstanding of the requirements of the Rules. It is not up to the discretion of the National Secretary whether he should seek the approval of National Council or National Executive regarding the employment of National Office staff or their terms and conditions of employment. It is a requirement of the Rules that this approval be obtained.

Submissions by the National Office

103. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions concerning matters that are the subject of finding 162.

Submissions by Mr Williamson regarding the employment of Ms Stevens

104. The matters that are set out in chapter 11 at 'Finding 173 - Employment of Ms Stevens without National Executive approval' on page 901 were also put to Mr Williamson in my letter to him of 14 December 2011 (FWA.019.0001, FWA.019.0004 and FWA.019.0046).
105. Mr Williamson's submissions in response are set out in chapter 11 at paragraph 19 on page 898. My consideration of those submissions is set out immediately below at paragraphs 20 to 30 of chapter 11.

Submissions by Mr Thomson regarding the employment of Ms Stevens and Mr Burke

106. Holding Redlich's general submissions on behalf of Mr Thomson (FWA.024.0002) regarding the employment, and terms and conditions, of National Office staff are set out at paragraphs 88 and 108 of chapter 3. My consideration of those general submissions is set out at paragraphs 89 to 107 and 109 to 113 of chapter 3 and is summarised above at paragraph 76 of this chapter.

107. Mr Thomson's specific submissions regarding the employment of Ms Stevens are set out at paragraphs 65 and 66 of chapter 4 and regarding the employment of Mr Burke are set out at paragraphs 109 to 111 of chapter 4.

Conclusions

108. I accept that Ms Stevens and Mr Burke were not Officers of the Union for the purpose of Sub-rule 21(c), and that accordingly their employment does not contravene this Sub-rule.
109. For the reasons set out at paragraphs 3 to 17 of chapter 4, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office without obtaining the approval of either National Council or National Executive to do so unless the appointment of such staff can properly be characterised as the 'business of the Union' between National Executive meetings.
110. It is clear that Ms Stevens was not employed by Mr Thomson as part of the 'business of the Union' (see paragraphs 341 to 347 of chapter 7).
111. It is clear that the National Executive never authorised Ms Stevens' employment by the National Office, as it was required to do (see paragraphs 49 to 64 of chapter 4). Even Mr Thomson does not suggest that the National Council or National Executive have authorised Ms Stevens' employment.
112. It is clear that Mr Burke was not employed by Mr Thomson as part of the 'business of the Union' (see paragraphs 505 to 509 of chapter 7).
113. It is clear that the National Executive never authorised Mr Burke's employment by the National Office, as it was required to do (see paragraphs 91 to 108 of chapter 4). Even Mr Thomson does not suggest that National Council or National Executive had authorised Mr Burke's employment.

Finding 162 - Failure to approve employment of Mr Burke and Ms Stevens

- 162.** The National Office has contravened Sub-rules 21(e) and 27(a) by employing, and determining wages and conditions, of Mr Burke or Ms Stevens when neither National Council nor National Executive had authorised their employment or had made a determination of their wages and conditions, and their employment was not part of the business of the Union.

Failure to appoint auditor

Evidence

114. Matters set out at paragraphs 115 to 125 below are relevant to Finding 163 - Failure to appoint auditor, which is set out at page 846.
115. Rule 35 deals with the National Auditor. It provides:
- The National Auditor shall -
- (a) be appointed annually by the National Council or the National Executive;
 - (b) be a competent person within the meaning of the Industrial Relations Act 1988 and the Industrial Relations Regulations;
 - (c) perform such functions and duties as are prescribed by the Industrial Relations Act 1988 and the Industrial Relations Regulations and such other functions and duties not inconsistent with the Industrial Relations Act 1988 and the Industrial Relations Regulations as are required by the National Council or the National Executive;
 - (d) have access to and examine if desired all books, papers, deeds, documents and accounts of the National Council, the National Executive and each branch and be empowered to question any office-bearer or officer or employee of the Union or any branch thereof with regard to the same and to obtain from any bank or other institution at which the funds of the Union or any branch thereof are deposited or invested such information as he/she may require; and,
 - (e) have power to place before the National Executive any suggestion he/she may desire to make concerning the financial affairs of the Union or its branches and before the Committee of a branch any suggestion he/she may desire to make concerning the financial affairs of that branch.
116. Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd has told me in interview that the first time he conducted a National Office audit was in 1999 (Dick PN 19). When asked about the nature of his appointment Mr Dick was uncertain, responding 'I'm not sure. I think it's either annual or tri-annual' (Dick PN 21). He later stated, 'I think I've got to be appointed every few years anyway...it's not a lifetime appointment as far as I understand. I've got to actually be appointed and I don't know whether it's every year or every three years, I'm not sure' (Dick PN 235).
117. Mr Thomson discussed in interview the circumstances surrounding Mr Dick's retention as auditor of the National Office when he was first appointed as National Secretary (Thomson PN 41):
- The only continuity we had - and it was quite frankly a political decision to keep this continuity - was the auditor Iaan Dick. He was a close personal friend of the Jacksons and we - I was persuaded by many branches that keeping him was probably a better thing than creating a war about something that wasn't the main business of the union.
118. When asked why it would have created a war, Mr Thomson responded (Thomson PN 43):
- This was such a divided union and to some extent still is, that any change was seen as a personal attack. So when you're trying to look at progressing change it was better to pick your fights and I got better at learning to do that. At the start I picked more fights that I

lost than won but this was one that I thought, well, I would have to pick a new person anyway, I had no issue particularly with this individual.

I was - opposed to that, I had the Tasmanian branch and the Victorian number 2 branch wanting a change of auditor but it wasn't something that had been overall agreed so we let it go.

119. When Mr Dick was originally engaged his fee to conduct the annual audit was \$2,500. During interview in 2009 (that is, 10 years later) Mr Dick advised that his fee had 'basically stay[ed] constant'. The financial return for the year ended 30 June 2006 ([FWA.004.0063](#)) and the documents that were lodged by Ms Jackson on 30 April 2009 for the year ended 30 June 2007 ([FWA.005.0035](#)) both disclose expenses for audit fees of \$2,500 for the financial year.
120. When asked in interview in September 2009 about the appointment of the auditor, Ms Jackson stated (Jackson (1) PN 112):
- Every annual general meeting the auditor is appointed by the national council so my understanding is and I've seen it happen that in the last four or five years Iaan Dick had been appointed as the national auditor by the national council. That's how it happens.
121. When then asked whether there was an engagement letter as a result of National Council appointing or re-appointing Mr Dick at its meetings, Ms Jackson replied (Jackson (1) PN 116):
- I would say that initially when Iaan Dick was appointed the auditor he would have got an initial letter of engagement but that would have been five, six, seven years ago but I don't imagine that every year after that that the organisation re-engaged him.
122. National Executive minutes of a meeting on 25 and 26 February 2003 ([HSUNO.024.0055](#)) record that '[d]iscussion took place about the process for appointing auditors. National Office agreed to tender for this process'. National Executive minutes do not reveal, however, any further discussion or information regarding the appointment of either Mr Dick or anyone else as an auditor. I have not been provided with any minutes of National Council meetings between 2003 and 2007.
123. Rule 35 places a duty upon National Council or National Executive to appoint the National Office auditor annually. Although Ms Jackson has stated in interview (Jackson (1) PN 112) that National Council appoints the auditor at 'every annual general meeting', I have not seen any documentary evidence supporting this. Further, while Sub-rule 35(a) requires that the auditor be appointed annually by National Council or National Executive, up until Rule alterations that were certified on 30 March 2006, Rule 22 required National Council meetings to occur biennially (rather than annually) in October of each even year. With Rule alterations that were certified on 30 March 2006, National Council is now required to meet annually in September, October or November. It seems to be at odds with the Rules up until 2006 (by which time Mr Dick had been the National Office auditor for seven years) to suggest that Mr Dick was appointed annually by a body that was only required to meet every two years.

124. No minutes of any meeting of National Council or National Executive provided to FWA refers to the appointment of Mr Dick (or indeed of any other person) to the role of National Auditor.

Submissions by the National Office

125. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions concerning matters that are the subject of Finding 163 - Failure to appoint auditor.

Conclusions

126. For the reasons set out in paragraphs 114 to 124 above of this chapter, I am satisfied that the National Office failed to appoint a National Auditor annually in respect of each of the financial years ended 30 June 2003 to 30 June 2008 inclusive.

Finding 163 - Failure to appoint auditor

- 163.** The National Office contravened Rule 35 by failing, in respect of each financial year ending 30 June 2003 to 30 June 2008 inclusive, to appoint a National Auditor annually.

Making donations using National Office funds without the authorisation of National Council or National Executive

Evidence

127. Matters set out or referred to at paragraphs 128 to 131 below are relevant to Finding 164 - Making donations using National Office funds without , which is set out at page 847.

Central Coast Convoy for Kids

128. Information about donations that were made by the National Office to the Central Coast Convoy for Kids is set out at the heading 'Authorising payment to the Central Coast Convoy for Kids by the National Office' at paragraphs 600 to 608 in chapter 7.

Dads in Education

129. Information about payments that were made by the National Office to Dads in Education is set out under the heading 'Authorising payment of Dads in Education Fathers' Day Breakfast by the National Office' on paragraphs 562 to 584 in chapter 7.

Golden Years Collectables

130. Information about a charge that was made to Mr Thomson's CBA Mastercard on 25 November 2006 for \$2,050 at Golden Years Collectables is set out under the

heading 'Authorising payment to Golden Years Collectables by the National Office' on paragraphs 591 and 594 in chapter 7.

Submissions by the National Office

131. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions concerning matters that are the subject of finding 164.

Conclusions

132. For the reasons set out at paragraphs 128 to 130 above of this chapter, I am satisfied that the National Office made the following donations which had not been authorised by National Council or National Executive:
- a. \$5,000 to Central Coast Convoy for Kids on 12 December 2006;
 - b. totalling \$10,000 to Dads in Education on 22 and 23 August 2007 and 3 December 2007; and
 - c. memorabilia to the value of \$2,050 to the ALP.

Finding 164 - Making donations using National Office funds without authorisation of National Council or National Executive

- 164.** The National Office contravened Sub-rule 36(g) by:
- making a donation of \$5,000 to the Central Coast Convoy for Kids on 12 December 2006;
 - making donations totalling \$10,000 to Dads in Education on 22 and 23 August 2007 and 3 December 2007; and
 - making a donation of memorabilia to the value of \$2,050 to the Australian Labor Party
- that were not authorised by National Council or National Executive.

Failing to keep financial records in relation to expenditure by Mr Thomson

Evidence

133. Matters set out or referred to at paragraphs 134 to 138 below are relevant to Finding 165 - Failing to keep financial records in relation to expenditure by Mr Thomson, which is set out below at page 849.

Expenditure by Mr Thomson using his credit cards on dining and entertainment while he was not travelling

134. Information regarding Mr Thomson's expenditure on the purchase of dining and entertainment expenses while he was not travelling is set out at paragraphs 603 to 637 of chapter 6.

Expenditure by Mr Thomson using his credit cards on dining and entertainment while he was travelling interstate

What were Mr Thomson's entitlements with regards to travelling expenditure?

135. Annexure D sets out details of dining and entertainment expenses totalling \$73,849.88 that were incurred by Mr Thomson between 2002 and December 2007. Much of the expenditure detailed in Annexure D appears to be expenditure on meals and incidentals associated with travel by Mr Thomson.
136. Information regarding Mr Thomson's entitlements with regard to travelling expenditure is set out at paragraphs 917 to 923 of chapter 5.

Supporting documentation - receipts and invoices

137. Only \$1,619.23 of the total amount of expenditure of \$73,849.88 which FWA has been able to identify as likely to be on dining and entertainment which appears on Mr Thomson's credit card statements is supported by any documentation (either a receipt, or an invoice) which the National Office has provided to FWA. All of the expenses for which supporting documentation has been viewed were incurred during the period of 28 March 2006 to 9 June 2006

Submissions by the National Office

138. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions concerning matters that are the subject of Finding 165 - Failing to keep financial records in relation to expenditure by Mr Thomson.

Conclusion

139. For the reasons set out in paragraphs 134 to 137 above of this chapter I am satisfied that the National Office has not kept the financial records which were required, including such records as are prescribed by the Reporting Guidelines, to correctly record and explain the transactions and financial position of the National Office and allow it to prepare a general purpose financial report. I am satisfied that the National Office has failed to keep its financial records in a way which would enable its accounts to be conveniently and properly audited.

Finding 165 - Failing to keep financial records in relation to expenditure by Mr Thomson

- 165.** The National Office has contravened subsection 252(1) of the RAO Schedule by failing to:
- keep such financial records as correctly record and explain the transactions and financial position of the National Office, including such records as are prescribed by the Reporting Guidelines,
 - keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253, and
 - keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited
- in relation to expenditure by Mr Thomson on what appears to have been dining and entertainment expenses.

Failing to keep financial records

Evidence

140. Matters set out or referred to at paragraphs 141 to 159 below are relevant to Findings 166 to 168 - Failing to keep financial records, which are set out below at page 852.

Documentation of cash withdrawals

141. Information regarding records substantiating Mr Thomson's cash withdrawals from his CBA Mastercard is set out in chapter 5 under the heading 'Failing to prepare policies regarding cash withdrawals' at paragraphs 283 to 311 on pages 277 to 286.
142. Paragraphs 286, 320 and 321 and 1105 to 1107 of chapter 5 discuss 22 memoranda dated between 28 April 2005 and 29 May 2006 regarding cash withdrawals that were claimed by Mr Thomson as a 'business expense'.
143. While FWA has only viewed memoranda regarding cash withdrawals for a limited period between 28 April 2005 and 29 May 2006, the reason why the records have been lost, and the time at which this occurred, is unclear on the evidence that is before FWA.
144. Mr Thomson gave evidence that records 'certainly were there when I was the national secretary' (Thomson PN 432). Ms Ord (who resigned from employment with the National Office after Mr Thomson had already left) has supported this and stated in interview that records were retained in the National Office when she left (Ord (1) PN 95 - 99). While Ms Jackson has alleged that documents were destroyed (Jackson (2) PN 327), there is no evidence before FWA supporting that allegation.

Mr Thomson's overseas trip in May and June 2004

145. Information regarding Mr Thomson's overseas trip in May and June 2004, including the absence of financial records regarding the trip, is set out at paragraphs 531 to 552 on pages 338 to 346 of chapter 5 under the heading 'Travelling overseas and incurring expenditure while Mr Thomson was on approved annual leave'.

'Melbourne Melbourne' \$1,790.14 - September 2004 and \$2,688.06 October 2004

146. Information regarding the transactions with 'Melbourne Melbourne', including the absence of financial records regarding this expenditure, is set out at paragraphs 620 to 623 of chapter 6 on page 600.

Internat Immobiliare \$770 - May 2005

147. Information regarding the transaction with Internal Immobiliare, including the absence of financial records regarding this transaction, is set out at paragraphs 587 to 590 on page 354 in chapter 5.

Smartyhost \$319.95 - March 2006

148. The statement issued in relation to Mr Thomson's CBA Mastercard for the period ending 27 March 2006 records entries for two transactions with 'Smartyhost Pty Ltd Melbourne Aus' on 3 March 2006 for \$270 and \$49.95 (HSUNO.010.0013).
149. No documents have been produced by the HSU to FWA evidencing that the transaction and payment made in connection with Smartyhost Pty Ltd were authorised by the National Council or the National Executive.
150. No evidence has been produced by the HSU to FWA substantiating that the transaction and payment which were made in connection with Smartyhost Pty Ltd was for the purpose of carrying out the objects of the Union.
151. Mr Thomson was asked by FWA to explain what the payment in connection with Smartyhost Pty Ltd related to. He stated that he was not sure what the transaction related to. It may have related to a change of the provider for the HSU website and domain name.
152. Mr Thomson gave the following evidence about the matter (Thomson PN 1551-1554):

MR NASSIOS: All right. Now, we've mentioned Smartyhost at some point, and it doesn't appear to ring any bells for you as to - we've got a bill, 28 March 2006. It certainly seems to be a web site and domain name company.

MR THOMSON: I don't know whether we changed domain names for the - domain providers for the HSU web site. That may be an explanation, but I'm not sure.

MR NASSIOS: I must admit, I can't actually recall what you may have said about the Coast Voice web site, but - - -

MR THOMSON: We said that that wasn't Smartyhost.

153. Mr Williamson and Dr Kelly were asked whether they knew what the transaction with Smartyhost Pty Ltd related to. They both stated that they had 'no idea'. See (Williamson PN 530-53) and Kelly (PN 665-666).

Hawkesfords International - January 2006 \$770

154. Information regarding the transaction with Hawkesfords International, including the absence of financial records regarding this transaction, is set out at paragraphs 591 to 595 on page 355 in chapter 5.

Comme Ci Comme Ca \$198 - April 2006

155. Information regarding the transaction with Comme Ci Comme Ca is set out at paragraphs 596 to 601 on page 355 in chapter 5. While National Office records include a receipt regarding the purchase of two silk ties, there is no record of authorisation of this expenditure in accordance with the requirements of the Rules.²⁵⁶

Emerald Tourist Railway Board

156. Information regarding a transaction with the Emerald Tourist Railway Board in November 2006, including the absence of financial records regarding this expenditure, is set out at paragraphs 570 to 574 in chapter 5.

Sydney Wedding Music \$1,000 - December 2006

157. Information regarding a transaction with Sydney Wedding Music in December 2006, including the absence of financial records regarding this expenditure, is set out at paragraphs 575 to 579 in chapter 5.

Cairns District Soccer Association \$5,738 - December 2006

158. Information regarding a transaction with Cairns District Soccer Association in December 2006, including the absence of financial records regarding this expenditure, is set out at paragraphs 580 to 586 in chapter 5.

Submissions by the National Office

159. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions concerning matters that are the subject of findings 166 to 168.

Conclusions

160. For the reasons set out in paragraphs 141 to 158 above of this chapter, I am satisfied that the National Office has not kept financial records which correctly record and explain the cash withdrawals made by Mr Thomson. The National Office has not produced any records relating to most of these withdrawals, and the limited records which have been produced do not sufficiently explain the transactions to which they relate.

²⁵⁶ See Findings 61 and 62 - Payments to Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca on page 359.

Findings 166 to 168 - Failing to keep financial records

- 166.** The National Office has contravened subsection 252(1) of the RAO Schedule by failing to keep such financial records as correctly record and explain cash withdrawal transactions made by Mr Thomson.
- 167.** The National Office contravened the requirements in subsection 252(1) of the RAO Schedule by failing to keep such financial records as correctly record and explain transactions by failing to keep records which correctly record and explain cash withdrawals by Mr Thomson using his CBA Mastercard while overseas.
- 168.** The National Office contravened the requirements in subsection 252(1) of the RAO Schedule by failing to keep such financial records as correctly record and explain the transactions set out above at paragraphs 141 to 158 of this chapter.

Failing to prepare an operating report and committee of management statement for the year ended 30 June 2007

Evidence

161. Matters that are set out or referred to at paragraphs 162 to 200 are relevant to Findings 169 and 170 - Failing to prepare an operating report and committee of management statement for the year ended 30 June 2007, which are set out at page 863 below.
162. Detailed information about the legislative framework, including reporting requirements that are imposed upon reporting units by the RAO Schedule, is set out in chapter 2 of this report.
163. I have found at Findings 70 and 71 - Failing to prepare financial documents for year ended 30 June 2007 and to present them to a meeting of National Council or National Executive before 14 December 2007 on page 460 in chapter 5 that Mr Thomson has contravened Sub-rule 32(e) and subsection 285(1) of the RAO Schedule in failing to prepare an operating report and committee of management statement by 14 December 2007. Information about those findings, including Mr Thomson's submissions, is set out at paragraphs 1144 to 1159 of chapter 5.
164. For ease of reference in understanding findings 177 and 178, set out in the next paragraph is a table of timelines that apply to the National Office. This table is also set out at paragraph 33 of chapter 2.

165. Sub-rule 36(f) of the HSU Rules provides that the financial year of the Union shall end on 30th June in each year. In applying those timelines to the HSU, the National Office must:

Deadline	Requirement
<p><i>As soon as practicable after 30 June of each year:</i></p>	<p>Committee of management must cause a GPFR to be prepared.</p> <p>As the committee of management statement is a constituent part of the GPFR, the committee of management must hold the first meeting at which it passes resolutions required by paragraph 17 of the first Reporting Guidelines/paragraph 25 of the second Reporting Guidelines</p>
	<p>After preparation of GPFR (including signing of committee of management statement), auditor must audit GPFR and date and sign the auditor's report</p>
	<p>Operating report must be prepared</p>
<p><i>By 10 December each year:</i></p>	<p>Circulate full report to members of the reporting unit</p>
<p><i>By 31 December each year:</i></p>	<p>Present full report to the second meeting</p>
<p><i>Within 14 days of the meeting and, in any event, by 14 January immediately following:</i></p>	<p>Lodge full report and designated officer's (Secretary's) certificate with AIR</p>

Financial Reports for the year ended 30 June 2007

166. Financial documents for the National Office for the year ended 30 June 2007 were required to be lodged with the AIR by no later than 14 January 2008. On 31 July 2008 ([FWA.004.0021](#)) an AIR official sent a letter to Ms Kathy Jackson, who had been appointed National Secretary on 14 December 2007 following the resignation of Mr Thomson, seeking lodgement of the outstanding financial documents. A further letter again seeking lodgement of outstanding financial documents for financial years ended 30 June 2007 and 30 June 2008 was sent by an AIR official on 4 March 2009 ([FWA.005.0087](#)).
167. On 6 April 2009 the Industrial Registrar sent a letter to Ms Jackson ([FWA.005.0082](#)) again seeking lodgement (by 14 April 2009) of the outstanding financial documents for financial years ended 30 June 2007 and 30 June 2008. A response was received from Ms Jackson under cover of letter dated 7 April 2009 (HSU.019.0139) in which she confirmed that financial statements for the year ended 30 June 2007 had not been lodged 'due to an oversight'. Ms Jackson stated that 'I will set out to rectify this, urgently.'
168. On 9 April 2009 ([FWA.005.0078](#)) the Industrial Registrar responded to Ms Jackson's letter of 7 April 2009 and again stated his expectation that the financial report for the

year ended 30 June 2007 would be lodged with the AIR by 14 April 2009. Since no documents were received by that date, an AIR official telephoned Ms Jackson on 16 April 2009 requesting lodgement of the outstanding 2007 financial report. Lodgement of the report was again sought in a letter to Ms Jackson from the Industrial Registrar dated 1 May 2009 ([FWA.010.0006](#)).

169. A letter dated 30 April 2009 from Ms Jackson to the Industrial Registrar ([FWA.005.0050](#)) enclosed financial documents of the National Office for the year ended 30 June 2007 ([FWA.005.0035](#)). Those documents contained:
- a. an unsigned and undated operating report ([FWA.005.0035](#) at 36);
 - b. an unsigned and undated Secretary's certificate ([FWA.005.0035](#) at 46) which did not contain any information regarding provision of documents to members or presentation of the full report to a meeting;
 - c. an unsigned and undated committee of management statement ([FWA.005.0035](#) at 46) which did not include the date upon which the committee of management had passed a resolution as required by paragraph 25 of the second Reporting Guidelines; and
 - d. an auditor's report that has been signed but not dated ([FWA.005.0035](#) at 48) by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd.

170. Ms Jackson's letter of 30 April 2009 ([FWA.005.0050](#)) stated that:

The Designated Officer's certificate and the Certificate of the Committee of Management have not been signed by the then National Secretary, and I am not able to sign them as I was not the National Secretary at the time. However I have examined the records of the HSU and can confirm that the documents lodged are copies of the documents provided to the National Executive at its meeting on 6 December 2007.

I am unable to state whether the documents were provided to members as I do not know, but have now had them posted to the Union's website.

171. The Industrial Registrar responded to Ms Jackson's letter of 30 April 2009 in a letter dated 18 May 2009 ([FWA.005.0075](#)) and noted that it is unclear on what basis the auditor formed his audit opinion without viewing signed documents. The Registrar also advised Ms Jackson that the obligations that are placed upon reporting units by Part 3 of Chapter 8 of the RAO Schedule must, by necessity, be carried out by the elected officers who hold office in that reporting unit from time to time. He continued, 'It is therefore unacceptable to fail to comply with such obligations because the office holders who represent that reporting unit have changed. The obligations in Part 3 of Chapter 8 remain.' Having noted the auditor's apparent failure to view a signed committee of management statement and his failure to date his auditor's report, the Industrial Registrar noted that 'it is unacceptable for either the organisation, or its auditor, to seek to obviate compliance with their obligations under the RAO Schedule as has occurred to date.'

172. In a letter to the Industrial Registrar dated 22 May 2009 ([HSUNO.019.0134](#)), Ms Jackson stated that it was neither her intention, nor that of the HSU, to seek to obviate compliance with its obligations under the RAO Schedule. Ms Jackson advised that she had forwarded the Industrial Registrar's letter of 18 May 2009 to

Slater & Gordon and asked them to advise her 'as part of their ongoing investigation'. This was a reference to a request that had been made of Slater & Gordon under cover of a letter from Ms Jackson dated 11 December 2008 ([HSUNO.018.0001](#)) to 'examine possible irregularities in the expenditure of the HSU for the period 16 August 2002 to 31 January 2008.' Ms Jackson stated in her letter of 22 May 2009 ([HSUNO.019.0134](#)) that she expected that Slater & Gordon would provide a report to the HSU by 'end May or at worst, shortly thereafter'.

173. In response, I wrote to Ms Jackson on 1 June 2009 ([FWA.005.0073](#)), in my capacity as acting Industrial Registrar, asking that properly executed and dated financial documents for the year ended 30 June 2007 be lodged with the AIR once the HSU was in receipt of the report from Slater & Gordon.
174. I also wrote to Mr Dick on 1 June 2009 ([DIC.001.0006](#)) asking, amongst other things, how he was able to form an audit opinion with respect to the GPFR for the year ended 30 June 2007 without apparently viewing a signed committee of management statement (given that the GPFR that was lodged with the AIR on 30 April 2009 did not contain a signed committee of management statement). Mr Dick responded to this letter on 4 June 2009 ([DIC.001.0005](#)), stating that 'We did view a signed Committee of Management Statement in about November of 2007. We are informed by Ms Jackson that she has not been able to find the signed Statement.'
175. On 2 July 2009 the AIR received a letter from Mr Ken Fowlie of Slater & Gordon ([HSUNO.019.0046](#)) regarding the outstanding financial reports. Mr Fowlie advised that Mr Dick had informed him that he had completed the audit of the financial documents for the year ended 30 June 2007, that Mr Dick understands that the GPFR was endorsed at a meeting of the National Executive and that Mr Dick sighted the GPFR which had been signed by Mr Thomson following the passing of a resolution by National Executive. Mr Fowlie further advised that Mr Dick had resigned his appointment as auditor of the National Office and that on 11 May 2009 the National Executive appointed Clements Dunne & Bell as the new auditors of the National Office. Mr Fowlie sought guidance from FWA regarding 'how you would like the HSU to meet its obligations under the Schedule in relation to the 2007 GPFR'.
176. I sent a letter in response to Mr Fowlie on 15 July 2009 ([FWA.005.0069](#)) in which I stated that it appears as though the National Office has two options with respect to the financial report for the year ended 30 June 2007:
- a. To locate and lodge the original financial documents, including a signed and dated committee of management statement, operating report and designated officer's certificate. It would also be necessary for Mr Dick to date his auditor's report; or
 - b. To prepare a fresh set of financial documents that have been signed and dated as required by the RO Act and to have the GPFR (which must include a committee of management statement) audited by the new National auditor.
177. On 16 March 2010 the new auditor of the National Office, Mr Andrew Wehrens of Clements Dunne & Bell, spoke to an FWA official regarding the outstanding financial report for the year ended 30 June 2007 ([WIT.WEH.002.0001](#)). Mr Wehrens advised FWA that he did not expect the outstanding financial report to be lodged with FWA

before early May 2010. FWA also provided Mr Wehrens via email with copies of the financial report for the year ended 30 June 2007 that had been lodged with FWA on 30 April 2009 and a copy of the second Reporting Guidelines ([FWA.023.0039](#)). On 20 May 2010 Mr Wehrens subsequently sent an email to FWA ([WIT.WEH.002.0003](#)) seeking comment regarding compliance of a 'template' of accounts that he had prepared with the legislative requirements. A letter in response was sent by an FWA official on 24 May 2010 ([FWA.001.0001](#)).

178. Ms Jackson was asked in interview on 11 April 2011 regarding the continuing failure of the National Office to lodge its outstanding financial reports (Jackson (2) PN 440). Ms Jackson advised that the auditor had 'nearly finished' but that he was 'having problems with putting it together but I imagine we'll have something in the next two or three weeks back to you, all of them completed by then' (Jackson (2) PN 449).
179. On 8 August 2011 the financial report for the National Office for the year ended 30 June 2007 ([FWA.009.0001](#)) was lodged with FWA. The documents contained:
- a. An operating report signed by Ms Jackson and dated 21 July 2011 ([FWA.009.0001](#) at 2);
 - b. A committee of management statement which was signed by Ms Jackson on 21 July 2011 and which states that a resolution was passed by the committee of management on 21 June 2011 ([FWA.009.0001](#) at 19);
 - c. An auditor's report that was signed by Mr Wehrens on 28 July 2011 ([FWA.009.0001](#) at 22); and
 - d. A Secretary's certificate that was signed by the Senior National Assistant Secretary, Ms Natalie Bradbury, on 28 July 2011 ([FWA.009.0001](#) at 21).

Documents lodged on 30 April 2009

Compliance with Part 3 of Chapter 8 of the RAO Schedule

180. Despite the fact that the National Office reporting unit had no members (which is discussed at paragraphs 5 to 8 of chapter 13), certain provisions in Part 3 of Chapter 8 of the RAO Schedule continued to apply to the reporting unit. The reporting unit was required to keep such records as correctly record and explain the transactions and financial position of the reporting unit,²⁵⁷ to cause an operating report to be prepared²⁵⁸ and to cause a GPFR to be prepared in accordance with Australian Accounting Standards.²⁵⁹ The Reporting Guidelines also required the reporting unit to cause to be prepared a committee of management statement,²⁶⁰ which forms part of the GPFR.²⁶¹ While these obligations are placed upon the reporting unit, Sub-rules 32(e) to (j) require the National Secretary to undertake tasks associated with financial reporting.

²⁵⁷ Section 252 of the RAO Schedule.

²⁵⁸ Section 254 of the RAO Schedule.

²⁵⁹ Subsection 253(1) of the RAO Schedule.

²⁶⁰ Paragraph 24 of the second Reporting Guidelines.

²⁶¹ Paragraph 253(2)(c) of the RAO Schedule.

181. The requirements regarding the preparation of a GPFR and an operating report are set out in subsection 253(1) and 254(1) respectively. Both of these subsections require preparation of the documents 'as soon as practicable after the end of each financial year'. The dictionary definition of the word 'practicable' is 'capable of being put into practice, done, or effected, especially with the available means or with reason or prudence; feasible'.²⁶²

Preparation by the reporting unit of an operating report and a committee of management statement

182. Mr Thomson has told FWA that he was not aware that National Office records had disappeared or could not be found until after he had left. As he said, 'They certainly were there when I was the National Secretary and I know that because we were frequently asked questions at National Executive about particular items and so forth and asked to produce those sorts of records' (Thomson PN 108). Ms Jackson also stated in interview that, when she first became acting National Secretary on 14 December 2007, 'say the Diners club cards, when I go through those statements it looked like they were keeping records as in you pulled up say January 2007 or January 2006 and all the invoices, all the receipts were attached to that person's credit card and that look[ed] intact' (Jackson (2) PN 47). The finance officer, Ms Ord, was also sure that records were still in the National Office when she resigned in early 2008, so much so that she knew 'for a fact' that they were still there (Ord (1) PN 99).
183. While the precise time when the records became lost is not clear on the information that is before FWA, there is agreement that the records were in existence in December 2007. As a result, there is no information before FWA to suggest that a lack of records meant that it was not 'practicable' for the reporting unit to have caused the GPFR (including the committee of management statement) and the operating report to be prepared after the end of the 2006/2007 financial year. Further, preparation of these documents by the reporting unit was not something that could reasonably have been considered to be a time consuming or onerous task since Mr Thomson has given evidence that one of the responsibilities of the financial officer who had been employed by the National Office was the preparation of documents for filing with the AIR:
- a. When asked in interview how he ensured compliance by the National Office with the requirement in Sub-rule 32(e) that the National Secretary shall 'keep, or cause to be kept, the records required to be kept by an organisation pursuant to the provisions of the WR Act', Mr Thomson replied (Thomson PN 71):
- Essentially in terms of those issues, they were issues for the financial controller, to make sure that we were putting our reports in. Yes, that was part of her job. She was someone who came on board after about eight or nine months I think of my time there, because the way in which the accounts of the national office on a day-to-day basis were done was there was a person who was employed essentially by the number 1 branch who was given to us to assist in terms of those things, and I think that's probably how they had done it in the past, and I felt after a period of time that that wasn't good enough, that we needed someone specifically that we employed

²⁶² Macquarie Concise Dictionary, 4th edition, 2006.

who was looking after how our accounts were operating and making sure we met those obligations.

- b. When then asked how he ensured compliance by the National Office with the requirement in Sub-rule 32(f) that the National Secretary lodge and file and furnish with the Industrial Registrar all documents that are required to be lodged by the *Workplace Relations Act 1996* at the prescribed times and in the prescribed manner, Mr Thomson replied (Thomson PN 77):

Same as the previous question.

184. An email to FWA from Mr Dan Hill on 30 August 2011 ([FWA.021.0018](#)) stated that, although a meeting of National Executive had been scheduled for 22 to 23 August 2007, it did not go ahead because 'National Executive members were engaged in intense caucusing over who should replace Mr Thomson in the event that he was elected to Federal Parliament'.
185. Members of National Executive were clearly conscious of the possibility, if not the probability, that the National Secretary would resign from the HSU following the federal election in late November 2007. The definition of 'practicable' concerns what is capable of being put into practice, especially with 'reason' or 'prudence'.²⁶³ While some circumstances may prudently suggest delay is appropriate, others can equally suggest that action should be taken sooner rather than later.
186. The circumstances in which the National Office found itself in late 2007 were just such a situation. Anticipation of the successful election to federal parliament of the office holder who was responsible under the Rules for ensuring that the National Office prepared a GPFR and other associated financial reporting documents should have caused the committee of management to prepare the GPFR and operating report more quickly than might otherwise have occurred. This would have ensured that the National Office had its 'house in order', and had met the requirements of the applicable financial reporting framework, in the event that Mr Thomson was elected to federal parliament in late November 2007.

Preparation of an operating report

187. Unlike preparation of the GPFR, it was not necessary for the committee of management of the reporting unit to meet in order that an operating report be prepared. Subsection 254(3) of the RAO Schedule provides that the operating report can be prepared by the committee of management or by a 'designated officer' (which is defined in section 243 of the RAO Schedule). As National Secretary of the HSU at the time, Mr Thomson was the HSU's 'designated officer'.²⁶⁴ Mr Thomson resigned as National Secretary with effect from 14 December 2007, some 5½ months after the end of the 2006/2007 year. Despite this period of time, the documents that were lodged with the AIR on 30 April 2009 did not contain an operating report that had

²⁶³ The dictionary definition of the word 'practicable' is 'capable of being put into practice, done, or effected, especially with the available means or with reason or prudence; feasible' (Macquarie Concise Dictionary, 4th edition, 2006).

²⁶⁴ The National Secretary is the 'designated officer' of the National Office under section 243 of the RAO Schedule since, under the Rules, the National Secretary is responsible for undertaking the functions necessary to enable the reporting unit to comply with Part 3 of Chapter 8 of the RAO Schedule - see, in particular, Sub-rules 32(e) and (f).

been signed and dated ([FWA.005.0035](#)) by Mr Thomson or by any other members of the committee of management of the National Office.

Preparation of a committee of management statement

188. Preparation of a GPFR by the reporting unit was a more onerous task than preparation of an operating report. In order to prepare the GPFR, a meeting of National Executive or National Council must be held (the first meeting) to consider, and pass, the committee of management resolution that is required by paragraph 25 of the second Reporting Guidelines. Sub-rule 32(b) requires the National Secretary to 'summon by notice in writing...all meetings of the National Council and National Executive'. Once the committee of management has passed the resolution, paragraph 26 of the second Reporting Guidelines also required Mr Thomson, as the designated officer, to sign and date the committee of management statement. Since the committee of management statement is a constituent part of the GPFR,²⁶⁵ the meeting of National Council or National Executive (and the subsequent signing of the committee of management statement) was required to occur 'as soon as practicable' after the end of the financial year.²⁶⁶

189. Information that is before FWA, however, indicates that the first meeting of National Executive that was held after the end of the 2006/2007 financial year was not until 6 December 2007 ([HSUNO.024.0014](#)). FWA has been provided with an agenda for a meeting on 22 and 23 August 2007 ([FWA.004.0060](#)) but Ms Jackson has told FWA in interview that she does not know whether a meeting on 22 and 23 August 2007 ever took place (Jackson (2) PN 281 - 283). Further, it seems unlikely that the meeting on 22 and 23 August 2007 did take place since Mr Dan Hill (who was a National Executive member) has stated in an email to FWA on 30 August 2011 ([FWA.021.0018](#)) that:

Whilst the National Executive members gathered in Melbourne on the 22-23 August 2007 I am not certain that a meeting was formally held and that is the reason there are no recorded minutes. I believe that Craig Thomson had by that time gained pre-selection for the seat of Dobell. National Executive members were engaged in intense caucusing over who should replace Mr Thomson in the event that he was elected to Federal Parliament.

190. Looking at what occurred at the meeting on 6 December 2007, it is not even clear that the resolution that is required by paragraph 25 of the second Reporting Guidelines was passed by that meeting. Minutes of the National Executive meeting on 6 December 2007 ([HSUNO.024.0014](#)) record the following:

RESOLUTION

Moved Rosemary Kelly/Steve Pollard; that

'The Financial Statements of the Health Services Union be amended to reflect the correct name of the Union (Health Services Union and not Health Services Union of Australia) be received and adopted and the recommendation contained in the Committee of Management Certificate be received, accepted and endorsed.'

- Carried

²⁶⁵ See paragraph 253(2)(c) of the RAO Schedule.

²⁶⁶ Subsection 253(1) of the RAO Schedule.

191. The meaning of the resolution that was carried on 6 December 2007 that the **'recommendation'** contained in the Committee of Management Certificate be received, accepted and endorsed' is far from clear (my emphasis). The committee of management statement cannot, objectively, be characterised as a 'recommendation'. Paragraph 25 of the second Reporting Guidelines sets out the terms of a resolution that is required to be passed by the committee of management at the 'first meeting'. It is a question of fact whether the resolution was, or was not, passed. There are, however, no 'recommendations' contained within the terms of the resolution required by paragraph 25.
192. In my view, there is some possibility that the resolution regarding the 'recommendation' in the committee of management statement should be read as meaning that the financial documents that were presented to the National Executive meeting on 6 December 2007 contained a committee of management statement that had already been signed and dated. In other words, National Executive was presented with a 'recommendation' in the form of a signed committee of management statement and that 'recommendation' was 'received, accepted and endorsed' by National Executive. Such a reading of the events at the National Executive meeting on 6 December 2007 is reinforced by information that has been provided to the AIR by the Union's auditor, Mr Ian Dick, who stated in a letter to the AIR dated 4 June 2009 ([DIC.001.0005](#)) that 'We did view a signed Committee of Management Statement in about November of 2007'. Mr Dick also confirmed in interview 'But when I signed [the auditor's report] I had a signed committee of management statement there' (Dick PN 111).
193. Adding to this suggestion is the fact the same resolution that was passed by National Executive on 6 December 2007 ([HSUNO.024.0014](#)) also records that 'The Financial Statements of the Health Services Union...be received and adopted'. This suggests that the full report was being presented to the meeting and that the meeting was, in fact, the 'second meeting' set out in the table of timeframes at paragraph 165 of this chapter.
194. Information before FWA, however, suggests that neither National Council nor National Executive could have passed the resolution required by paragraph 25 of the second Reporting Guidelines at any meeting before 6 December 2007:
- a. In looking at meetings of National Executive:
 - i. the first meeting of National Executive after the end of the 2006/2007 financial year was to be held on 22 and 23 August 2007. However, for reasons set out at paragraph 189 of this chapter, it seems probable that this meeting did not take place (even if an informal gathering of National Executive members did occur on that date); and
 - ii. FWA has not been provided with any evidence of any other meeting of National Executive before 6 December 2007;
 - b. In looking at meetings of National Council in 2007:
 - i. Sub-rule 22(a) provides that National Council must meet annually in the month of September, October or November. Sub-rule 22(b) allows for special meetings of National Council to be held by resolution of National

Council or National Executive or by a decision of the National Secretary in conjunction with the National President;

- ii. Information before FWA suggests that a meeting of National Council was held in Canberra from 7 to 9 May 2007 in the place of the meeting that was required by the Rules to be held in September, October or November of 2007:
 1. Minutes of a National Executive meeting on 23 October 2006 ([HSUNO.018.0200](#)) record that a Special National Council meeting would be held on 28 and 29 March 2007 in Perth;
 2. Minutes of the National Executive meeting held on 2 February 2007 ([HSUNO.018.0170](#)), however, suggest that the meeting in Perth did not go ahead. They record that 'it was agreed that the special February Executive meeting be forgone and that the Special Council Meeting set down for March in Perth be postponed to the 8th, 9th and 10th in Canberra';
 3. While the month to which the National Council meeting was to be postponed was not minuted in the 2 February 2007 meeting, the 'Action Arising' list attached to those minutes includes 'Special National conference in march (sic) be deferred until the 8th, 9th, and 10th may (sic) in Canberra. This conference to also be in lieu of the traditional September conference' ([HSUNO.018.0170](#)). Minutes of a subsequent National Executive meeting on 28 and 29 March 2007 ([HSUNO.018.0151](#)) also record that 'The National Secretary outlined the program for the National Conference in Canberra in May'; and
 4. Mr Thomson has stated in interview that the payment of \$14,786 to Hyatt Catering at Parliament House in Canberra on 30 April 2007 and 1 May 2007 ([HSUNO.008.0005](#)) was for a dinner at Parliament House for persons attending National Council (Thomson PN 1467).
195. Any suggestion that National Executive was presented at its meeting on 6 December 2007 with a 'recommendation' in the form of a committee of management statement that had already been signed and dated when the evidence suggests that no meeting of National Council or National Executive could have been held to pass the necessary resolution carries with it the grave assertion that a false document was knowingly (or at least recklessly) presented to that meeting. Given this context, and in the absence of a copy of any committee of management statement that has been signed and dated prior to 6 December 2007, I do not believe that there is sufficient information to satisfy me that a signed and dated committee of management statement was, in fact, presented to the National Executive meeting on 6 December 2007.

Submissions by the National Office

196. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that the National Office denies that Finding 169 has been made out. It is submitted that subsection 254(1) of the RAO Schedule did not require that the National Office

prepare an operating report by 14 December 2007. It required that the National Office prepare an operating report 'as soon as practicable' after the end of the financial year ended 30 June 2007. The submission goes on:

In all the circumstances, including the circumstances recited in correspondence between HSU and the AIR/FWA, the National Office prepared the annual report as soon as practicable after the end of the financial year.

197. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) submits that:

In all the circumstances, including the circumstances recited in correspondence between HSU and the AIR/FWA, the National Office prepared the committee of management statement as soon as practicable after the end of the financial year.

Conclusions

198. Given that financial records were held by the National Office as at 14 December 2007 and that 5½ months had elapsed since the end of the 2006/2007 financial year, in my view the failure of the National Office to either prepare an operating report, or to have required Mr Thomson to prepare an operating report, by the time he resigned on 14 December 2007 was a contravention by the reporting unit of the requirement in subsection 254(1) of the RAO Schedule that an operating report be prepared as soon as practicable after the end of the financial year.
199. I do not believe that there is sufficient information to satisfy me that a signed and dated committee of management statement was presented to the National Executive meeting on 6 December 2007. That being the case, even if it is presumed that the minutes of 6 December 2007 are poorly drafted and that a resolution was passed in the terms required by paragraph 25 of the second Reporting Guidelines at that meeting, I have formed the view that this resolution was not passed by the committee of management 'as soon as practicable after the end of [the] financial year', as required by subsection 253(1) of the RAO Schedule. Over five months had passed since the end of the 2006/2007 financial year and yet this was the first meeting of National Executive to occur in that period. There is no information before FWA to suggest that it was not 'practicable' for National Executive to have met any earlier. While National Executive members in the latter half of 2007 may have been preoccupied with 'intense caucusing over who should replace Mr Thomson in the event that he was elected to Federal Parliament' (as stated by Mr Hill in his email of 30 August 2007 ([FWA.021.0018](#))), this does not obviate the obligations that are placed upon the reporting unit by section 253 regarding the preparation of a GPFR. Indeed, as set out at paragraphs 185 and 186 of this chapter, in my view it should have compelled National Executive to act with greater alacrity.
200. Further, it was not sufficient for the meeting on 6 December 2007 to have passed a resolution in the terms required by paragraph 25 of the second Reporting Guidelines. It is also necessary, under paragraph 26 of those Guidelines, for the committee of management to cause a committee of management statement to be signed and dated by a designated officer. While Mr Dick has stated that he saw such a signed committee of management statement (Dick PN 111), the documents that were lodged with FWA by Ms Jackson on 30 April 2009 ([FWA.005.0035](#) at 46) contained a committee of management statement that was neither signed nor dated.

Findings 169 and 170 - Failing to prepare an operating report and committee of management statement for the year ended 30 June 2007

- 169.** The National Office has contravened subsection 254(1) of the RAO Schedule by failing to either prepare an operating report, or to have required Mr Thomson to prepare an operating report, by the date of Mr Thomson's resignation as National Secretary on 14 December 2007.
- 170.** The National Office has contravened subsection 253(1) of the RAO Schedule by failing to cause to be prepared a committee of management statement as required by paragraphs 24 to 26 of the second Reporting Guidelines for the year ended 30 June 2007 by the date of Mr Thomson's resignation as National Secretary on 14 December 2007.

Failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended 30 June 2007

Evidence

201. Matters that are set out or referred to at paragraphs 202 to 216 below are relevant to Finding 171 - failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended 30 June 2007, which is set out below at page 867.

Requirements placed upon organisations – Part 2 of Chapter 8

202. Part 3 of Chapter 8 of the RAO Schedule places obligations upon 'reporting units' with respect to financial records, accounting and auditing. Part 3 of Chapter 8 contains the only provisions of the RAO Schedule that regulate 'reporting units', as distinct from the registered organisation itself (and/or its Branches).
203. Part 2 of Chapter 8 of the RAO Schedule regulates other records that must be kept by registered organisations and lodged with the AIR. Amongst those records are particulars of loans, grants and donations that have been made by an organisation or its Branches during a financial year. Requirements regarding notification of loans, grants and donations are set out in section 237 of the RAO Schedule.
204. A reporting unit must, within 90 days of the end of the financial year, lodge with the AIR (or with FWA, as appropriate) a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made during the financial year:

237 Organisations to notify particulars of loans, grants and donations

- (1) An organisation must, within 90 days after the end of each financial year (or such longer period as the Registrar allows), lodge in the Industrial Registry a statement showing the relevant particulars in relation to each loan, grant or

donation of an amount exceeding \$1,000 made by the organisation during the financial year.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A statement lodged in the Industrial Registry under subsection (1) must be signed by an officer of the organisation.
- ...
- (5) The relevant particulars, in relation to a loan made by an organisation, are:
- (a) the amount of the loan; and
 - (b) the purpose for which the loan was required; and
 - (c) the security given in relation to the loan; and
 - (d) except where the loan was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.
- (6) The relevant particulars, in relation to a grant or donation made by an organisation, are:
- (a) the amount of the grant or donation; and
 - (b) the purpose for which the grant or donation was made; and
 - (c) except where the grant or donation was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.
- (7) Where an organisation is divided into branches:
- (a) this section applies in relation to the organisation as if loans, grants or donations made by a branch of the organisation were not made by the organisation; and
 - (b) this section applies in relation to each of the branches as if the branch were itself an organisation.
- (8) For the purposes of the application of this section in accordance with subsection (7) in relation to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.

Compliance with Sub-rule 36(g)

205. Sub-rule 36(g), which is set out at page 96 in chapter 2, requires that the Union shall not make any loan, grant or donation of any amount exceeding \$1,000 unless the National Council or the National Executive of the Union has approved such loan, grant or donation.
206. On 14 August 2007 Belinda Ord sent an email to members of the Finance Committee (Craig Thomson, Peter Mylan, Rosemary Kelly, Iris Knight and Dan Hill) under the

subject of 'Queries arising from Finance Teleconference' ([HSUNO.018.0107](#)). In it she set out information regarding the 'Audited Financials' for the year ended 30 June 2007 which consisted of the following table:

Donations \$14,214	
Health Services Union - National Office	
Donations/gifts	
1/7/06 - 30/6/07	
Multiple Sclerosis	2400
Convoy for Kids	5000
Labour Leaders Forum	3000
Cancer Council of Australia	1000
ALP Dinner	1363.64
Australian Labor Party 44th National Conference Dinner	909.09
Oxfam	500
Flowers	41.63
TOTAL	14,214.40

What is a 'donation'? - Payment to the Julie Williamson Fundraising Appeal

207. The RAO Schedule does not define the terms 'loan', 'grant' or 'donation'. While payment to the Julie Williamson Fundraising Appeal was classified as a 'donation' in the email from Belinda Ord to members of the Finance Committee on 14 August 2007 ([HSUNO.018.0107](#)) and by members of the National Executive in interview with FWA, it is nevertheless necessary to consider whether the payment was, in fact, a 'donation' for the purposes of subsection 237(1).
208. There does not appear to be any judicial consideration of the meaning of 'donation' as it appears in subsection 237(1) of the RAO Schedule or in section 269 of the WR Act, which was a broadly equivalent provision. The Macquarie Concise Dictionary (4th edition, 2006) defines a 'donation' as being:
1. The act of presenting something as a gift.
 2. A gift, as to a fund; a contribution.
209. A gift, in turn, is defined in the Macquarie Concise Dictionary as being 'something given; a present', which contains within it the notion that nothing is received by the giver in return.
210. While the term 'donation' is not used in this particular context, some guidance may be found in provisions of the *Income Tax Assessment Act 1997* regarding the giving of deductible 'gifts or contributions' to fund raising events. In general, a deduction is available to an individual (although not a company) for a 'contribution' of cash or property of \$150 or more made for the right to participate in a fund raising event conducted by a deductible gift recipient. In that legislation, 'fund raising events' include a fete, ball, gala show, dinner, performance or similar event as long as it is conducted for the purpose of fund raising and it does not form any part of a series or

regular run of like or similar events. A contribution is not deductible where the GST inclusive market value of the right to attend the fund raising event exceeds the lesser of \$100 or 10% of the amount of the contribution. Further, a taxpayer can only claim a deduction for the amount of the contribution, reduced by the GST inclusive market value of the right to attend, or participate in, the fund raising event.

211. It appears unlikely that monies that are paid to a fund raising charity in return for attendance at a function would be considered to be a 'donation'.
212. I have also examined the *Electoral Act 1918* (Cth) to determine whether there are any analogous provisions to section 237 of the RAO Schedule. While that Act does not define 'donation', it does require political parties and donors to disclose 'gifts' that are made to political parties. The term 'gift' is, however, broadly defined to include not only any disposition of property made by a person to another person without consideration in money or money's worth but also the disposition of property with inadequate consideration. This extension of the ordinary meaning of a 'gift' beyond the notion of disposition of property without any material advantage being received in return suggests that it is not an appropriate analogy for the purposes of the RAO Schedule.
213. It is also relevant to note that subsection 237(1) of the RAO Schedule is a civil penalty provision (see section 305 of the RAO Schedule). There is a presumption in favour of strict construction of a pecuniary penalty provision, suggesting that a court would be unlikely to interpret the provisions of subsection 237(1) to the disadvantage of a registered organisation if another construction is available.

Central Coast Convoy for Kids

214. Information about donations that were made by the National Office to the Central Coast Convoy for Kids is set out at the heading 'Authorising payment to the Central Coast Convoy for Kids by the National Office' at paragraphs 600 to 608 in chapter 7.

Golden Years Collectables

215. Information about a charge that was made to Mr Thomson's CBA Mastercard on 25 November 2006 for \$2,050 at Golden Years Collectables is set out under the heading 'Authorising payment to Golden Years Collectables by the National Office' on paragraphs 591 and 594 in chapter 7.

Submissions by the National Office

216. Slater & Gordon's letter of 24 January 2012 (FWA.022.0484) states that, without making any concessions, the National Office does not wish to advance any submissions regarding matters that are the subject of Finding 171 - failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended

Conclusions

217. No statement of loans, grants and donations has been lodged by the registered organisation with the AIR or with FWA for the years ended 30 June 2006.

218. I consider that the National Office has contravened subsection 237(1) of the RAO Schedule by failing to lodge with the AIR a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year ended 30 June 2007.

Finding 171 - failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended 30 June 2007

- 171.** The National Office has contravened subsection 237(1) of the RAO Schedule by failing to lodge a statement showing the relevant particulars in relation to the following donations made by the organisation during the financial year ended 30 June 2007 with the AIR or with FWA:
- a donation of \$5,000 to Central Coast Convoy for Kids on 12 September 2006; and
 - a donation of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006.

Chapter 10 - Contraventions by Ms Jackson

1. This chapter concerns findings of contravention by Ms Jackson, who was a National Assistant Secretary and subsequently the Senior National Assistant Secretary of the HSU while Mr Thomson was National Secretary. Ms Jackson was appointed, and subsequently elected, as the National Secretary of the HSU upon Mr Thomson's resignation from that role.
2. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2.
3. As set out at paragraph 201 of chapter 1, on 15 December 2011 Ms Jackson was served with a letter dated 14 December 2011 (FWA.015.0001) and supporting materials (FWA.015.0004 and FWA.015.0025). My letter advised Ms Jackson that I had reached a preliminary view that it was open to me to make adverse findings in respect of various conduct that has been the subject of the Inquiry and Investigation.
4. On 3 February 2012 I received a response from Ms Jackson (FWA.022.0489) to my letter of 14 December 2011 (FWA.015.0001). Ms Jackson's response included an attachment identified as 'Bundle KJ' (FWA.022.0566) and a sound recording of her first interview with me on 8 September 2009. Before setting out responses to allegations set out in my letter of 14 December 2011, Ms Jackson made some introductory comments:
 - a. Receipt of my letter surprised Ms Jackson. Ms Jackson stated that she had been given no indication before my letter that she was under investigation for alleged contraventions of the RO Act (sic). After she assumed office as Acting National Secretary of the Hospital Services Union (sic) in December 2007, Ms Jackson reported to FWA that there were serious irregularities in the accounts of the Union and since that time she has had many communications with me and with FWA providing as much material as she was able to locate amongst the books and records of the Union. At all times Ms Jackson believed that she was assisting me in my investigation, not that she was 'a target' of my investigation.
 - b. Ms Jackson has informed me of all matters within her recollection to the best of her ability in relation to what she understood to be the principal matters that I was investigating.
 - c. Since the end of 2007, Ms Jackson has been engaged 'virtually on my own as a sole whistle blowers and without the assistance of any other Union officer in trying to have Mr Thomson's conduct investigated and for him to be required to answer for that conduct'. The letter went on:

My purpose has always been to advance and protect the interests of the Union and its members. I have been opposed at every step. I have been threatened and intimidated by persons in powerful positions attempting to coerce me to give up my efforts to ensure that the fraudulent conduct of Mr Thomson that caused apparently substantial dishonest loss to the members should not be swept under the carpet for no other reason than to

serve the interests of the ALP government in the context of the slim margin by which it holds office.

- d. My letter to Ms Jackson states that the material has been provided to her on a confidential basis but Ms Jackson in 'unaware of any legal basis for the claim of confidentiality'. Ms Jackson continued:

It is my belief that Fair Work Australia has targeted me unfairly. If it becomes necessary in defending myself generally from any coercion or vilification, I must be free to make use of Fair Work Australia's conduct towards me if I consider it relevant in the circumstances.

- e. Before forming any preliminary view, FWA should have given Ms Jackson the opportunity to advance any relevant circumstances covered by sections 283, 285(2), 292 and 315 of the RO Act, particularly as FWA will bear the onus of rebutting any explanation upon which Ms Jackson may rely that gives her the benefit of section 292. 'Those deficiencies undermine your investigation into my conduct.'
- f. FWA has formed a preliminary view without regard to relevant circumstances and in many respects on the basis that it does not know the circumstances, which is 'not a proper basis to form a preliminary view'.
- g. Since her appointment as National Secretary, Ms Jackson has had many commitments which have required her attention and which have affected 'the nature and discharge of any duties that section 285 imposed upon me'.
- h. It is Ms Jackson's intention to vigorously defend any proceedings that FWA may bring against her in relation to the matters that have been alleged. Further, even if (contrary to her submissions) Ms Jackson is found to have committed a contravention, the maximum penalty that could be obtained against her is \$2,200 in respect of each contravention. All of these allegations are misconceived. The costs incurred by FWA in recovering any penalty if it were successful could not be recovered against Ms Jackson.
- i. Even if FWA was to confirm its preliminary view, proceedings against Ms Jackson are not in the public interest on the basis of public policy grounds.
- j. There has been public criticism of FWA's conduct of the investigation into Mr Thomson's conduct. The letter goes on:

It has been alleged that there has been political interference in that investigation to prevent or delay the exposure of Mr Thomson's conduct to public scrutiny. Whether it is intended or not, any proceedings against me in the circumstances of this case, will be seen as an attempt to coerce me from further acting in the interests of the Union and its members to have Mr Thomson's conduct subjected to public scrutiny. Any such proceedings in the circumstances of this case will be seen as a warning to other possible whistle blowers seeking the public scrutiny of unlawful conduct contrary to the interests of those who hold powerful positions.

- k. It is apparent from the detail of the material that FWA has prepared and served upon Ms Jackson that 'an enormous amount of taxpayers' money has been diverted' to an investigation into her conduct. Ms Jackson went on 'Having regard to the length of time that it has taken you to serve that material upon me,

that diversion has been to the prejudice of the investigation you were asked to conduct into Mr Thomson's conduct.'

5. Ms Jackson's submissions regarding the alleged contraventions that were put to her in my letter of 14 December 2011, and my responses to those submissions, are set out in the discussion of my findings below.
6. I will, however, deal with the point that is summarised at paragraph 4.a above, and which is repeated a number of times throughout Ms Jackson's submissions, that Ms Jackson had been given no indication before my letter that she was under investigation for alleged contraventions of the RAO Schedule.
7. Ms Jackson was a member of the National Executive throughout the period in which Mr Thomson was the National Secretary (16 August 2002 to 14 December 2007). From April 2004 Ms Jackson held the position of Senior National Assistant Secretary, as recorded in the minutes of the National Executive meeting held on 22 April 2004 ([HSUNO.018.0358](#)).
8. At the commencement of the Investigation on 26 March 2010 I wrote to Ms Jackson (WIT.JAC.001.0010), in her capacity as National Secretary of the Union, and advised her of the scope of that Investigation, including the fact that I was investigating whether various provisions that were set out in that letter 'have been contravened by the National Office of the Health Services Union, **and/or by officials** or employees **of the National Office** of the Health Services Union' during the Investigation Period (my emphasis). I also advised Ms Jackson that, in particular, I was examining whether:
 - officers of the National Office exercised their powers and discharged their duties with reasonable care and diligence, in good faith for the best interests of the organisation and for a proper purpose during this period;
 - officers or employees of the National Office have improperly used their position to gain an advantage for themselves or someone else, or to cause detriment to the organisation during this period;
 - transactions of the National Office of the Health Services Union made during this period were properly authorised;
 - proper financial records were kept of such transactions by the National Office,
 - proper financial, expenditure, donation and audit reports were approved by the National Office and filed with the Australian Industrial Registry or Fair Work Australia (as appropriate) in respect of the 2002/03 to 2008/09 financial years.
9. An extract from my letter of 26 March 2010 is set out at paragraph 104 of chapter 1.
10. Further, I sent notices to Ms Jackson under subsection 335(2) of the RO Act on four occasions:
 - a. On 29 April 2010 I sent a Notice to Provide Information under paragraph 335(2)(a) of the RO Act (WIT.JAC.001.0003);
 - b. On 26 May 2010 I sent a Notice to Produce Documents under paragraph 335(2)(b) of the RO Act (HSUNO.017.0061);

- c. On 20 December 2010 I sent a Notice to Provide Information and to Produce Documents under paragraphs 335(2)(a) and (b) of the RO Act (FWA.005.0014); and
 - d. On 31 January 2011 I sent a Notice to Attend to Answer Questions under paragraph 335(2)(c) of the RO Act (FWA.014.0041).
11. Each of those notices advised Ms Jackson of the scope of my Investigation in the same terms as my letter of 26 March 2010, including the fact that I was examining whether various provisions have been contravened by officials or employees of the National Office of the Health Services Union.
 12. Lastly, I note that Ms Jackson was accompanied at both of her interviews with FWA by a legal representative.

Ms Jackson's role as National Secretary

13. Ms Jackson was appointed by the National Executive to act as National Secretary on 14 December 2007 ([HSUNO.025.0012](#)). Ms Jackson's election as National Secretary was recorded in the minutes of the National Executive meeting held on 23 January 2008 ([HSUNO.025.0018](#)).

Ms Jackson's failure to produce a GPFR and an operating report for the 2007 financial year as soon as practicable

Evidence

14. The following evidence is relevant to Finding 172 - Ms Jackson failed to produce a GPFR and an operating report for the 2007 financial year as soon as practicable, which is set out below at page 894.

Terms of the Alleged Contravention that was put to Ms Jackson in my letter of 14 December 2011

15. Having considered Ms Jackson's submissions (which are discussed below at paragraphs 45 to 88 of this chapter), finding 172 differs from the alleged contravention that was put to Ms Jackson in Schedule 1 (FWA.015.0004) to my letter of 14 December 2011 (FWA.015.0001). The alleged contravention that was put to Ms Jackson, and to which she responded in her letter of 3 February 2012 (FWA.022.0489), was that Ms Jackson had contravened subsection 285(1) of the RAO Schedule as follows:

Ms Jackson failed to exercise her powers and discharge her duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to the lodgement of the operating report and general purpose financial report for the National Office for the year ending 30 June 2007 in that a reasonable person who was occupying the position of National Secretary between October 2009 and August 2011 would not have taken a further 15 months after the date on which the auditor indicated returns would be lodged to

prepare an operating report and a committee of management statement, to have had the general purpose financial report audited and to have lodged financial documents with FWA.

Documents lodged on 8 August 2011

16. On 8 August 2011 the financial report for the National Office for the year ended 30 June 2007 (FWA.009.0001) was lodged with FWA. The documents contained:
 - a. An operating report signed by Ms Jackson and dated 21 July 2011 (FWA.009.0001 at 2);
 - b. A committee of management statement which was signed by Ms Jackson on 21 July 2011 and which states that a resolution was passed by the committee of management on 21 June 2011 (FWA.009.0001 at 19);
 - c. An auditor's report that was signed by Mr Wehrens on 28 July 2011 (FWA.009.0001 at 22); and
 - d. A Secretary's certificate that was signed by the Senior National Assistant Secretary, Ms Natalie Bradbury, on 28 July 2011 (FWA.009.0001 at 21).
17. It is not possible to provide an exact date but, at some time at or around the time that Ms Jackson became National Secretary in December 2007 or early 2008, many of the records of the HSU could no longer be located, despite searches for the records (Jackson (1) PN 160).
18. Despite the failure to locate many of the records, on 13 October 2009 the National Office lodged with the Australian Electoral Commission an Annual Return Relating to Political Expenditure for the 2006/2007 financial year ([PUB.002.0030](#)) that was signed by Ms Jackson as National Secretary on 13 October 2009. That return disclosed political expenditure in the 2006/2007 financial year in the following categories:

2.	Public expression of views on an issue in a Federal election by any means (other than those at items 1, 3, 4 or 5)	\$378,472
3.	Printing, production, publication or distribution of any material (other than at item 1 or Item 2 above) that is required by section 328 or 328A of the [<i>Electoral Act</i> 1918 (Cth)] to include a name, address or place of business	\$16,426
5.	Carrying out opinion polling or other research relating to a Federal election or the voting intentions of electors	\$9,394

19. On the same day, 13 October 2009, the National Office also lodged with the Australian Electoral Commission an Annual Return Relating to Political Expenditure for the 2007/2008 financial year ([PUB.002.0036](#)) that was signed by Ms Jackson as

National Secretary on 13 October 2009. That return disclosed political expenditure in the 2006/2007 financial year in the following categories:

2. Public expression of views on an issue in a Federal election by any means (other than those at items 1, 3, 4 or 5)	\$516,020
3. Printing, production, publication or distribution of any material (other than at item 1 or Item 2 above) that is required by section 328 or 328A of the [<i>Electoral Act 1918 (Cth)</i>] to include a name, address or place of business	\$24,850
4. Broadcast of political matter in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the <i>Broadcasting Services Act 1992</i>	\$17,387
5. Carrying out opinion polling or other research relating to a Federal election or the voting intentions of electors	\$28,416

20. On the same day, 13 October 2009, the National Office also lodged with the Australian Electoral Commission a Donor to Political Party Return for the 2007/2008 financial year ([PUB.002.0039](#)) that was signed by Ms Jackson as National Secretary on 13 October 2009. That return stated that the following donations were made to the 'ALP (NSW)':
- a. \$10,000 on 14 February 2008; and
 - b. \$2,511.40 on 18 February 2008.
21. I sent a Notice to provide information pursuant to paragraph 335(2)(a) of the RO Act ([WIT.JAC.001.0003](#)) to Ms Jackson under cover of a letter dated 29 April 2010 ([WIT.JAC.001.0006](#)). That Notice sought:
- a. An itemised breakdown of all expenditure disclosed by the National Office and falling within the categories disclosed in the Annual Return Relating to Political Expenditure for the 2006/2007 financial year ([PUB.002.0030](#)) that was lodged with the Australian Electoral Commission on 13 October 2009, including the date, nature and purpose of each expense, whether such expense was authorised and, if so, how and when such authorisation occurred;
 - b. An itemised breakdown of all expenditure disclosed by the National Office and falling within the categories disclosed in the Annual Return Relating to Political Expenditure for the 2007/2008 financial year ([PUB.002.0036](#)) that was lodged with the Australian Electoral Commission on 13 October 2009, including the date, nature and purpose of each expense, whether such expense was authorised and, if so, how and when such authorisation occurred;
 - c. An itemised breakdown of all expenditure falling within the categories disclosed by the National Office in its Donor to Political Party Return for the 2007/2008 financial year ([PUB.002.0039](#)) that was lodged with the Australian Electoral

- Commission on 13 October 2009, including the nature of each gift or donation and whether or not each donation included the provision of free goods or services other than in the normal course of business; and
- d. Information as to whether the National Office has lodged a Donor to Political Party Return for the 2006/2007 financial year with the Australian Electoral Commission and, if it has not, whether it proposes to do so.
22. A response to the Notice to provide information was received from Mr Ken Fowlie of Slater & Gordon on behalf of the National Office on 14 May 2010 ([HSUNO.016.0001](#)). That response set out the following:
- a. Attachments containing an itemised breakdown of all expenditure falling within the amounts disclosed by the National Office in its Annual Return Relating to Political Expenditure financial year 2006/2007;
- b. Attachments containing an itemised breakdown of all expenditure falling within the amounts disclosed by the National Office in its Annual Return Relating to Political Expenditure financial year 2007/2008;
- c. A tax invoice from the ALP-NSW Branch made out to the HSU for \$12,511.40 being for 'advertising paid by ALP NSW Head Office relating to Dobell FEC' which was declared as two separate donations as payments in made in two parts of \$10,000 and \$2,511.40; and
- d. Advice that no Donor to Political Party Return has been lodged by the National Office for the 2006/2007 financial year and there was no present intention to do so.
23. Despite the fact that returns were lodged with the Australian Electoral Commission on 13 October 2009, it took another 22 months, until 8 August 2011, before the financial return for the financial year ended 30 June 2007 was lodged with FWA. The financial documents that were lodged contained, in particular:
- a. An operating report signed by Ms Jackson and dated 21 July 2011 ([FWA.009.0001](#) at 0002); and
- b. A committee of management statement which was signed by Ms Jackson on 21 July 2011 and which states that a resolution was passed by the committee of management on 21 June 2011 ([FWA.009.0001](#) at 19).

Compliance with Part 3 of Chapter 8 of the RAO Schedule

24. Despite the fact that the National Office reporting unit had no members (which is discussed at paragraphs 5 to 8 of chapter 13), certain provisions in Part 3 of Chapter 8 of the RAO Schedule continued to apply to the reporting unit. The reporting unit was required to keep such records as correctly record and explain the transactions and financial position of the reporting unit,²⁶⁷ to cause an operating report to be prepared²⁶⁸ and to cause a GPFR to be prepared in accordance with

²⁶⁷ Section 252 of the RAO Schedule.

²⁶⁸ Section 254 of the RAO Schedule.

Australian Accounting Standards.²⁶⁹ The Reporting Guidelines also required the reporting unit to cause to be prepared a committee of management statement,²⁷⁰ which forms part of the GPFR.²⁷¹ While these obligations are placed upon the reporting unit, Sub-rules 32(e) to (j) require the National Secretary to undertake tasks associated with financial reporting.

25. The requirements regarding the preparation of a GPFR and an operating report are set out in subsection 253(1) and 254(1) respectively.

253 Reporting unit to prepare general purpose financial report

- (1) As soon as practicable after the end of each financial year, a reporting unit must cause a general purpose financial report to be prepared, in accordance with the Australian Accounting Standards, from the financial records kept under subsection 252(1) in relation to the financial year.
- (2) The general purpose financial report must consist of:
 - (a) financial statements containing:
 - (i) a profit and loss statement, or other operating statement; and
 - (ii) a balance sheet; and
 - (iii) a statement of cash flows; and
 - (iv) any other statements required by the Australian Accounting Standards; and
 - (b) notes to the financial statements containing:
 - (i) notes required by the Australian Accounting Standards; and
 - (ii) information required by the reporting guidelines (see section 255); and
 - (c) any other reports or statements required by the reporting guidelines (see section 255).
- (3) The financial statements and notes for a financial year must give a true and fair view of the financial position and performance of the reporting unit. This subsection does not affect the obligation for a financial report to comply with the Australian Accounting Standards.

²⁶⁹ Subsection 253(1) of the RAO Schedule.

²⁷⁰ Paragraph 24 of the second Reporting Guidelines.

²⁷¹ Paragraph 253(2)(c) of the RAO Schedule.

Note 1: This section is a civil penalty provision (see section 305).

Note 2: The Australian Accounting Standards may be modified for the purposes of this Act by the regulations.

Note 3: If the financial statements and notes prepared in compliance with the Australian Accounting Standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph (2)(b).

254 Reporting unit to prepare operating report

(1) As soon as practicable after the end of each financial year, the committee of management of a reporting unit must cause an operating report to be prepared in relation to the financial year.

(2) The operating report must:

- (a) contain a review of the reporting unit's principal activities during the year, the results of those activities and any significant changes in the nature of those activities during the year; and
- (b) give details of any significant changes in the reporting unit's financial affairs during the year; and
- (c) give details of the right of members to resign from the reporting unit under section 174; and
- (d) give details (including details of the position held) of any officer or member of the reporting unit who is:
 - (i) a trustee of a superannuation entity or an exempt public sector superannuation scheme; or
 - (ii) a director of a company that is a trustee of a superannuation entity or an exempt public sector superannuation scheme; and

where a criterion for the officer or member being the trustee or director is that the officer or member is an officer or member of a registered organisation; and

- (e) contain any other information that the reporting unit considers is relevant; and
- (f) contain any prescribed information.

(3) To avoid doubt, the operating report may be prepared by the committee of management or a designated officer.

Note: This section is a civil penalty provision (see section 305).

26. Both of these subsections require preparation of the documents 'as soon as practicable after the end of each financial year'. The dictionary definition of the word 'practicable' is 'capable of being put into practice, done, or effected, especially with the available means or with reason or prudence; feasible'.²⁷²

Compliance by Ms Jackson, as National Secretary, with Rule 32

27. Sub-rule 32(e) requires the National Secretary to 'keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the

²⁷² Macquarie Concise Dictionary, 4th edition, 2006.

Workplace Relations Act 1996'. This is a broad requirement which, in my view, does not just relate to the requirement in subsection 252(1) of the RAO Schedule that a reporting unit keep financial records that record and explain transactions and that will enable a GPFR to be prepared and the accounts to be audited.

The Keeping of Financial Records

28. Section 252 of the RAO Schedule requires a reporting unit to keep records, and to retain such records for a period of seven years, as follows:

252 Reporting unit to keep proper financial records

- (1) A reporting unit must:
- (a) keep such financial records as correctly record and explain the transactions and financial position of the reporting unit, including such records as are prescribed; and
 - (b) keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253; and
 - (c) keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited under this Part.

...

- (5) An organisation must retain the financial records kept under subsection (1) for a period of 7 years after the completion of the transactions to which they relate.

29. "Financial records" are defined in section 6 of the RAO Schedule as follows:

financial records includes the following to the extent that they relate to finances or financial administration:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;
- (d) a document.

30. Section 6 of the RAO Schedule gives a broad definition of 'financial records' that includes 'a document', 'financial reports' and 'any other record of information' to the extent that they 'relate to finances or financial administration'. In my view the operating report and GPFR would both fall within the definition of 'financial records'. It goes without saying that most of the documents that make up the GPFR (namely the statement of financial performance, statement of financial position, statement of equity and statement of cash flows) contain information relating to the finances of the reporting unit. These documents would clearly fall within the definition of 'financial records'. The committee of management statement, which is part of the GPFR,²⁷³ would in my view also fall within the definition of 'financial records' as it contains information about both the finances and financial administration of the reporting unit,

²⁷³ Paragraph 253(2)(c) of the RAO Schedule.

such as whether financial statements comply with Australian Accounting Standards and the Reporting Guidelines, whether they give a true and fair view of financial performance, financial position and cash flows of the reporting unit, whether the reporting unit will be able to pay its debts as and when they fall due et cetera. Similarly, the operating report contains information about the finances and financial administration of the reporting unit. It is required to detail any significant changes during the financial year in the reporting unit's financial affairs, any directorships of superannuation entities, the number of members of the reporting unit (which directly affects the reporting unit's income from membership subscriptions) and the number of employees of the reporting unit (which affects wages expenses).

31. As a result, the records that Ms Jackson, as National Secretary, is required by Sub-rule 32(e) to keep (or cause to be kept) include not only those records that are specified in subsection 252(1) of the RAO Schedule but also other financial records that fall within the definition in section 6 of the RAO Schedule, including the GPFR and operating report. Further, Sub-rule 32(e) requires the National Secretary to keep the records 'pursuant to the provisions of the Workplace Relations Act 1996'.
32. Ms Jackson stated in a letter to the Industrial Registrar dated 30 April 2009 ([FWA.005.0050](#)) that she was not able to sign the committee of management statement that had been prepared for Mr Thomson's signature (but which had never been executed by him) 'as I was not the National Secretary at the time'. As bodies corporate, however, registered organisations (and the reporting units that make up those organisations) must by necessity act through their elected office holders from time to time. Sub-rule 32(e) requires the person who is National Secretary, from time to time, to keep, or cause to be kept, records required pursuant to the *Workplace Relations Act 1996*. As a result, despite the fact that the outstanding financial report for the year ended 30 June 2007 related to a period during which Mr Thomson was National Secretary and that Mr Thomson had resigned from that office on 14 December 2007 without the reporting unit having prepared an operating report or a committee of management statement, the obligations under subsection 253(1) and 254(1) to prepare a GPFR and operating report remained. With the resignation of one National Secretary and assumption of that office by another, Sub-rule 32(e) required the new National Secretary to assume the obligations which, until the date of resignation, had lain with the former National Secretary.
33. It is clear from the number of documents that were provided by the HSU to me and from information that has been given by various people during interview that many of the records of the National Office could not be located in late 2007 or early 2008, although the reason for this is unknown. Whatever the reason for the lack of records, it is clear that their absence impeded Ms Jackson's capacity to meet outstanding obligations that were imposed upon her by the Rules regarding compliance with Part 3 of Chapter 8 of the RAO Schedule. Further, in a letter dated 12 May 2008 ([HSUNO.018.0009](#)) Mr Iaan Dick, the National Office auditor, advised Ms Jackson of the results of an 'Exit Audit' that he had conducted pursuant to a resolution of National Executive at its meeting on 6 December 2007 ([HSUNO.024.0014](#)) and a letter of instruction from Ms Jackson dated 14 April 2008. In a separate letter also dated 12 May 2008 ([HSUNO.018.0023](#)) Mr Dick further advised Ms Jackson that,

whilst conducting the Exit Audit, he had become aware of a Commonwealth Bank credit account of which he had previously been unaware. Mr Dick advised that statements for that account showed 'a considerable number of cash withdrawals' for which he had seen no supporting documents. As a result of Mr Dick's Exit Audit, in a letter dated 11 December 2008 ([HSUNO.018.0001](#)) the HSU commissioned Slater & Gordon, solicitors, to provide a report by an 'appropriate forensic accounting firm' regarding 'an examination of possible irregularities in the expenditure of the HSU for the period 16 August 2002 to 31 January 2008'. Slater & Gordon subsequently engaged the accounting and auditing firm BDO Kendalls and the BDO Kendalls Report ([HSUNO.019.0050](#)) was provided to FWA (some six months after it was commissioned) under cover of a letter from Mr Fowlie of Slater & Gordon dated 16 June 2009 ([HSUNO.019.0049](#)).

34. The requirements in subsections 253(1) and 254(1) of the RAO Schedule regarding preparation of a GPFR and operating report respectively are framed in such a way that consideration must be given to the extent to which production of those documents was 'practicable'. As set out above at paragraph 26 of this chapter, the term 'practicable' is defined as meaning 'capable of being put into practice, done, or effected, especially with the available means or with reason or prudence; feasible'.²⁷⁴ In circumstances where many records have been lost or are missing, financial irregularities have been identified that have apparently occurred over a period of more than five years and independent advisors have been engaged to undertake a professional audit, it could reasonably be said that the production of financial records for the 2006/2007 financial years was not capable of being done with the available means.
35. Four months after the BDO Kendalls report was provided to FWA, however, on 13 October 2009 the HSU was able to piece together sufficient financial information to enable it to lodge Annual Returns Relating to Political Expenditure for the 2006/2007 and 2007/2008 financial years plus a Donor to Political Party Return for the 2007/2008 financial year with the Australian Electoral Commission.
36. Mr Fowlie of Slater & Gordon had advised FWA in a letter dated 2 July 2009 ([HSUNO.019.0046](#)) that on 11 May 2009 the National Office had appointed Clements Dunne & Bell as its new auditors. Mr Andrew Wehrens of Clements Dunne & Bell spoke to an FWA official by telephone on 16 March 2010 and stated that he did not expect the outstanding 2006/2007 financial report to be lodged with FWA until early May 2010 ([WIT.WEH.002.0001](#)). More than a year later, in interview on 11 April 2011, Ms Jackson told me in interview that the outstanding financial report would likely be lodged 'in the next two or three weeks' (Jackson (2) PN 440). However it was not until 21 July 2011 that the operating report was prepared and the committee of management statement was signed by Ms Jackson. On 8 August 2011, the financial report for the year ended 30 June 2007 ([FWA.009.0001](#)) was lodged with FWA.
37. The committee of management statement requires the committee of management to form an opinion, and to pass a resolution regarding, matters such as whether (most

²⁷⁴ Macquarie Concise Dictionary, 4th edition, 2006.

pertinently) financial records of the reporting unit have been kept and maintained in accordance with the RAO Schedule. The resolution must also address whether financial statements and notes comply with Australian Accounting Standards and the Reporting Guidelines and give a true and fair view of the financial performance, financial position and cash flows of the reporting unit for the financial year to which they relate, and whether there are reasonable grounds to believe that the reporting unit will be able to pay its debts as and when they become due and payable. A reporting unit can only pass a resolution, however, that is accurate within the circumstances in which it finds itself at the time that the resolution is passed. If, for example, there are no (or insufficient) records available that would correctly record and explain transactions, allow a GPFR to be prepared and allow the accounts of the reporting unit to be conveniently and properly audited then the obligation upon the reporting unit is to pass a resolution to that effect. Similarly, if the absence of records means that it is not possible to pass a resolution that any GPFR that is prepared will present a 'true and fair view' then a resolution to that effect must be passed by the committee of management. While it is always anticipated by the regulator that a committee of management will be able to be satisfied of the matters set out in paragraph 25 of the second Reporting Guidelines, it will not be possible in all circumstances.

38. For this very reason, the committee of management statement that was signed by Ms Jackson on 21 July 2011 ([FWA.009.0001](#) at 19) set out that the resolution that was passed by the committee of management of the National Office on 21 June 2011 could not state that the committee of management was satisfied of certain matters set out in paragraph 25 of the second Reporting Guidelines. In particular, the statement that was lodged on 21 July 2011 contained the following:

The Committee of Management declares in relation to the GPFR that in its opinion:

...

- (c) They cannot be satisfied that the financial statements and notes give a true and fair view of the financial performance, financial position and cashflows of the reporting unit for the financial year to which they relate;

...

- (e) During the financial year to which the GPFR relates and up to 30 June 2009:

...

- (2) They cannot be satisfied that the financial affairs of the reporting unit have been managed in accordance with the rules of the organisation including the rules of a branch concerned; and
- (3) They cannot be satisfied that financial records of the reporting unit have been managed in accordance with the RAO Schedule and the RAO Regulations; and
- (4) They cannot be satisfied that financial records of the reporting unit have been kept, as far as practicable, in a consistent manner to each of the other reporting units of the organisation;...

39. Ms Jackson provided an explanation in interview on 11 April 2011 for the HSU's delay in lodging its financial report for the year ended 30 June 2007 that the auditor, Mr Wehrens (Jackson (2) PN 449):

... has had to trawl through all the same stuff that you guys had to do it, and he's finding it quite difficult about how to prepare it. We have then sought guidance from various - we sought guidance from you as well about what we should and shouldn't put in. I just think he's having problems with putting it together...

40. The auditor's report for the year ended 30 June 2007, by necessity, also contained a disclaimer of opinion as a result of the circumstances under which the audit was conducted. The disclaimer was in the following terms ([FWA.009.0001](#) at 22):

Basis for Disclaimer of Auditor's Opinion

We were not appointed as auditors of the Union until 11 May 2009. At this time certain matters were being investigated by the Australian Industrial Registrar and we were advised that the books and records of the Union had been removed from their offices and had passed through the hands of several other organisations.

As the remaining accounting and statutory records are not adequate to permit the application of necessary audit procedures, we are unable to obtain all the information and explanations we require in order to form an opinion on the financial report.

Disclaimer of Auditor's Opinion

In our opinion, because of the existence of the limitation on the scope of our work, as described in the preceding paragraph, and the effects of such adjustments, if any, as might be have been determined to be necessary had the limitation not existed, we are unable to and do not express an opinion as to whether the financial report of Health Services Union National Office is in accordance with the Workplace Relations Act 1996, including:

- (a) giving a true and fair view of the Health Services Union National Office's financial position as at 30 June 2007 and of its performance for the year ended on that date; and
 - (b) complying with Australian Accounting Standards (including the Australian Accounting Interpretations) and the Workplace Relations Act 1996.
41. I recognise that preparation of the documents that make up a GPFR was difficult in the circumstances in which the HSU found itself after the resignation of Mr Thomson but the task was nevertheless one that was able to be completed, as evidenced by the financial report that was lodged with FWA on 8 August 2011. While preparation of the GPFR and the conduct of its audit was a more onerous task in those circumstances, it was able to be done and, in my view, should have been done within a shorter timeframe than the 14 months that it took from the date that the auditor had indicated that the financial report would be lodged with FWA and the date that Ms Jackson signed the committee of management statement and the operating report.
42. Since the obligation is placed upon the National Secretary from time to time to produce the GPFR and operating report pursuant to the provisions of the RAO Schedule (until 30 June 2009) and RO Act (from 1 July 2009), it was incumbent upon

Ms Jackson once she took up office as National Secretary in December 2007 to produce a GPFR and an operating report 'as soon as practicable' after the end of the 2006/2007 financial year. While I accept that it was not practicable for Ms Jackson to produce (or cause to be produced) a GPFR and an operating report before the date upon which the auditor advised FWA that the reports would be lodged in May 2010, I have set out below my view that there was a period of more than seven months between 30 August 2010 and 11 April 2011 during which Ms Jackson took no steps to finalise the 2007 Financial Report.

Contravention by Ms Jackson of subsection 285(1) of the RAO Schedule

43. It is necessary for me to consider, under subsection 285(1) of the RAO Schedule, what degree of care and diligence would have been exercised by a reasonable person where that reasonable person was an officer of the National Office in the particular circumstances of the National Office and occupying the position of, and assuming the same responsibilities as, the National Secretary. Ms Jackson was required by subsection 285(1) to exercise her powers and discharge her duties with the degree of care and diligence of that reasonable person.
44. Even though the RAO Schedule placed the obligation to prepare an operating report and a GPFR upon the reporting unit, as the National Secretary, Ms Jackson was charged by Sub-rule 32(e) with preparation of those documents as soon as practicable after the end of the 2006/2007 financial year.

Ms Jackson's submissions

45. Ms Jackson states that she can identify only three incriminating matters which have been relied upon in reaching a preliminary conclusion in relation to the contravention which was alleged against her:
 - a. the fact that in her letter to me of 30 April 2009 she stated that she was "not able to sign the committee of management statement that had been prepared for Mr Thomson's signature" (but which had not been executed by him) "as I was not the National Secretary at the time";
 - b. the fact that the HSU was able to lodge a return with the Australian Electoral Commission itemising political expenditure in the same period; and
 - c. the fact that the HSU auditor, Mr Wehrens, told an FWA official on 16 March 2010 that he did not expect the outstanding 2007 financial report to be lodged with FWA until early May 2010, and that in April 2011 Ms Jackson told me at interview that the outstanding financial report would likely be lodged in two or three weeks, and yet it was not lodged for a further four months.

First matter - Ms Jackson's statement that she was "not able to sign the committee of management statement prepared for Mr Thomson's signature 'as I was not the National Secretary at the time'"

46. Ms Jackson contends that her statement in her letter of 30 April 2009 that "[she was] not able to sign the committee of management statement that had been prepared for Mr Thomson's signature ... as I was not the National Secretary at the time" was not a

statement of an intention to rely upon that fact as the basis for an outright refusal to sign any financial return for the 2006/2007 year.

47. The letter in question (HSUNO.005.0050) relevantly stated (emphasis added):

I enclose a copy of the report of the auditor in relation to the inspection and audit of the financial records of the HSU for financial year 2007, together with a copy of the general purpose financial report and the operating report.

The Designated Officer's Certificate and the Certificate of the Committee of Management have not been signed by the then National Secretary, **and I am not able to sign them as I was not the National Secretary at the time**. However I have examined the records of the HSU and can confirm that the documents lodged are copies of the documents provided to the National Executive at its meeting on 6 December 2007.

I am unable to state whether the documents were provided to members as I do not know, but have now had them posted on the Union's website.

I have asked the National Auditor to urgently prepare documents which meet the requirements of s257 for financial year 2008 ...

48. In my view the bolded words in Ms Jackson's statement above are ambiguous.

49. It is true, as Ms Jackson claims, that, in terms, the statement is no more than a statement that she is unable to sign the enclosed documents (which had been prepared by Mr Thomson) because she was not the National Secretary at the time.

50. However the letter does not suggest that Ms Jackson would be prepared to undertake the task of preparing such reports afresh, and to sign such reports. Indeed, the fact that Ms Jackson then goes on to state that she will have reports for the 2008 year prepared provides some implicit support for the conclusion that she did not intend to do so for the 2007 year.

51. Ms Jackson's letter was a response to a letter dated 9 April 2009 from the then Industrial Registrar (FWA.005.0078). That letter relevantly stated:

Outstanding financial returns for 2007 and 2008

On 6 April 2009, I asked you to lodge the outstanding financial returns for the HSU National Office for the years ending 30 June 2007 and 2008, by 14 April 2009.

In your letter of 7 April 2009, you noted that the failure to lodge the financial return for 2007 was an oversight which will be corrected urgently. It is important that this occur expeditiously.

52. In my view, either construction of the bolded words in Ms Jackson's response would be equally responsive to the terms of the Industrial Registrar's request.

53. Ms Jackson submits that the bolded words in her response should be understood as a statement that she had no basis to suppose that the unexecuted 2007 financial return prepared by Mr Thomson was reliable. She says that at 30 April 2009 she knew that those documents were undoubtedly incorrect because they included as Union expenses amounts that were not properly Union expenses, such as payments to brothels. She submits that:

In those circumstances, no reasonable person in my condition could have been reasonably satisfied that the unexecuted 2007 Financial Return prepared for Craig Thomson's execution was a true and fair document that satisfied the requirements of the Act in accordance with the usual form of certificate that I would be required to sign under pain of sanction for false certification. Indeed, knowing what I knew, I say it would have been a dereliction of my duty of due care and diligence for me to sign those unexecuted financial returns prepared under the control of Craig Thomson. I instructed counsel who proposed (and I relied upon his advice) to FWA a sequence that would have seen the unexecuted 2007 Financial Return prepared for Craig Thomson's execution lodged with Fair Work Australia in a fashion that would justify its receipt being treated as a sufficient attempt at compliance with the statutory obligation to be accepted by FWA (and thereby avoid the need to prepare a fresh 2007 Financial Return). FWA rejected that proposal. In the particular circumstances, there was no proper option available to me other than to have the 2007 Financial Return prepared afresh (and, as your letter of 15 July 2009 to Slater and Gordon demonstrates, you knew that as well). That was the legal advice I received from the HSU's counsel, Mr Langmead. It was he who drafted my letter of 20 April 2009.

54. Ms Jackson states that:

... from mid 2009 Fair Work Australia was aware, and had concurred with my decision, made on professional advice, I would not execute the unexecuted returns prepared under the control of Craig Thomson but would instead have the 2007 Financial Return prepared afresh by the Union's (new) auditor and would execute and lodge them when they were prepared. ...your letter of 15 July 2009 implicitly endorses my decision.

55. The letter of 15 July 2009 referred to by Ms Jackson (FWA.005.0069) is a letter to Slater & Gordon in which I said the following (emphasis added):

In considering the financial report for the year ended 30 June 2007, on 7 May 2009 the HSU National Office lodged financial documents that included a Committee of Management Statement, Operating Report and Designated Officer's certificate all of which were unsigned and undated. The lodged documents also contained an audit report from Mr Dick that was signed but not dated. Mr Dick subsequently advised in his letter of 4 June 2009 that he did view a signed Committee of Management Statement in November 2007 but that Ms Jackson has not been able to find that Statement.

In light of the above, it appears that **the National Office has two options with respect to the financial report for the year ended 30 June 2007:**

...

2. To prepare a fresh set of financial documents that have been signed and dated as required by the RO Act and to have the GPFR (which must include the Committee of Management Statement) audited by the new National auditor.

...

56. The bolded words are consistent with Ms Jackson's claim that FWA had implicitly endorsed the approach which she took.

57. Although Ms Jackson's letter of 30 April 2009 is ambiguous, I accept that Ms Jackson's statement (that she could not sign the 2007 returns prepared by Mr Thomson as she was not National Secretary at the time) was a statement of her view, as at 30 April 2009, that she could not sign any return for the 2007 year.

58. I also accept Ms Jackson's submission that she did not, on 30 April 2009, indicate an unwillingness to sign any financial reports for the 2007 year (as distinct from an unwillingness to sign any such reports which had been prepared by Mr Thomson).

Second matter - the HSU was able to lodge a return with the Australian Electoral Commission itemising political expenditure in the same period;

59. Ms Jackson makes the short point that the content of the report provided to the AEC is significantly different to the contents of the GPFR and operating reports which the National Office was required to file with FWA. In particular she states that the National Office was only required to report on amounts of National Office funds which had been expended for political purposes, and was not a comprehensive report about the financial position of, and transactional record of, the National Office. Ms Jackson submits that the information required by the AEC reports was able to be isolated from banking records available from the Union's banks.
60. I accept this submission.
61. Ms Jackson makes a further point that she relied on professional advisors to prepare both sets of documents, and the fact that those advisors could finalise the AEC return by 13 October 2009 but could not finalise the 2007 Financial Return until mid 2011 was irrelevant.

Third matter - statements by the HSU auditor to FWA on 16 March 2010 and by Ms Jackson in April 2011

62. Ms Jackson advances a number of matters in response to this point.
63. First, Ms Jackson states that at no time did Mr Wehrens tell her that he expected to complete preparation of the fresh 2007 financial returns by early May 2010, "*let alone that he had said this to FWA*".
64. Second, Ms Jackson states that from 15 July 2009 (being the date of my letter referred to at paragraph 55 above) she believed that FWA knew that she was doing everything she could to investigate and correct the irregularities in the accounts of the Union and to have the auditor prepare a fresh 2009 Financial Return.
65. Third, Ms Jackson sets out a very extensive chronology of events from 14 December 2007 (the date of Mr Thomson's resignation as National Secretary) and 14 December 2011 (the date of my letter of alleged contraventions to Ms Jackson). Ms Jackson contends that this chronology
- ... is important to an understanding that I was doing my best, in difficult circumstances, to investigate and take action to correct the irregularities in the Union's accounts that I had discovered and reported to Fair Work Australia.
66. Although Ms Jackson's chronology covers the four year period from 14 December 2007 to 14 December 2011, the proposed finding against Ms Jackson was framed in such a way that the critical issue is whether, between May 2010 and August 2011, Ms Jackson was exercising the degree of care and diligence that would have been exercised by a reasonable person in the position of National Secretary in the

circumstances of the National Office, in respect of her efforts to have the 2007 Financial Report lodged with FWA.

67. In this regard Ms Jackson submits that:

- a. it was obvious from a fair reading of Ms Carruthers' file note of her conversation with Mr Wehrens on 16 March 2010 that Mr Wehrens still had a substantial amount of work to do to complete all of the Financial Returns for the 2007, 2008, and 2009 financial years and that, if he needed to first finish the financial statements for multiple catholic schools, there was little prospect of him doing so by "early May 2010";
- b. FWA was aware that Mr Wehrens was working on all three of these returns at the same time, and expressly left it for him to determine with the HSU its priorities and timeframes for lodging the outstanding financial reports;
- c. between May and August 2010 there was a series of communications between Mr Wehrens and the National Office regarding the obtaining of information necessary for the completion of the 2007 Financial Reports;
- d. Mr Wehrens also provided a "template document" to FWA on 20 May 2010 for comment, which FWA responded to on 24 May 2010;
- e. On 28 February 2011 Mr Wehrens emailed Ms Jackson, in response to an enquiry from her, and said "*Have finally cleared the decks will call you tomorrow*" and again on 7 March 2011, and said "*There are still several items outstanding which we need to finalise the audits and reports for the IR*";
- f. On 11 April 2011 Ms Jackson attended her second interview in relation to this investigation. During that interview she stated that Mr Wehrens had told her "about three weeks ago or something" that he was nearly finished preparing the 2007 Financial Report, and that she imagined "*we'll have something in the next two or three weeks back to you, all of them completed by then*". In response I told Ms Jackson during the interview that the last contact FWA had had with Mr Wehrens was on 24 May 2010.
- g. The chronology prepared by Ms Jackson (and the supporting documents provided by Ms Jackson) demonstrate a flurry of communications between the National Office, Mr Wehrens, and Mr Langmead, commencing from 11 April 2011 (the date of Ms Jackson's interview with FWA), and continuing through May, June and July 2011;
- h. Mr Wehrens provided the draft 2007 accounts to Ms Jackson on 20 July 2011 for presentation at the National Executive meeting the following day, where they were approved by the National Executive, and signed by Ms Jackson, who commenced leave the following day;
- i. Ms Bradbury, as Acting National Secretary, signed the designated officer's certificate on 28 July 2011 and filed the 2007 Financial Return on 8 August 2011.

68. Ms Jackson additionally submits:
- a. FWA has accepted that many of the records of the National Office could not be located in late 2007 or early 2008, and that this impeded Ms Jackson's capacity to meet outstanding obligations imposed on her by the Rules regarding compliance with Part 3 of Chapter 8 of the RAO Schedule. FWA has also agreed that the exit audit conducted by Mr Dick had uncovered a Commonwealth bank account of which Mr Dick was previously unaware, and which showed a considerable number of cash withdrawals for which there were no supporting documents, which resulted in the union commissioning Slater & Gordon to provide a report on possible irregularities in the expenditure of the HSU between 16 August 2002 and 31 January 2008, which was received on 16 June 2009;
 - b. Slater & Gordon, on behalf of the HSU, sought guidance from FWA in relation to resolving the problems about the 2007 Financial Return. In response on 15 July 2009 FWA specifically identified "*the discovery of fraud or errors that show that the financial statements are incorrect*" as one example of adjusting events after a reporting date that require an entity to make adjustments to financial statements. This meant that the discovery of a CBA Mastercard in Mr Thomson's name which was unknown to the auditor "had the inevitable consequence" that the unexecuted 2007 financial reports prepared by Mr Thomson could not be relied on as complying with reporting requirements, which was advice she obtained from Mr Dick, as well as from Mr Langmead, and relied upon;
 - c. In those circumstances the only proper alternative was to arrange the preparation of a fresh 2007 Financial Return. Ms Jackson relied upon advice of her auditor and legal advisor in this respect. In light of the missing records this could not be done until the matters revealed by the exit audit had been properly investigated and the effect of any fraud assessed, and it was this problem which became the subject of communication between FWA and the HSU during the first half of 2009. FWA's letter to Slater & Gordon of 15 July 2009 indicated that FWA recognised this difficulty, and concurred with Ms Jackson's decision to prepare a fresh 2007 Financial Report.
69. Ms Jackson's submissions that are summarised above in paragraphs 62 to 68 are largely unobjectionable. However, Ms Jackson then goes on to state:
- You have accepted the difficulties that the Union experience (sic) in obtaining financial records and other documents up until May 2011.
70. The basis on which she has made this claim is not clear from Ms Jackson's submission, or from the evidence that FWA has seen. Further, while the chronology prepared by Ms Jackson does demonstrate that she (either personally, or through other HSU personnel) was taking action to obtain financial records and other documents:
- a. between May 2010 and August 2010; and
 - b. from April 2011 until August 2011

the chronology (and supporting evidence) does not identify what (if indeed any) steps were taken by Ms Jackson (or others) between August 2010 and April 2011 to obtain missing financial records and documents.

71. On the basis of the material that has been provided by Ms Jackson, I infer that between August 2010 and April 2011 she considered that Mr Wehrens was preparing the 2007 Financial Report, and that Mr Wehrens had not told Ms Jackson otherwise. In my view, however that is not the same thing as accepting that, up until May 2011, the National Office had been experiencing difficulties in obtaining relevant financial documents. Indeed the only evidence provided by Ms Jackson that Mr Wehrens sought any further information from the National Office after 30 August 2010 is his email to Ms Jackson of 7 March 2011. Ms Jackson's chronology also draws attention to Mr Wehrens' emails to her of 18 May 2011 and 20 June 2011 but neither of these emails seeks any further information from Ms Jackson in relation to the preparation of the 2007 Financial Return.
72. Ms Jackson's chronology of events also includes a statement that "in late 2010 - shortly before [Doug Williams] ceased to be the Registrar of the AIRC" she had a "private conversation" with Mr Williams. This alleged conversation does not appear to have related at all to Ms Jackson's difficulties in having the 2007 Financial Reports prepared and filed. Nor does Ms Jackson identify the relevance of this alleged conversation. Accordingly I have not given any consideration to the alleged conversation, save to note that Mr Williams ceased to be the Industrial Registrar on 31 December 2009, not "late 2010", as claimed by Ms Jackson.
73. Ms Jackson then breaks the period between May 2010 and August 2011 up into several shorter periods, and offers particular reasons for the delay which are referable to each of those periods.

Delay between 16 March 2010 and "early May 2010"

74. Ms Jackson submits with respect to the period between 16 March 2010 and early May 2010 that:
 - a. in early 2009 she retained Mr Langmead of counsel to liaise with FWA regarding the problems which were preventing lodgement of the 2007 Financial Returns and Mr Langmead had discussions with the Registry at this time. She relied upon legal advice from Mr Langmead in relation to her communications with FWA about this issue, and about the actions which she should take to address these problems;
 - b. from at least mid 2009 until July 2011 she considered that she required professional auditing skills to undertake the preparation of the 2007 Financial Report, and obtained and relied upon legal advice from Mr Langmead in relation to those issues. Moreover those difficulties had been raised with FWA in early 2009, and she had instructed Mr Dick to prepare a fresh Financial Report for 2007 prior to his resignation, which in turn necessitated a tender process to obtain a new auditor, and in turn the appointment of Mr Wehrens, who she instructed to prepare a fresh 2007 Financial Report;

- c. Mr Wehrens and FWA were in communication with each other about the preparation of the relevant financial returns and she relied upon Mr Wehrens to finalise the preparation of appropriate documents in consultation with FWA.
 - d. Mr Wehrens contacted her, and Ms Bradbury, to request further documentation or information on about five occasions in the period following March 2010. On "most" such occasions she would ask Mr Wehrens how the 2007 returns were going and he would tell her where he was up to.
 - e. She also had several conversations with Mr Wehrens in which he said he had had dealings with FWA about the form of words on the required statutory certificate (which I take to be a reference to the committee of management statement).
75. As a result of the matters set out in paragraph 74, Ms Jackson says that she reasonably believed that Mr Wehrens was continuing to work on the preparation of a fresh 2007 Financial Return and that "he had the matter in hand with Fair Work Australia" to FWA's satisfaction, and she had no particular reason to believe that the matter had dragged on after May 2010. She says that Ms Carruthers' email to Mr Wehrens of 24 May 2010 (which I take to be a reference to a letter of that date which is FWA.001.0001) and my letter of 15 July 2009 to Slater & Gordon (FWA.005.0069) corroborated this view. Moreover, both documents left it open to Ms Jackson to continue with the option of preparing a fresh 2007 Financial Report.
76. Ms Jackson says that the context of Ms Carruthers' "email" of 24 May 2010 suggests FWA must be taken to have known there would be an inevitable further material period of delay following 24 May 2010 attributable to Mr Wehrens continuing his preparation of the 2007 Financial Return.
77. Accordingly, Ms Jackson says that prior to 11 April 2011 she believed that FWA had ceased "chasing" the lodgement of the 2007 Financial Return and on that basis she believed that Mr Wehrens was proceeding with the "very difficult and troublesome job" of preparing the 2007 Financial Report in a way which FWA had assessed as proper.
78. In my view, it is reasonable to infer from this evidence regarding communications between Ms Jackson, Mr Wehrens, Mr Langmead and FWA, that, between March and May of 2010 Ms Jackson, through her legal and auditing advisors, was taking steps to seek to comply with the National Office's obligations under the RAO Schedule in respect of the 2007 Financial Returns.
79. However, the information which is set out above at paragraphs 75 to 77 seeks to advance an argument that Ms Jackson was entitled to regard the cessation of inquiries from FWA about the progress of those efforts after July 2010 as evidence that (without more) Mr Wehrens was progressing the preparation of the 2007 Financial Reports in a manner, and in accordance with a time frame, which was known to FWA and considered acceptable by it. I am unable to accept this contention. Neither Ms Jackson's chronology, nor any of the supporting documents provided by her, suggests that Mr Wehrens made a statement to Ms Jackson at any time after 24 May 2010 and before 11 April 2011 to the effect that he had been in

communication with FWA about the 2007 Financial Return. Indeed, on one view the email from Mr Wehrens to Ms Jackson dated 28 February 2011, in which Mr Wehrens says "*Kathy. Have finally cleared the decks will call you tomorrow...*", suggests a contrary inference.

80. When the evidence, including the matters raised by Ms Jackson, is considered as a whole, it does not identify any steps taken by Ms Jackson between August 2010 and 11 April 2011 to progress the preparedness of the 2007 financial return. Nor does this evidence identify any advice received from Mr Wehrens (or from any other person) during this period which would have led a reasonable person to conclude that it was reasonable to allow such a considerable period of time to elapse without making inquiries of the auditor about his progress in preparing the 2007 Financial Report.

The period between 11 April 2011 and 20 June 2011

81. Ms Jackson advances further submissions about the period from 11 April 2011 to 20 June 2011. In particular Ms Jackson states that:
- a. even when asked about the outstanding 2007 Financial Report on 11 April 2011 I did not express concern about the delay. This was the first indication that she had had which challenged her belief that Mr Wehrens had been in ongoing communication with FWA in connection with solving the many problems associated with finalising the 2007 Financial Report.
 - b. her statement during this interview that the outstanding reports were likely to be lodged "in the next two or three weeks" was made because she understood from Mr Wehrens that he was close to finalising the documents at that time, and it did not occur to her that she should question Mr Wehrens' performance of his professional duties in that regard.
 - c. Ms Jackson acted immediately after her interview on 11 April 2011 by contacting the National Office bookkeeper and tasking her to contact Mr Wehrens to ensure the National Office did whatever it could to expedite completion of the 2007 financial return, and Ms Holt did so that day.
 - d. Mr Wehrens provided the fresh 2007 Financial Return to Ms Jackson on 20 June 2011. Ms Jackson immediately arranged for the legal advice recommended by Mr Wehrens, and organised an executive meeting and had the draft published to members.
82. Ms Jackson also states that it was only on 11 April 2011 that she learned that there had apparently been no contact between Mr Wehrens and FWA since 24 May 2010, but that, at this time "*I believed that I had no realistic choice but to press on with Mr Wehrens finishing the preparation of the documents given his advice that they were almost finalised*".
83. I accept that the evidence that has been put by Ms Jackson does not suggest that she failed to act with reasonable care and diligence between 11 April 2011 and 20 June 2011.

The delay after 21 June 2011

84. In terms of the delay between the approval of the 2007 Financial Return at the National Executive meeting on 21 July 2007 and their lodgement with FWA on 8 August 2011, Ms Jackson advises that she was on leave during this period.
85. I accept that the evidence that has been put by Ms Jackson does not suggest she failed to act with reasonable care and diligence between 21 July 2011 and 8 August 2011.

Other matters relied on by Ms Jackson

86. Throughout her submission, and then in particular at paragraphs [137] and [138] of her submission, Ms Jackson states that she relied at various points on the professional advice given to her by Mr Wehrens and Mr Langmead.
87. Subsection 285(2) of the RAO Schedule provides:
- (2) An officer of an organisation or a branch who makes a judgement to take or not to take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgement if he or she:
- (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material interest in the subject matter of the judgement; and
 - (c) informs himself or herself about the subject matter of the judgement to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the organisation.
- The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.
88. I accept that Ms Jackson followed advice which was given to her by either Mr Wehrens or Mr Langmead and that her judgement had been made in good faith, on the basis of reasonable steps having been taken to inform herself about the subject matter of those judgements. On the information that is before me, there is no basis for concluding that Ms Jackson did not rationally believe that any judgement made in conformity with that advice was in the best interests of the organisation. Further, there is no suggestion that Ms Jackson had a material interest in the subject matter of any judgments which she may have made in relation to the preparation and lodgement of the 2007 Financial Reports.
89. However, as stated above in paragraph 80, I do not accept that either Mr Wehrens, Mr Langmead or any other person provided advice to Ms Jackson which made it reasonable for her to allow seven months to elapse (between August 2010 and 11 April 2011) without making inquiries of the auditor about his progress in preparing the 2007 Financial Report.

Conclusions

90. In my view, when Ms Jackson's response to finding 172 is considered as a whole, it provides a reasonable argument that she was taking appropriate steps to have the 2007 Financial Report completed:
- a. between May 2010 and about August 2010; and
 - b. after 11 April 2011.
91. However, on close inspection, Ms Jackson does not provide any specific evidence that she was taking steps to have the 2007 financial report completed between 30 August 2010 and 11 April 2011. As set out above at paragraph 74.d, Ms Jackson does submit that she spoke to Mr Wehrens on about five occasions after March 2010 when she asked him about his progress on the 2007 Financial Returns, however there is no specific evidence that any of these enquiries occurred between 30 August 2010 and 11 April 2011. That is a period of more than seven months.
92. It does appear from the evidence provided by Ms Jackson, however, that she had tasked Mr Wehrens with the job of preparing this report before this period, and there is no evidence that Mr Wehrens was waiting on Ms Jackson, or the National Office, to provide him with any information or documents during this period. Moreover, Mr Wehrens' statement by email on 28 February 2011 that he has now 'cleared the decks' and would call Ms Jackson the next day, is consistent with the conclusion that during this period Ms Jackson was reliant on Mr Wehrens, as she had tasked him.
93. This interpretation of events suggests that, during the seven months between 30 August 2010 and 11 April 2011, Ms Jackson failed to make regular enquiries of Mr Wehrens about his progress in preparing the 2007 Financial Report. This period itself is longer than the legislation allows for preparation and lodgement of financial statements with the AIR/FWA at the conclusion of each financial year. Further, there is no evidence that Ms Jackson's apparent inactivity during this period was a course which she had been counselled to take by either Mr Wehrens or Mr Langmead (or any other person).
94. In my view the totality of the material provided in response by Ms Jackson establishes that:
- a. because of the irregularities found by Mr Dick and by the Slater & Gordon investigation, it was necessary to commence afresh the task of preparing the 2007 Financial Report (and FWA accepted that this was appropriate);
 - b. this task was considerably hampered by missing documentation;
 - c. Ms Jackson sought, and obtained, advice about this process from both Mr Wehrens and Mr Langmead, and was entitled to rely on this advice;
 - d. between March and August 2010 there was regular communication between Mr Wehrens and the National Office directed toward tracking down missing documentation required by Mr Wehrens to enable him to prepare the 2007 Financial Report;

- e. sometime around the end of August 2010, and until 28 February 2011, Mr Wehrens appears to have been diverted by other work, and he does not appear to have progressed matters during this period, but this was not known by Ms Jackson until 11 April 2011 or at least until 28 February 2011;
 - f. Ms Jackson did not take any steps to enquire about Mr Wehrens' progress in preparing the 2007 Financial Return or to expedite preparation of that return, between August 2010 and 11 April 2011;
 - g. when Ms Jackson was told by FWA on 11 April 2011 that Mr Wehrens had not contacted FWA since May 2010, she took steps that day to follow up Mr Wehrens' lack of progress, which resulted in Mr Wehrens taking the necessary steps to complete the 2007 Financial Report in a timely fashion, in order for it to be passed at the National Executive meeting on 21 July 2011;
 - h. Ms Jackson was on leave after 21 July 2011 and the documents were lodged shortly after that time by Ms Bradbury, in her capacity as acting National Secretary.
95. I accept that Ms Jackson's explanation of events goes some way to meeting the allegation that was put to her in my letter of 14 December 2011 that the delay in filing the 2007 Financial Reports between October 2009 and August 2011 could only be explained on the basis that she had failed to exercise the degree of care and diligence that would have been exercised by a reasonable person in the position of National Secretary.
96. Nevertheless, Ms Jackson's response suggests that no action was being taken by her between 30 August 2010 and 11 April 2011 to finalise the 2007 Financial Report, which, by this time, was three years overdue.

Finding 172 - Ms Jackson failed to produce a GPFR and an operating report for the 2007 financial year as soon as practicable

- 172.** Ms Jackson failed to exercise her powers and discharge her duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to the lodgement of the operating report and general purpose financial report for the National Office for the year ending 30 June 2007 in that a reasonable person who was occupying the position of National Secretary between August 2010 and April 2011 would have taken steps to prepare an operating report and a committee of management statement, to have had the general purpose financial report audited and to have lodged financial documents with FWA.

Chapter 11 - Contraventions by Mr Williamson

1. This chapter concerns findings of contravention by Mr Williamson, who was the President of the HSU while Mr Thomson was National Secretary.
2. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2.
3. As set out at paragraph 200 of chapter 1, on 14 December 2011 FWA emailed to Mr Williamson my letter dated 14 December 2011 (FWA.019.0001) and accompanying materials (FWA.019.0004 and FWA.019.0046). That letter advised Mr Williamson that I had reached a preliminary view that it was open to me to make adverse findings in respect of various conduct that had been the subject of the Inquiry and Investigation. Mr Williamson was invited to make submissions in response by 20 January 2012. Mr Williamson was subsequently served with the documents on 15 December 2011.
4. On 3 February 2012 I received a letter from Uther Webster & Evans, solicitors, (FWA.022.0556) who act on behalf of Mr Williamson. That letter set out the following preliminary submissions regarding Mr Williamson's response:
 - a. The position of National President, which Mr Williamson has occupied since 1996, is an honorary position. As National President, Mr Williamson has no involvement in the day to day administration of the National Office of the HSU. That is the responsibility of the full time officers such as the National Secretary and National Assistant Secretaries. Mr Williamson was rarely present in the National Office and played no role in its functioning. Apart from presiding at meetings of National Council and National Executive, Mr Williamson signed the minutes of those meetings. He was not privy to the day to day financial transactions of the union and was not a member of the Finance Committee. It was stated that my letter of 14 December 2011 'places significant emphasis on the requirement in Rule 30 for the National President to see *'that these Rules are rigidly adhered to'*. However, given the nature of the role of the National President, this responsibility has to be understood and observed in a common sense and practical manner. Taken to its literal extreme, this responsibility would require the National President to ensure rigid adherence to the rules governing the operation of the union's eight state branches (Rule 52-73), even though he plays no role at all in relation to those branches, which each has its own Branch President, Committee of Management and full time paid officers.
 - b. It is the National Secretary who performs the role of Chief Executive of the union. Unlike the National President, the National Secretary is located in the National Office in Melbourne and works there on a full-time basis. It is the National Secretary who is responsible for the property and monies of the Union and for the control and conduct of the business of the union between meetings of National Executive (Rule 32(j) and (n)). It is the National Secretary who prepares the agenda for meetings of the National Council (Rule 23(b)). It is the National Secretary who (in conjunction with the National President) may

determine whether it is necessary to put any matter to a vote of National Council between annual meetings of National Council (Rule 25(a)) and who may call meetings of the National Executive (Rule 28(a)(iv)).

- c. There is not a great deal of authority on section 285 of the RO Act. There is, however, a considerable body of case law on section 180 of the *Corporations Act 2001* (Cth), the equivalent provision which applies to company directors and other officers. The provision imposes on company directors the requirement to exercise their powers and to perform their duties with the degree of care and diligence that a reasonable person would exercise in that position. The letter then went on to set out information regarding case law on section 180 of the *Corporations Act 2001* (Cth), including the fact that 'it appears that there can be no breach of the statutory standard unless, at the relevant time, it was reasonably foreseeable that harm to the interests of the company might be caused by the director's conduct...In the present matter there is no evidence of any damage suffered by the HSU as a consequence of any conduct of Mr Williamson.'

The letter went on to state that Mr Williamson occupies a position akin to that of a non-executive director in the role of chairman of the board and that 'the present statutory standard in section 180(1) restores the view...that there is a difference in the standard of care for executive and non-executive directors'. The letter went on:

Recent examples of breaches of subsection 180(1) (or its statutory predecessors) are helpfully set out in *Ford's Principles of Corporations Law*, 13th Edition at paragraph [8.035], pp389-395. These cases serve to highlight the level of seriousness of the failure to exercise due care and diligence with which the statutory standard is concerned. On no basis could it be said that the allegations against Mr Williamson, even if made out, constitute a failure to exercise due care and diligence of sufficient seriousness to attract the operation of the provision, in this case section 285(1) of the RAO Schedule.

Further, subsection 285(2) provides that the requirements of subsection 285(1) are taken as met if the officer who makes a judgement to take or not take action of a matter relevant to the operations of the organisation, makes that judgement in good faith for a proper purpose and does not have a material personal interest in the subject matter of the judgement. To the extent that the allegations against Mr Williamson involve him making a judgement to take or not take action in respect of a matter relevant to the operation of the HSU, he acted, at all times, in good faith for a proper purpose and did not have a material personal interest in the subject matter of the judgement.

5. Submissions regarding each of the alleged contraventions that were put to Mr Williamson are set out in this chapter in discussions about each of those matters.

Mr Williamson's role as National President of the HSU (National President) - Rule 30

6. The Rules require the National President to preside over all National Council and National Executive meetings (including signing the Minute Book) and to see that the Rules are 'rigidly adhered to'.

7. Rule 30²⁷⁵ sets out the powers and duties of the National President:

The National President shall attend all meetings of the National Council and National Executive and any meeting in the Union held by decision of the National Council and National Executive and preside at these meetings, and may, if he/she desires, preside over any other meeting of the Union or a Branch thereof at which he/she is present. He/she shall preserve order so that the business may be conducted in due form and with propriety and upon the minutes being confirmed shall sign the Minute Book in the presence of the meeting. He/she shall be impartial in all transactions and shall see that these Rules are rigidly adhered to. Upon taking office he/she shall immediately determine the order of precedence of the National Vice-Presidents and submit this in writing to the National Secretary, whereupon this order of precedence shall be and remain the same until one or more of the National Vice-Presidents ceases to hold such office either by effluxion of time or otherwise.

8. Mr Williamson (who was the National President for the entire period between 16 August 2002 and 1 March 2008 (**the investigation period**)), has been the National President of the HSU since at least 2000.²⁷⁶
9. Mr Williamson was also the General Secretary of the New South Wales Branch of the HSU, as well as being the General Secretary of the union that is registered under the *Industrial Relations Act 1996* in New South Wales and which was also called 'Health Services Union' while Mr Thomson was National Secretary of the NSW Union. Mr Williamson was paid an Honorarium of \$20,000 per annum by the HSU National Office in respect of his position as National President. Mr Williamson was asked in interview to explain why he was paid an honorarium. He replied (WIT.WIL.002.0001 PN 23):

That reflects the work that I do for chairing the meetings of the national executive and the national council and it is when I also attend some other branches' activities. In the old days I attended number 1 and number 3 branch activities as the national president and I have attended meetings in Queensland in terms of that branch as well, and in Western Australia as well. So it's a range of - brings in all - scopes in all that.

10. The minutes of the National Executive meeting held on 25 February 2003 (HSUNO.024.0055) record that Dr Kelly foreshadowed a resolution with regards to 'concerns about payment for Honorarium National President'. The minutes record that:

Jeff Jackson & Craig Thomson strongly recommended that if a resolution was put forwarded that it be rejected. The National Presidents position is an important position that requires many hours of work not paid for by the Branch in the Presidents own time. National Executive recognised this at the time the honorarium was agreed to and circumstances have not changed that would warrant its removal.

11. National Executive minutes do not contain any further references to payment of an honorarium to Mr Williamson.

²⁷⁵ This rule was numbered Rule 31 between 30 March 2006 and 8 June 2006

²⁷⁶ A memorandum regarding the National Council meeting on 22 September 2000 (FWA.011.0001) was sent out to members under the signature block of Michael Williamson, National President. Mr Williamson also stated in interview that he thought he became National President 'about 2000' (WIT.WIL.002.0001 PN 9). Mr Williamson was declared elected as National President at elections in 2004 for a two year term (E2004/215 - FWA.010.0002) and in 2006 for a four year term (E2006/127 - FWA.010.0001).

Power to employ National Office staff and to fix remuneration and conditions

12. The provisions of the Rules regarding the power to employ National Office staff and to fix their remuneration and conditions is set out at paragraphs 3 to 6 on page 163 in chapter 4.
13. Information regarding the capacity of the National Secretary to appoint staff of the National Office under Sub-rule 32(n) is set out at paragraphs 3 to 17 of chapter 4.
14. Information regarding the determination of wages and conditions of National Office staff is set out at paragraphs 18 to 25 in chapter 4.

Employment of Ms Stevens without National Executive approval

Evidence

15. The following matters are relevant to Finding 173 - Employment of Ms Stevens without National Executive approval, which are set out below at page 901.

Employment of Criselee Stevens

16. Detailed information about the employment of Criselee Stevens is set out in chapter 4 under the heading 'Employment of Criselee Stevens' at paragraphs 27 to 72 on pages 167 to 173. Further information about Ms Stevens' duties is set out at paragraphs 220 to 227 of chapter 7.
17. Information about knowledge amongst National Executive members of Ms Stevens' employment is set out at paragraphs 49 to 64 of chapter 4. It is clear that National Executive did not authorise Ms Stevens' employment by the National Office, as it was required to do.
18. I also refer to my comments at paragraphs 101 and 102 on pages 841 in chapter 9 regarding my assessment of information that has been given to me by members of the National Executive regarding their knowledge of Ms Stevens' employment and her role as an employee of the National Office.

Submissions of Mr Williamson

19. In their letter of 3 February 2012 (FWA.022.0556), Uther Webser & Evans have submitted on behalf of Mr Williamson as follows:
 - a. Mr Williamson's only involvement with Ms Stevens was that 'he had a cup of coffee with Mr Thomson and Ms Stevens during a break in either a National Council or National Executive meeting, he can't recall which'. Mr Williamson can recall that no discussion occurred regarding Ms Stevens commencing duty with the National Office. He can also recall that Mr Thomson referred to an apprentice type program that he was keen to access so that Ms Stevens could be employed under it. No discussion occurred regarding starting dates, conditions of employment, rates of pay or the like.

- b. Mr Williamson now, with the benefit of time to reflect, submits that the information that he provided to FWA in interview that Ms Stevens had attended a National Executive meeting as an observer was incorrect. Mr Williamson was confusing Ms Stevens with another woman he had observed at a National Executive meeting.

Therefore, your conclusions...that Mr Williamson knew Ms Stevens had been employed by Mr Thomson to work for the National Office, that Mr Williamson had no idea what she did that was HSU-related work, that she was obviously working in Dobell and that, even if the National Executive had not approved her employment by the National Office, they ought to have known that she had been so employed because she sat at a National Executive meeting without saying a word, are misconceived. Mr Williamson did not observe Ms Stevens' presence at any National Executive meeting and maintains that he had no knowledge of the role she performed.

The employment of Ms Stevens was, as far as Mr Williamson knows, handled entirely by Mr Thomson.

- c. Rule 21(e) empowers National Council to appoint and remove such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary. As far as Mr Williamson is now aware, Ms Stevens' employment did not fall within any of these categories.
- d. Rule 27 empowers the National Executive to conduct and manage the affairs of the Union, including the power to set wages and conditions of National Office staff and, between meeting of National Council, to control and conduct the business of the Union. Given the infrequency of National Executive meetings, the National Secretary's powers must, by necessity, include the power to hire employees and, as far as Mr Williamson knows, that is what occurred with respect to Ms Stevens' employment.
- e. The proposition that it is a requirement of the Rules that the approval of National Council or National Executive be obtained to employ National Office staff (outside the categories referred to in Rule 21(e)) is plainly wrong.
- f. The further proposition that the National Secretary would be permitted to engage staff, subject always to subsequent approval or ratification by National Council or National Executive, is also wrong, is not supported by the Union's Rules and is plainly unworkable. In the event that the National Secretary employed, for example, a clerical employee and four months later, at a National Executive meeting, failed to gain approval for that action because a member (or members) of National Executive had taken a dislike to that employees, the employee would then be dismissed. This could well leave the Union exposed to an unfair dismissal claim in FWA. This proposition is tantamount to a requirement for board approval for the engagement of all staff.
- g. To the extent that there was any obligation to raise the matter of Ms Stevens' employment with the National Council or National Executive, that obligation lay with Mr Thomson as National Secretary and not with Mr Williamson.

Conclusions

20. Mr Williamson's submission acknowledges that the account that he has provided in his response is at odds with information that he provided to FWA at interview regarding whether Ms Stevens had ever attended a meeting of National Executive.
21. Mr Williamson's evidence during interview that Ms Stevens had attended a meeting of National Executive is not supported by any other member of National Executive (see, in particular, evidence at paragraphs 29 to 63 of chapter 4).
22. Since Mr Williamson's new submission is consistent with all other evidence that is before FWA concerning this matter, I accept that Ms Stevens did not attend any meeting of National Executive.
23. I still, however, have before me evidence from Mr Williamson that is consistent with evidence that has also been given by Mr Thomson (see paragraph 61 of chapter 4) that:
 - a. Mr Williamson and Mr Thomson had a cup of coffee with Ms Stevens which was not an offer of employment but could have been a 'general chat about possible employment';
 - b. Ms Stevens did something with the HSU, but Mr Williamson had no idea what that was; and
 - c. Ms Stevens lived on the Central Coast of New South Wales and what she was doing there 'obviously must have been in relation to Dobell somewhere but as to what that was, I don't know'.
24. Rather, Mr Williamson's new submission that he 'maintains that he had no knowledge of the role [Ms Stevens] performed' and that Ms Stevens' employment was 'handled entirely by Mr Thomson' confirms that Mr Williamson knew that she was employed by the National Office but did not know what Ms Stevens did that was HSU-related work.
25. For the reasons set out at paragraphs 3 to 17 of chapter 4, I remain of the view that the National Secretary does not have the power to employ staff on behalf of the National Office without obtaining the approval of either National Council or National Executive to do so unless the appointment of such staff can properly be characterised as the 'business of the Union' between National Executive meetings.
26. I have concluded at paragraph 69 of chapter 4 that the information regarding Ms Stevens' duties whilst employed by the National Office (which is set out at paragraphs 220 to 227 of chapter 7) makes it clear that Ms Stevens was not employed by Mr Thomson as part of the 'business of the Union'. It was therefore not within Mr Thomson's power under the Rules to employ Ms Stevens without authorisation from National Council or National Executive.
27. National Executive did not authorise Ms Stevens' employment by the National Office, as it was required to do (see paragraphs 49 to 64 of chapter 4).
28. I have found at finding 1 that Mr Thomson contravened Sub-rules 21(e) and 27(a) by employing Criselee Stevens on behalf of the National Office without seeking the

authorisation of either the National Council or National Executive to do so. I have also found at finding 162 that the National Office contravened Sub-rules 21(e) and 27(a) by employing, and determining wages and conditions, of Ms Stevens when neither National Council nor National Executive had authorised her employment or had made a determination of her wages and conditions.

29. Mr Williamson has made a submission (which is set out at paragraph 4 of this chapter) that, as National President, he occupies a position that is akin to that of a non-executive director in the role of chairman of the board. While I do not disagree with that as a general proposition, the obligations that are placed upon Mr Williamson in his role as National President arise from the Rules of the HSU, most specifically Rule 30, which requires the National President to ensure that the Rules are rigidly adhered to.
30. The fact that Mr Thomson had an obligation to seek authorisation from National Executive of Ms Stevens' employment does not detract from any obligation that also lay upon Mr Williamson to ensure that the National Executive and National Council were informed of Ms Stevens' employment in circumstances where Mr Williamson knew of Ms Stevens' employment but did not know what Ms Stevens did that was HSU-related work.

Finding 173 - Employment of Ms Stevens without National Executive approval

- 173.** Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in relation to the employment of Ms Criselee Stevens by the National Office in that he failed to take any steps to raise with National Executive the fact that Ms Stevens had been employed by the National Office without any authorisation by National Council or National Executive, when, to his knowledge:
- Mr Thomson had employed Ms Stevens on behalf of the National Office;
 - Ms Stevens was working in the electorate of Dobell;
 - he was otherwise unaware what, if any, role Ms Stevens had on behalf of the National Office; and
 - he knew, or ought to have known, that Ms Stevens' employment had not been authorised by (or even reported to) either National Executive or National Conference.

Authorisation of establishment of credit card accounts for staff of the National Office

Credit cards issued to National Office staff

Evidence

31. The following matters are relevant to Finding 174 - Authorisation of establishment of credit card accounts for staff of the National Office, which is set out below at page 904.
32. Information concerning the issuance of credit cards to National Office staff is set out in chapter 5 at paragraphs 74 to 110 on page 222 to 230, including information regarding:
 - a. National Office practices regarding issuance of credit cards before Mr Thomson became National Secretary (see paragraphs 79 and 80 on page 224); and
 - b. approval of the issuance of credit cards for National Office staff once Mr Thomson became National Secretary (see paragraphs 81 to 100 on pages 224 to 228).
33. There is no evidence before me indicating that the National Council or the National Executive approved the establishment of credit card accounts for use by staff of the National Office.
34. The evidence set out at paragraph 79 of chapter 5 indicates that the National Office established credit card accounts with Diners Club International some time prior to Mr Thomson becoming National Secretary and that it had been a long standing practice for staff of the National Office to have a Diners Club card. At least some members of the National Executive were aware of this practice.
35. The powers conferred on the National Secretary by Rule 32 do not include a specific power to approve the issuance of credit cards. The matters described in Rule 32 are activities concerning the day to day control and conduct of the affairs of the HSU and, in the absence of any formal policy, do not extend to giving the National Secretary power to establish credit card accounts for National Office staff. Such matters are not of a routine or recurring nature. Under Sub-rule 36(b) the funds and property of the HSU are under the control of the National Council and the National Executive. As such, in the absence of a formal policy, the power to make decisions concerning the establishment of credit card accounts lay with the National Council and the National Executive under Sub-rule 36(b).
36. The persons to whom it was necessary and appropriate for a credit card to be issued was also properly a matter for consideration and decision by the National Council or National Executive. This question also relates to the control of the funds and property of the Union under Sub-rule 36(b). The National Secretary is not given specific power under Rule 32 to make decisions about such matters and, in the

absence of a formal policy, such a matter does not fall within the 'control and conduct of the business of the Union' under Sub-rule 32(n).

37. The National Office did not have any formal written policies regarding the establishment and issuance of credit cards. I have found at Finding 12 - Failure to prepare, and to seek approval of, policies regarding the establishment of credit cards at page 231 that Mr Thomson contravened Sub-rule 32(j) by failing to prepare financial governance policies regarding the establishment of credit cards for use by National Office staff.

Submissions by Mr Williamson

38. The letter from Uther Webster & Evans dated 3 February 2012 (FWA.022.0556) contains submissions that deal collectively with the Finding 174 - Authorisation of establishment of credit card accounts for staff of the National Office (which is set out below at page 904) and Findings 175 and 176 - Authorisation of expenditure incurred by Mr Thomson and staff members of the National Office on their credit cards against Mr Williamson (which are set out at page 909 below).
39. So far as they are relevant to the question of the establishment and issuance of credit cards to National Office staff, Mr Williamsons submissions are that:
- a. he had no knowledge as to whether anybody in the National Office had credit cards;
 - b. Credit cards are a more effective, efficient and secure way of dealing with work related expenses;
 - c. There is nothing in the Rules which requires National Council or National Executive approval for the establishment and use of credit cards;
 - d. he was not a member of the Finance Committee;

Conclusions

40. I accept the submissions that are summarised at subparagraphs 39.a and 39.d.
41. I also accept that it may well be correct that credit cards are a more effective, efficient and secure way of dealing with work related expenses in many organisations and businesses. It is not, however, relevant to the contravention that has been put to Mr Williamson that he failed to ensure that Mr Thomson acted within the limits of his powers under the Rules by obtaining authorisation of National Council or National Executive for the establishment of credit card accounts and issuance of cards to staff. The basis of the contravention that has been put to Mr Williamson is not whether credit cards are an inherently bad idea but rather whether their issuance to National Office staff was authorised under the Rules.
42. The submission that the Rules do not (expressly) require approval of National Council or National Executive for establishment of credit cards is correct on its face. This submission does not, however, deal with the substance of the contravention that was put to Mr Williamson, namely that Sub-rule 32(n) did not empower the National

Secretary to establish credit card accounts. Rather, such a power lay with National Council and National Executive under Sub-rule 36(b).

43. In my view, on a proper construction of the Rules and in the absence of any formal policy, it was necessary for Mr Thomson to obtain the authorisation of National Council or National Executive for establishment of credit card accounts and the issuance of those cards to National Office staff.
44. Rule 30 imposes upon the National President a positive obligation to take steps to see that the Rules are rigidly adhered to. Mr Williamson was required to take at least some steps to satisfy himself as to whether the Rules of the HSU (including Sub-rule 36(b)) were being complied with regarding the establishment of credit cards for National Office staff. As such, he was not entitled to confine himself to raising matters that came to his attention at National Executive meetings. Mr Williamson's submission that his position as National President was akin to a 'non Executive Chairman' cannot deny the clear conferral of a positive obligation upon him by Rule 30.

Finding 174 - Authorisation of establishment of credit card accounts for staff of the National Office

174

Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in that he failed to ensure that Mr Thomson acted within the limits of his powers under the Rules by obtaining the authorisation of National Council or National Executive for establishment of credit card accounts and the issuance of credit cards to staff of the National Office.

Authorisation of expenditure incurred by Mr Thomson and National Office staff on their credit cards

Evidence

45. The following matters are relevant to Findings 175 and 176 - Authorisation of expenditure incurred by Mr Thomson and staff members of the National Office on their credit cards, which are set out below at page 909.

Credit cards issued to National Office staff

46. Information is set out in chapter 5 regarding Diners Club cards and CBA Mastercards that were issued to National Office staff at paragraphs 74 to 77 on pages 222 and 224.
47. The following information concerning those cards is set out in chapter 5:
 - a. National Office practices regarding issuance of credit cards before Mr Thomson became National Secretary - see paragraphs 79 and 80 on page 224;

- b. Approval for issuance of credit cards for National Office staff once Mr Thomson became National Secretary - see paragraphs 81 to 100 on pages 224 to 228;
- c. Why National office staff needed CBA Mastercards - see paragraphs 101 to 104 on pages 228 and 229;
- d. Policies regarding credit cards and transactions, including documentation of credit card transactions and permitted use of cards - see paragraphs 112 to 146 on pages 231 to 239; and
- e. Instructions to staff regarding when to use Diners Club Card or CBA Mastercard - see paragraphs 147 to 151 on pages 239 and 241.

Power to expend the funds of the HSU - Sub-rules 36(a) & (b)

48. Rule 36 deals with the funds and property of the HSU. Sub-rule 36(a) provides that the funds and property of the HSU shall consist of -

- (i) any real or personal property of which the National Council or National Executive of the Union, by these Rules or by any established practice not inconsistent with these Rules, has, or, in the absence of any limited term lease bailment or arrangement, would have, the right of custody, control or management;
- (ii) the amounts of the branch contributions payable to the National Council pursuant to this rule ;
- (iii) any interest, rents, dividends, or other income derived from the investment or use of such funds and property;
- (iv) any superannuation or long service leave or other fund operated or controlled by the Union as a whole in accordance with these rules for the benefit of its officers or employees;
- (v) any sick pay fund, accident pay fund, funeral fund or like fund operated by the Union as a whole in accordance with these rules for the benefit of its members;
- (vi) any property acquired wholly or mainly by expenditure of the moneys of such funds and property or derived from other assets of such funds and property; and,
- (vii) the proceeds of any disposal of parts of such funds and property.

49. Sub-rule 36(b) provides that:

The funds and property of the Union shall be controlled by the National Council and the National Executive both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union and all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee. For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.

50. The Rules did not at any time while Mr Thomson was National Secretary include a provision that allowed for financial transactions of the National Office to be conducted electronically or by credit card.

Compliance with Sub-rules 36(a) and (b)

Signatories to cheques

51. The minutes of the National Executive meeting held on 19 September 2002 ([HSUNO.018.0461](#)) record a resolution that 'All officers of the National Union should be signatories for the National Union.'

Electronic financial transactions

52. In the absence of any rule which specifically provides for, or otherwise deals with, electronic financial transactions of the National Office, including the use of credit cards to undertake such transactions, the use of such facilities to undertake financial transactions could only be permitted where this is authorised by, or under, another rule. In my view:
- a. Sub-rule 36(b) would empower either National Council or National Executive to authorise the expenditure of funds of the HSU by credit card for the purpose of carrying out the objects of the HSU; and
 - b. Where National Council or National Executive, acting under Sub-rule 36(b), has approved the expenditure of funds of the HSU for the purpose of carrying out the objects of the HSU, it would (at least generally) be open to the National Secretary, acting in accordance with Sub-rule 32(n), to conduct the business of the HSU by using credit cards to effect the transaction which has been authorised by National Council or National Executive; and
 - c. Sub-rules 36(b) and 32(n) between them would authorise the National Secretary to use credit cards to effect a transaction which involved the expenditure of money on the general administration of the HSU or for purposes reasonably incidental to the general administration of the HSU.
53. However nothing in the Rules authorises the use of credit cards to undertake financial transactions generally, or in circumstances outside those set out in (a) to (c) above.
54. The powers conferred on the National Secretary by Rule 32 do not include a specific power to establish credit card facilities. The matters described in Rule 32 are activities concerning the day to day control and conduct of the affairs of the HSU.

Submissions by Mr Williamson

55. The letter from Uther Webster & Evans dated 3 February 2012 (FWA.022.0556) contains submissions that deal collectively with the Finding 174 - Authorisation of establishment of credit card accounts for staff of the National Office (which is set out above at page 904) and Findings 175 and 176 - Authorisation of expenditure incurred by Mr Thomson and staff members of the National Office on their credit cards against

Mr Williamson (which are set out at page 909 below). Those collective submissions are that:

- a. Mr Williamson had no knowledge as to whether anybody in the National Office had credit cards;
- b. Credit cards are a more effective, efficient and secure way of dealing with work related expenses;
- c. Staff with credit cards are still required to produce receipts which are then reconciled with the credit card statements;
- d. There is nothing in the Rules which prohibits financial transactions of the National Office from being conducted electronically, nor is there any requirement in the Rules for National Council or National Executive approval for use of electronic banking;
- e. Mr Williamson was not a member of the Finance Committee;
- f. Mr Williamson could not report any alleged irregularity in the use of credit cards if it was not known to him, which it was not; and
- g. As far as Mr Williamson is aware, financial irregularities in relation to credit card usage had never been raised by the auditor.

Conclusions

56. I take the submission that is summarised in subparagraph (g) to be limited to Mr Williamson's knowledge of irregularities in relation to credit card usage prior to receipt by the National Office of the Exit Audit. Leaving that point aside, I accept the submissions that are summarised at subparagraphs (a), (e) and (g).
57. I also accept that credit cards may be a more effective, efficient and secure way of dealing with work related expenses in many organisations and businesses. It is not, however, relevant to the contravention that has been put to Mr Williamson that he failed to ensure that Mr Thomson carried out his obligations to be responsible for the monies of the National Office and that he prepared, and obtained the approval of National Council or National Executive for, financial governance policies and procedures in relation to credit cards. The basis of the contravention that has been put to Mr Williamson is not whether credit cards are an inherently bad idea but rather that there were no proper financial governance policies and procedures in relation to such cards.
58. I am also of the view that any practices which may have existed and which required staff to produce receipts for reconciliation against credit card statements are not relevant to the contravention that has been put to Mr Williamson as such information does not address the question of whether proper financial governance policies and procedures in relation to such cards were prepared and approved by National Council or National Executive.
59. The submission that the Rules do not prohibit electronic transactions and that they do not require approval of National Council or National Executive for establishment of electronic banking is correct on its face. This submission does not, however, deal

with the substance of the contravention that was put to Mr Williamson, which is set out above at paragraphs 48 to 50 and 52 to 54 of this chapter. I did not suggest to Mr Williamson that the Rules entirely prohibit the National Office from conducting financial transactions by credit card. Rather, (in summary) I suggested that:

- a. Sub-rule 36(b) provides that the funds and property of the Union shall be controlled by National Council and National Executive, both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union;
 - b. The Rules do not 'include a provision' which allowed for financial transactions of the National Office to be conducted by credit card;
 - c. In the absence of any rule which specifically provides for, or otherwise deals with, the use of credit cards to undertake financial transactions, the use of such facilities could only be permitted where this is authorised by, or under, another rule;
 - d. Sub-rule 36(b) would empower National Council or National Executive to authorise the use of credit cards for expenditure of National Office funds for the purpose of carrying out the objects of the Union;
 - e. Where National Council or National Executive, acting under Sub-rule 36(b), had approved the expenditure of funds of the HSU for the purpose of carrying out the objects of the Union, it would at least generally be open to the National Secretary, in accordance with Sub-rule 32(n), to use credit cards to conduct such transactions as the business of the Union; and
 - f. Sub-rules 36(b) and 32(n) between them would authorise the National Secretary to use credit cards to effect a transaction which involved the expenditure of money on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union.
60. While I agree that Mr Williamson could not have reported any alleged irregularity in the usage of credit cards if he was not aware of such irregularity, in my view the obligation that is placed upon Mr Williamson by Rule 30 extends beyond the mere reporting of matters of which he is aware. Rule 30 imposes upon the National President a positive obligation to take steps to see that the Rules are rigidly adhered to.
61. Pursuant to Rule 30, Mr Williamson had a positive obligation to take at least some steps to satisfy himself as to whether the Rules of the HSU (including Sub-rule 32(j)) were being complied with. As such, he was not entitled to confine himself to raising matters that came to his attention at National Executive meetings. Mr Williamson's submission that his position as National President was akin to a 'non Executive Chairman' cannot deny the clear conferral of a positive obligation upon him by Rule 30. A reasonable person in Mr Williamson's position as National President would have taken positive steps to inform himself, as required by Rule 30, about the ways in which the funds of the National Office were being spent and the existence, or non-existence, of an appropriate framework of safeguards around that process, in order to ensure that the Rules of the Union were complied with.

Findings 175 and 176 - Authorisation of expenditure incurred by Mr Thomson and staff members of the National Office on their credit cards

- 175.** Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in that he failed to ensure that Mr Thomson carried out his obligations under Sub-rule 32(j) to be responsible for the monies of the HSU and he failed to ensure that Mr Thomson prepared and obtained the approval of National Council or National Executive of financial governance policies and procedures in relation to credit cards.
- 176.** Mr Williamson failed to discharge his duties as National President with the degree of care and diligence that a reasonable person would exercise if they were National President in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to preparation and approval of financial governance policies and procedures in relation to credit cards in that:
- he failed to take steps to ensure that Mr Thomson carried out his obligations under Sub-rule 32(j) to be responsible for the monies of the HSU and he failed to ensure that Mr Thomson prepared and obtained the approval of National Council or National Executive of financial governance policies and procedures in relation to credit cards
 - as National President he was obliged by Rule 30 to see that the Rules are rigidly adhered to.

Payment to the Julie Williamson Fundraising Appeal by the National Office

Evidence

62. The following matters are relevant to Finding 177 - Payment to the Julie Williamson Fundraising Appeal by the National Office, which is set out below at page 912.
63. Information regarding a payment of \$2,040 to the Julie Williamson Fundraising Appeal on 8 August 2006 is set out in chapter 5 at paragraphs 492 to 498 on pages 329 and 330.

Analysis

64. The terms of the resolution that is recorded in the minutes of the National Executive meeting on 9 September 2009 ([HSUNO.019.0035](#)), which refer to a payment of \$2,400 that was made on 18 November 2008 to the Julie Williamson MS Fundraising Appeal, cannot authorise the payment that was made by the National Office to the Julie Williamson Fundraising Appeal on 8 August 2006. This is for several reasons:
- a. While the amounts that were expended are exactly the same, the dates are so different as to suggest that it is not likely that a typographical error occurred in recording the terms of the resolution that was passed.

- b. Further, it is clear from information given to me in interview by Mr Williamson that significant amounts of money are raised by the fundraising appeal each year. Mr Williamson stated that the fundraising appeal runs under his wife's 'banner' and that 'she raised 50 grand last year in 2006 and then this year we're aiming for \$120,000.00 this year...' (Williamson PN 479). Given that Mr Williamson is the National President of the HSU, it seems likely that funds were donated to the Julie Williamson Fundraising Appeal each year (as is also suggested by the donation on 16 January 2009 of \$1,200.00 that is also referred to in the minutes of 9 September 2009).
 - c. In any event, the use of the word 'has' in Sub-rule 36(g) (instead of the word 'is'), together with the mandatory language in which the prohibition against expenditure is expressed ('*the Union shall not make any loan, grant or donation of any amount exceeding \$1,000 unless the National Council or the National Executive ...has...*') means that that Sub-rule operates as a prohibition against the making of any loan grant or donation of an amount exceeding \$1,000.00 unless the either National Council or National Executive has, before the loan, grant or donation is made, satisfied itself of the two matters set out in subparagraph 36(g)(i) and given the approval required by Sub-paragraph 36(g)(ii). Accordingly it was not open to the National Executive in 2009 to form the satisfaction required by 36(g)(i) and grant the approval required by 36(g)(ii) in respect of a donation which had been made some three years previously.
65. It is clear that the payment to the Julie Williamson Fundraising appeal was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.
66. I believe that a reasonable person in Mr Williamson's position as National President would have taken steps to ensure that this payment was approved by National Executive, that National Executive was formally made aware that the recipient of the payment was a charity connected to his own wife and that these matters were recorded in the minutes of National Executive.

Mr Williamson's submissions

67. Mr Williamson submits that:
- a. He was unaware of the need to have donations over \$1,000 approved by National Council or National Executive;
 - b. He has a 'firm belief' that the donation was approved at the time, although it was not minuted;
 - c. There is no doubt that members of National Executive were aware of this expenditure at the time and that the fundraiser was being organised by his wife; and
 - d. The expenditure was approved on 9 September 2009.

Conclusions

68. I am not sympathetic to Mr Williamson's submission that he was unaware of the need to have donations over \$1,000 approved by National Council or National Executive. The requirement is set out in Sub-rule 36(g) of the Rules and, as National President and the person who is charged by Rule 30 with ensuring that the Rules are rigidly adhered to, Mr Williamson should have been aware of the requirements of the HSU's own Rules.
69. The submissions do not address the analysis that is set out at paragraph 64 of this chapter. For the reasons set out above at paragraph 64 of this chapter, I do not accept that the submission that 'the expenditure was approved on 9 September 2009' (which presumably is intended to argue that such approval on 9 September 2009 met the requirements of Sub-rule 36(g)) establishes that the requirements of the Rules were met.
70. The submissions that Mr Williamson believes that the donation was approved at the time, that members of National Executive knew of the expenditure at the time and that the fundraiser was being organised by his wife are not supported by evidence that has been given by Dr Kelly (see paragraphs 496 and 497 of chapter 5), although I acknowledge that Mr Thomson's evidence does support Mr Williamson (see paragraphs 494 and 495 of chapter 5). Whether or not some members knew of the expenditure and that the event was being organised by Mr Williamson's wife, however, the submission does not suggest that the fact that the fundraiser was being organised by Mr Williamson's wife was formally notified to National Executive.
71. At its highest, Mr Williamson's submission is that National Executive agreed to this expenditure but that he did not take any steps to ensure that his relationship with the organiser, or the terms of the National Executive's authorisation, were formally recorded in the minutes.
72. In light of contradictory evidence of Dr Kelly and the absence of any minutes prior to 9 September 2009 which record authorisation of the expenditure, Mr Williamson has not persuaded me that finding 177 should not stand.

Finding 177 - Payment to the Julie Williamson Fundraising Appeal by the National Office

- 177.** Mr Williamson failed to discharge his duties as National President with the degree of care and diligence that a reasonable person would exercise if they were National President in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to the payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 to purchase a table to raise funds for multiple sclerosis in that:
- the National Office made a payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 to purchase a table to raise funds for multiple sclerosis;
 - he was aware of this payment;
 - the payment was made to a charity which was connected to his wife;
 - he took no steps to ensure that this payment was approved by National Executive;
 - he did not formally disclose to National Executive that the recipient of the payment was a charity connected to his own wife;
 - he did not ensure that the fact that the recipient of this payment was a charity connected to his wife was recorded in the minutes of National Executive.

Chapter 12 - Contraventions by Mr Iaan Dick, auditor of the National Office

1. This chapter concerns findings of contravention by Mr Iaan Dick, who was the auditor of the National Office reporting unit while Mr Thomson was National Secretary.
2. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2.
3. Mr Dick was invited in my letter to him dated 14 December 2011 (FWA.017.0001, FWA.017.0004 and FWA.017.0030) to provide submissions in response to the alleged contraventions that were set out in that letter by 20 January 2012. FWA has not received a response from Mr Dick.

Legislative requirements placed upon auditors of reporting units

4. The powers and duties of auditors are set out in section 257 of the RAO Schedule. An auditor is required to audit the financial report of the reporting unit for each financial year and to make a report in relation to that year. In particular, section 257 requires as follows:

257 Powers and duties of auditors

- (1) An auditor of a reporting unit must audit the financial report of the reporting unit for each financial year and must make a report in relation to the year to the reporting unit.
...
- (5) An auditor must, in his or her report, state whether in the auditor's opinion the general purpose financial report is presented fairly in accordance with any of the following that apply in relation to the reporting unit:
 - (a) the Australian Accounting Standards;
 - (b) any other requirements imposed by this Part.If not of that opinion, the auditor's report must say why.
- (6) If the auditor is of the opinion that the general purpose financial report does not so comply, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the general purpose financial report. If it is not practicable to quantify the effect fully, the report must say why.
- (7) The auditor's report must describe:
 - (a) any defect or irregularity in the general purpose financial report; and
 - (b) any deficiency, failure or shortcoming in respect of the matters referred to in subsection (2) or section 252.
- (8) The form and content of the auditor's report must be in accordance with the Australian Auditing Standards.

- (9) The auditor's report must be dated as at the date that the auditor signs the report and must be given to the reporting unit within a reasonable time of the auditor having received the general purpose financial report.
- (10) An auditor must not, in a report under this section, make a statement if the auditor knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

- (11) If:
 - (a) the auditor suspects on reasonable grounds that there has been a breach of this Act or reporting guidelines; and
 - (b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report or by reporting the matter to the committee of management of the reporting unit;the auditor must immediately report the matter, in writing, to the Industrial Registrar.

Note: This subsection is a civil penalty provision (see section 305).

Australian Auditing Standards

- 5. Subsection 257(8) of the RAO Schedule requires the 'form and content of the auditor's report' to be in accordance with the Australian Auditing Standards.
- 6. Australian Auditing Standards set out both mandatory requirements (which appear in bold type) and explanatory guidance. The explanatory guidance paragraphs provide guidance and illustrative examples to assist the auditor in fulfilling the mandatory requirements. Consistent with the way in which they appear in Australian Auditing Standards, extracts of mandatory requirements in this schedule are also bolded.
- 7. Australian Auditing Standard ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement*²⁷⁷ establishes mandatory requirements that are placed upon an auditor in obtaining an understanding of the entity and its environment, including its internal control, and in assessing the risks of material misstatement in auditing a financial report:
 - 5. **The auditor shall obtain an understanding of the entity and its environment, including its internal control, sufficient to identify and assess the risks of material misstatement of the financial report whether due to fraud or error, and sufficient to design and perform further audit procedures.**

...

²⁷⁷ ASA 315 applies from 1 July 2006. Prior to that date, similar requirements were set out in AUS 402 (February 2004) *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatements*.

Risk Assessment Procedures

11. The auditor shall perform the following risk assessment procedures to obtain an understanding of the entity and its environment, including its internal control:

- (a) enquiries of those charged with governance, management and others within the entity;
- (b) analytical procedures; and
- (c) observation and inspection.

...

13. In addition, the auditor ordinarily performs other audit procedures where the information obtained may be helpful in identifying risks of material misstatements. For example, the auditor may consider making enquiries of the entity's external legal counsel or of...banks...

...

Internal Control

52. The auditor shall obtain an understanding of internal control relevant to the audit.

53. Under paragraph 5 of this Auditing Standard, the auditor needs to use the understanding of internal control to identify types of potential misstatements, consider factors affecting the risks of material misstatement, and design the nature, timing, and extent of further audit procedures...

54. Internal control is the process designed and effect by those charged with governance, management, and other personnel to provides reasonable assurance about the achievement of the entity's objectives with regard to reliability of financial reporting, effectiveness and efficiency of operations and compliance with applicable laws and regulations.

...

Control Environment

79. The auditor shall obtain an understanding of the control environment.

80. The control environment includes the governance and management functions and the attitudes, awareness, and actions of those charged with governance and management concerning the entity's internal control and its importance in the entity. The control environment sets the tone of the organisation, influencing the control consciousness of its people. It is the foundation for effective internal control, providing discipline and structure.

81. The primary responsibility for the prevention and detection of fraud and error rests with both those charged with governance and management of an entity. In evaluating the design of the control environment and in determining whether it has been implemented, ordinarily the auditor understands how management, with the oversight of those charged with governance, has created and maintained a culture of honesty and ethical behaviour, and established appropriate controls to prevent and detect fraud and error within the entity.

8. Australian Auditing Standard ASA 330 *The Auditor's Procedures in Response to Assessed Risks* also establishes mandatory requirements in determining overall

responses and designing and performing further audit procedures once risks of material misstatement have been assessed using the procedures set out in ASA 315.

9. The following mandatory requirements are among those imposed by ASA 330:

88. **The auditor shall perform audit procedures to evaluate whether the overall presentation of the financial report, including the related disclosures, is in accordance with the applicable financial reporting framework.**
90. **Based on the audit procedures performed and the audit evidence obtained, the auditor shall evaluate whether the assessments of risks of material misstatement at the assertion level remain appropriate.**
99. **The auditor shall document the overall responses to address the assessed risks of material misstatement at the financial report level and the nature, timing, and extent of the future audit procedures, the linkage of those procedures with the assessed risks at the assertion level, and the results of the audit procedures. In addition, if the auditor plans to use audit evidence about the operating effectiveness of controls obtained in prior audits, the auditor shall document the conclusions reached with regard to relying on such controls that were tested in a prior audit.**

Mr Dick made false or misleading statements by signing auditors reports in 2004, 2005 and 2007

10. In addition to the matters set out at paragraphs 4 to 9 above, the following matters are relevant to Finding 178 - Mr Dick made false or misleading statements by signing auditors reports in 2004, 2005, 2006 and 2007 which is set out below at page 927.

Evidence

11. Mr Dick signed auditor's reports for each of the years ended:

- a. 30 June 2004 ([FWA.004.0120](#)),
- b. 30 June 2005 ([FWA.004.0101](#)),
- c. 30 June 2006 (FWA.004.0063); and
- d. 30 June 2007 ([FWA.005.0035](#))

in which he gave the opinion that:

- (a) The organisation kept satisfactory accounting records detailing the sources and nature of the income of the organisation and the nature and purposes of expenditure; and
- (b) The accompanying accounts and statements were properly drawn up so as to fairly present:
 - the state of affairs of the organisation as at the end of financial year; and
 - the income and expenditure, and any surplus, for the financial year;

- (c) The accounts have been prepared in accordance with applicable Australian Accounting Standards.

The Exit Audit

12. Minutes of a National Executive meeting on 6 December 2007 ([HSUNO.024.0014](#)) record that:

The National President offered his congratulations on behalf of the union to Craig [Thomson] upon his election to the federal parliament for the seat [of] Dobell and being the first HSU member to be elected to our federal parliament.

13. Minutes of that same meeting on 6 December 2007 ([HSUNO.024.0014](#)) also record passage of the following resolution regarding the conduct of an 'exit audit':

RESOLUTION

Moved Dan Hill/Jorge Navas that;

"A Clearing Audit of National Office accounts as a result of the election of Craig Thomson to the Federal Parliament, take place. The clearing audit is to occur at the declaration of the poll in the NSW seat of Dobell."

- Carried

14. It appears from minutes of a meeting of National Council on 23 July 2002 ([HSUNO.023.0033](#)), being the meeting at which National Council accepted the resignation of the former National Secretary (Mr Rob Elliott) and appointed Mr Thomson as National Secretary from 16 August 2002, that an 'exit audit' had also been conducted by the HSU in the past. Minutes of that meeting on 23 July 2002 record the following:

13 **GENERAL BUSINESS**

Dan Hill indicated that with a change in the office of National Secretary, that the incoming National Secretary should arrange for an independent clearance audit to be conducted. The National President advised that this would be done.

15. An email from Ms Ord to Mr Dick dated 1 February 2008 ([DIC.001.0012](#)) appears to confirm that the Exit Audit was underway at this date.
16. On 9 April 2008 Ms Jackson sent a letter to Mr Dick ([HSUNO.018.0058](#)) asking him to undertake 'a detailed analysis of the accounts of the HSU since 1 July 2007' and set out 13 particular questions to which she sought responses.
17. Mr Dick's exit audit was provided to Ms Jackson in a letter dated 12 May 2008 ([HSUNO.018.0009](#)). Mr Dick also sent Ms Jackson another letter dated 12 May 2008 ([HSUNO.018.0023](#)) in which he stated as follows:

In the course of the preparation of the exit audit we became aware of a Commonwealth Bank Credit account, and on request for statements for the period of the exit audit were provided with a folder of some statements for this account.

This account was incorporated in the general ledger of the Union as Commonwealth Bank entries, but it was not previously apparent from the ledger that there was a separate Credit account.

The statements only went to June 2007. We asked for the statements of the period after this, but in any event conducted a cursory examination of the statements we had been provided with.

Those statements revealed that there were a considerable number of cash withdrawals from ATMs in various locations. Whilst these entries have been entered in the Union's books and attributed to various purposes, we have not been provided with any documentary evidence to support these allocations. A schedule of cash withdrawals is attached.

We consider that failure to provide documentary evidence for these transactions may be a breach of the reporting guidelines or Schedule 1 to the Workplace Relations Act 1996.

We draw your attention to our obligations under Item 257(11) of the Schedule. Please advise us of the response of the National Executive to this matter.

18. When he was asked in interview about the Commonwealth Bank credit account of which he had previously been unaware, Mr Dick stated (Dick PN 63):

...what's happened here is I've missed a credit card and so I was reviewing the Diners Club credit cards and there was also a Commonwealth Bank credit card that I didn't know about and so what happened with the credit card I don't really know and I never reviewed any documents to do with it. To do with the Diners Club, yes, the vouchers were stapled behind...there wasn't a voucher all the time but, you know, the bulk of the time there was a voucher supporting it.

19. A little later in interview, Mr Dick noted (Dick PN 122):

...if I'd done a banking letter I may have picked up that bank account earlier in the whole chain.

20. Mr Dick advised FWA in interview in July 2009 that the HSU had replaced him as auditor of the National Office (Dick PN 35).

21. In the wake of the Exit Audit that had been conducted by Mr Dick, in a letter dated 11 December 2008 ([HSUNO.018.0001](#)) the National Office engaged Slater & Gordon, solicitors, to provide a report by an 'appropriate forensic accounting firm' regarding 'an examination of possible irregularities in the expenditure of the Union for the period 16 August 2002 to 31 January 2008'. Slater & Gordon subsequently engaged the accounting and auditing firm BDO Kendalls and the BDO Kendalls Report ([HSUNO.019.0050](#)) was provided to FWA some six months after it was commissioned under cover of a letter from Mr Fowlie of Slater & Gordon dated 16 June 2009 ([HSUNO.019.0049](#)).

Mr Dick's Auditing Practices

22. On 24 July 2009 Mr Dick was interviewed by me regarding the audits that he had conducted on the financial reports of the National Office reporting unit during the period when Mr Thomson was National Secretary.
23. Mr Dick was asked during interview about the financial reporting environment in which the National Office operated. Mr Dick was specifically asked whether the National Office employed sufficiently skilled staff to manage financial functions. Mr Dick replied (Dick PN 43):

Well, currently they - their current personnel are excellent. Probably before they're not. They're bookkeepers but they're not high level bookkeepers, you know, so they had a bit of -they're going to make mistakes, the mistakes are minor, you know...I think the lady that was doing the work was competent enough but not - but she wasn't a brilliant bookkeeper but she was competent enough and because it's such a small office it's really only the federal secretary. The bookkeeper is also the typist. There's now other staff but that was basically the situation to start with. It was just those people. It's very hard to get any internal control. It's only two people liaising with each other and so there's no internal controls because one person approves everything and one person does everything and so under the circumstances, yes, I think she did a good job.

24. When asked about attitudes to the reporting and auditing processes in general, Mr Dick replied (Dick PN 45):

They weren't interested, or Craig wasn't interested. You know, wasn't - his priorities were elsewhere apart from...the political thing that he's gone into now. Before that he was more interested in whatever the actual job was, not - the audit was just a nuisance..It's something he's got to get out of the way and nothing comes out of it that does him any good. It's only preparation of a set of financial statements that he's got to take through a procedure to get lodged and it wasn't - yes, it wasn't of interest to him, I wouldn't have said.

25. Mr Dick also indicated that he had very little contact with Mr Thomson over the five years of Mr Thomson's term as National Secretary (Dick PN 87):

I've had little contact with Craig. I've probably spoken to him for four hours over seven years, tops...when I was there he was never there and I don't know whether that was deliberate. He did spend a lot of time in New South Wales so we didn't get involved in any long discussions about any of this stuff.

26. In response to a question about how the National Office determined its accounting policies, Mr Dick stated (Dick PN 51):

...I suppose I'd be involved in that to a degree because I'd be asked and so I'd tell - you know, as to the way I'd keep the records...so I'd be advising how to keep the records but with a low level of staff there's not really much reference to keep. But other policies there aren't - when you look at the office there aren't really many policies that can be put in place. Like there's no policies with regard to credit cards expenditure, because Craig's the one spending the money and he's the one that's authorising it so there's no-one - and there was no policy where the executive was reviewing it and that's probably with the benefit of hindsight...in a circumstance where there's a lack of internal control the executive should have been probably had their nose deeper into the financial side of the running of the union...

27. When subsequently asked about scrutiny by National Executive of specific expenditure on HSU issued credit cards, Mr Dick replied that (Dick PN 65 - 67):

I would have only thought broadly...I knew they had finance meetings every quarter...and these sort of financials, the MYOB financials were presented to them so they're reviewing and I supposed approving and I noted that in the minutes, not recently but probably a couple of years ago that just I looked at one minute and there it was approving the expenditure to support. But I didn't go and check that it was approved every quarter or anything like that. I just every now and again I'd read through the minute book and have a squiz and they were - was being approved...

...

But all they're really doing is approving a set of MYOB financials that say this is the expenditure with no detail behind it. So it would be very hard for them without getting their hands dirty to know what they were approving.

28. Mr Dick acknowledged that he did not obtain an external audit confirmation from the HSU's solicitors, bankers or debtors (Dick PN 147 - 148). While acknowledging that he may have detected the existence of the CBA Mastercard earlier if he had 'done a banking letter', Mr Dick nevertheless was of the view that (Dick PN 122):

But if what was going on was fraudulent there's plenty of other ways to do exactly the same thing, you know. So if what Craig was doing was fraudulent, which I'm not saying it was because I haven't got a clue, but if it was, if it was fraudulent and I picked it up with a bank letter early days there would have been plenty of other ways to do exactly the same thing further on if the branch committee of management weren't inspecting closely enough the quarterly statements coming out.

29. Mr Dick stated that he did not take any steps to address issues of internal controls by sending a management letter to the National Office because 'Part of it is when you've only got two people the issue of internal control is so hard...' (Dick PN 156). As Mr Dick put it (Dick PN 158):

Yes, you know, what do I say? All I can really say is to the committee of management that they've got to - they really should review because they've got no internal control. You should know that anyway or they're not a committee of management.

30. In terms of actually conducting the annual audit, Mr Dick stated that the bookkeeper prepared the end of year financial report 'straight out of MYOB' and then 'all I'm really doing is aggregating the numbers...there's no magic in it' (Dick PN 101). At the end of the year, Mr Dick would get together with the bookkeeper and he would (Dick PN 75 - 77):

probably spend four hours, four or five hours picking out, fixing things that were obviously incorrectly allocated. But you know the quality of work she did was pretty good...Changing account allocations. I'd reconcile the superannuation. You know, there were all these expenses, not expense accounts but clearing accounts for superannuation and sometimes they wouldn't reconcile and wages didn't reconcile, group tax mightn't. You know, so I'd show her how to reconcile that or give her a hand to reconcile the reconciliations I was looking at and then once that procedure went through and I had a set of financials that I could have a look at.

31. When describing the audit process in more detail, Mr Dick told me that (Dick PN 134):

...what I'd normally do is I'd get their MYOB database and I'd take it away and just go through it at my leisure, print the whole thing and review allocations, do the things, the normal checks that an accountant does when he gets a set of financial statements prepared by bookkeepers. You'd know the sorts of things I'm talking about and then I'd go back and I'd suggest to the bookkeeper that she makes these changes and I, then I'd stay at the union and start doing a few reconciliations, reconciling the wages, doing those sort of things and then while I'm doing that I'd do a few transaction checks, check the BAS statements, check fringe benefits tax returns just to make sure - part of it more for her security as much as mine because some of these things she was uncertain about how to fill in so I'd be checking part of it to help her as well...

32. As Mr Dick continued (Dick PN 138):

...It was a very low - the way I conducted the audit was a very low level transaction audit because the income in here is very easy to verify because, you know, it comes from one source so I don't worry about income and the expenditures once I reconciled the wages and everything is going to the branch committee of management every quarter financially, I didn't think I had to - plus I didn't have the budget to do that level of work anyway and I didn't think I needed to but as it turned out I obviously did but - not obviously because we don't know whether Craig's done anything in appropriate. It's just it appears he may have.

33. Mr Thomson told me in interview that record keeping was 'for the financial controller...that was part of her job' (Thomson PN 71). The financial controller was required to bank monies received and to enter associated records (Thomson PN 78 - 79). Despite the terms of Sub-rule 32(f) which require the National Secretary to lodge all necessary documents with the AIR, Mr Thomson stated that it was also part of the job of the financial controller to lodge all financial returns with the AIR (Thomson PN 77).

34. Australian Auditing Standard ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* requires Mr Dick to obtain an understanding of the National Office and its environment, including its internal control (paragraph 5) and control environment (paragraph 79). In so doing, Mr Dick should be able to identify types of potential misstatements and thereby design the nature, timing and extent of further audit procedures. Once potential misstatements have been identified, Mr Dick was required by ASA 330 *The Auditor's Procedures in Response to Assessed Risks* to perform audit procedures to evaluate whether the overall presentation of the financial report, including the related disclosures, is in accordance with the financial reporting framework that is set out in the RAO Schedule (paragraph 88).

35. A summary of evidence that is before FWA regarding audits that were conducted by Mr Dick of the National Office reporting unit, however, reveals that:

- a. Mr Dick was paid \$2,500 per annum for conducting audits of the National Office and that figure did not increase during the decade in which he was engaged by the National Office (Dick PN 23; audit fees of \$2,500 per annum were disclosed in Statements of Financial Performance/Income Statements of financial reports of the National Office for years ended 30 June 2002 ([HSUNO.018.0424](#)), 30 June 2003 (see the comparative figure for 2003 in the Statement of Financial Performance for 30 June 2004 - [FWA.004.0120](#)), 30 June 2004 ([FWA.004.0120](#)), 30 June 2005 ([FWA.004.0101](#)), 30 June 2006 ([FWA.004.0063](#)) and 30 June 2007 ([FWA.009.0001](#)));
- b. Staff who were employed by the National Office to manage its financial affairs while Mr Thomson was National Secretary were bookkeepers who were 'competent enough', although not brilliant (Dick PN 43);
- c. Mr Thomson himself had very little interest in accounting and auditing processes (Dick PN 45) and had virtually no contact with Mr Dick over the five years in which he was the auditor of the National Office (Dick PN 87);

- d. There were few, if any, internal controls in the National Office. Mr Thomson not only incurred expenditure but also authorised its approval and there was no subsequent authorisation or scrutiny by National Executive of transactions. National Executive approved a 'set of MYOB financials' with no details regarding expenditure 'behind' those figures which would have informed National Executive of the particular expenditure that was being authorised (Dick PN 51, PN 65 - 67);
 - e. The National Office did not have policies with respect to matters such as credit card expenditure (Dick PN 51);
 - f. In the absence of internal controls, Mr Dick was of the view that fraudulent activities could have occurred in the National Office in a number of different ways (Dick PN 122);
 - g. Despite knowing that the National Office had no internal controls and that expenditure was not reviewed or authorised by the committee of management, Mr Dick nevertheless did not obtain external audit confirmation from the HSU's solicitors, bankers or debtors (Dick PN 148);
 - h. In conducting his 'audit', Mr Dick saw his role as 'aggregating the numbers' that Ms Ord had generated from MYOB. While he reconciled figures (Dick PN 75 - 77, PN 134), Mr Dick was not of the view that it was necessary, and was not paid a sufficiently high sum, to do any more than this (Dick PN 138). Very occasionally Mr Dick would have a 'squiz' at the minute book to see whether transactions were approved by the committee of management, although such approval was only of 'a set of MYOB financials' in any event (Dick PN 65 - 67).
36. I have also come to the following conclusions regarding day to day practices for authorisation of expenditure in the National Office:
- a. Evidence before me indicates that, on his own admission, once he had 'set up parameters' regarding appropriate expenditure of its funds, Mr Thomson played no part in authorisation or scrutiny of day to day expenditure of the National Office. Once Ms Ord had 'learnt the ropes', she used her own judgement to determine whether or not expenditure related to the National Office and, if so, how it should be accounted for in MYOB (Thomson PN 684). As she said, if the paperwork was 'self explanatory', she would pay it without reference to anyone else (Ord (1) PN 482, PN 485 - 487). Further, Ms Ord's evidence is that, if she did require information regarding whether expenditure related to the National Office, she would be just as likely to refer that question to someone other than Mr Thomson (Ord (1) PN 484). Further, Ms Ord was required by Mr Thomson to use her own judgement regarding whether expenditure by National Office employees fell within the parameters that had been set by Mr Thomson (Thomson PN 684). If she did not have any concerns regarding expenditure that she reviewed, she would pay the invoice without further reference (Ord (1) PN 482).
 - b. It would be fair to say that the day to day process within the National Office was one of 'authorisation by exception'. That is, Mr Thomson would only scrutinise and/or authorise payment of particular invoices when specifically asked to do so by Ms Ord or when he had concerns regarding the cash flow of the National

Office and it was necessary to prioritise the payment of some invoices over others. Given the HSU was a federation and the Branches expended the vast bulk of funds, it was not an onerous task for Mr Thomson to have exercised a process which was not authorisation by exception.

Was Mr Dick reckless as to whether his auditor's reports were false or misleading?

37. Mr Dick signed an auditor's report for the financial years ending 30 June 2004, 30 June 2005 and 30 June 2007²⁷⁸ giving the opinion that:
- a. The organisation kept satisfactory accounting records detailing the sources and nature of the income of the organisation and the nature and purposes of expenditure; and
 - b. The accompanying accounts and statements were properly drawn up so as to fairly present:
 - i. The state of affairs of the organisation as at the end of financial year; and
 - ii. The income and expenditure, and any surplus, for the financial year;
 - c. The accounts have been prepared in accordance with applicable Australian Accounting Standards.
38. From information that is before me, however, it seems unlikely that Mr Dick viewed what he described in his auditor's reports as 'satisfactory accounting records detailing...the nature and purposes of expenditure' since:
- a. Mr Dick has stated in interview that he only very occasionally viewed documents relating to authorisation of expenditure, such as the minute book (Dick PN 65); and
 - b. Even if he had sought to view documents such as minutes authorising expenditure of the National Office, minutes that were kept of meetings of National Executive are notable for their absence of resolutions authorising specific expenditure.
39. For example, an examination of minutes of meetings of National Council (in 2002 only) and of National Executive while Mr Thomson was National Secretary shows carriage by those bodies of the following resolutions regarding expenditure by the National Office:
- a. Minutes of the National Council meeting on 23 July 2002 ([HSUNO.023.0033](#)) record carriage of a resolution *"That lawyers be instructed to provide advice and proposals to National Executive and National Council on the corporatising of the training company so that it is a separate legal entity representing those branches that seek to contribute to the training company. Such costs of the corporatisation are to be born (sic) by the National office and those branches that seek to be part of the company in equal shares."*

²⁷⁸ See paragraph 11 above.

- b. Minutes of the National Council meeting of 23 July 2002 ([HSUNO.023.0033](#)) record carriage of a resolution authorising the basis of a "termination" payment to Rob Elliott, the outgoing National Secretary.
 - c. Minutes of the National Council meeting 19 September 2002 ([HSUNO.018.0461](#)) record carriage of a resolution authorising "The Tasmanian No 1 Branch ... to Brief Legal Council (sic) on this matter".
 - d. Minutes of the National Executive meeting on 19 September 2002 record the reaching of an agreement between the National Office and the Victoria No.1 Branch over outstanding capitation and affiliation fees whereby the Branch would provide '\$82,000 worth of services per year to the National Office including free rent, electricity phones etc'. A motion was carried that 'The arrangements outlined by the National Secretary in relation to the Victorian Number 1 Branch be endorsed and the National Secretary be authorised to sign the agreement between the Branch and the National Office'.
 - e. Minutes of the meeting on 28 February and 1 March 2005 ([HSUNO.024.0118](#)) record the passing of a resolution entitled 'Recommendation' that 'Executive endorses the Union becoming a sponsorship member of the National Aged Care Alliance' with no information being recorded regarding, or motion being carried authorising, the specific cost of such sponsorship.
 - f. Minutes of the National Executive meeting of 7 and 8 November 2005 ([HSUNO.024.0024](#) at 0025) record an "action arising" item that "National President to seek legal advice in relation to the need to transfer assets from individual officers to other entities to protect them from possible fines and tort damages under the new Act".
 - g. Minutes of the National Executive meeting of 5 December 2006 ([HSUNO.018.0192](#)) record that the National President undertook to seek legal advice concerning legislative changes to laws regarding the disclosure of political donations.
40. On occasion, minutes of National Executive meetings record no more than that a report was given regarding a particular item of expenditure. Minutes of the meeting on 15 and 16 February 2006 ([HSUNO.018.0259](#)) record a discussion regarding an 'internal review' being conducted by Paul Goulter of the ACTU. While it was not crafted as a resolution, the minutes record 'The National Secretary indicated that the cost of the review was around \$30,000'. There is no record of the carriage of a resolution at this or any subsequent meeting authorising expenditure on such a review.
41. Mr Thomson agreed that it was quite common for discussions of National Executive not to be formalised by resolution (Thomson PN 136 - 137).
42. Paragraph 252(1)(c) of the RAO Schedule requires a reporting unit to keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited. Section 6 of the RAO Schedule gives a broad definition to the term 'financial records' that includes 'a document', 'financial reports'

and 'any other record of information' to the extent that they 'relate to finances or financial administration'.²⁷⁹

43. A similar provision to subsection 252(1) of the RAO Schedule can be found in the CA. Section 286 of the CA requires a company to keep written financial records that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statement to be prepared and audited. "Financial records" is defined in section 9 of the *Corporations Act 2001* to mean:
- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
 - (b) documents of prime entry; and
 - (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are made up; and
 - (ii) adjustments to be made in preparing financial statements.
44. In *Frauenstein v Farinha* [2007] FCA 1953 which dealt with section 286 of the *Corporations Act 2001*, Emmett J stated at 202:
- General accounting practice would require supporting documentation such as detailed invoices, wage records, management agreements, working papers, banking records and the like to support journal entries. Detailed invoices, cash docketts and the like are normally kept to support cash expenses. Group certificates, job specifications, employment contracts and details of duties are normally kept to support salaries of wages shown as expenses in the accounts.
45. In my view, the definition of 'financial records' in section 6 of the RAO Schedule is wider than the definition in section 9 of the CA as it encompasses any document that relates to finances or financial administration of the reporting unit. Applying the decision of Emmett J in *Frauenstein v Farinha*, section 252(1) of the RAO Schedule would require a reporting unit to keep documents such as group certificates, employment contracts and minutes of committee of management meetings which record the authorisation of the employment of staff of the reporting unit and determination (or variation) of their wages and conditions. Such documentation would be required to be kept because it would support salaries or wages shown as expenses in the accounts. Resolutions of the National Executive at its meeting on 19 September 2002 approving the employment of Mr Mark Robinson and Ms Karene Walton and their salaries are the only occasion upon which National Executive passed resolutions authorising the employment of National Office staff or determining their wages and conditions while Mr Thomson was National Secretary ([HSUNO.018.0461](#)).

²⁷⁹ "Financial records" are defined in section 6 of the RAO Schedule as follows:

financial records includes the following to the extent that they relate to finances or financial administration:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;
- (d) a document.

Conclusions

46. It seems unlikely that Mr Dick could have been satisfied that any financial report that was prepared by the National Office was properly drawn up so as to fairly present the state of affairs of the organisation as at the end of financial year and the income and expenditure, and any surplus, for the financial year. As summarised above at paragraph 35 of this chapter, Mr Dick conducted his audits (and gave his audit opinions) in circumstances where he knew that, in terms of daily financial management, Mr Thomson had very little interest or participation in the supervision of the financial activities of the National Office. Mr Dick also knew that this lack of supervision or participation was occurring in an environment where the bookkeeper, while being competent, did make mistakes. Further, Mr Dick was of the view that there were no internal controls. Mr Dick knew that the National Office did not maintain policies with respect to all expenditures and that expenditure was both incurred and authorised by the National Secretary without external review of specific expenditure by the committee of management. Mr Dick was conscious that fraud was a very real risk for the National Office. Despite these deficiencies, Mr Dick did no more than aggregate and reconcile figures. In effect, Mr Dick did little that could be considered to be an 'audit' of the National Office. Rather, Mr Dick ensured that the numbers that were taken from MYOB and placed by the financial controller into a financial report each year added up.
47. Further, Mr Dick's total audit fees for each year were only \$2,500. Mr Dick has stated that he would spend four or five hours with the bookkeeper fixing up incorrect allocations and doing reconciliations. In addition, Mr Dick took the MYOB data away to go through it at his leisure and perform all 'the normal checks that an accountant does when he gets a set of financial statements prepared by bookkeepers', such as checking BAS statements and fringe benefits tax returns. By the time he had undertaken these preliminary tasks it is hard to imagine that Mr Dick's stipend would have allowed him more time in which to conduct a thorough audit.
48. I am satisfied in all the circumstances that, by signing auditor's reports for the financial years ending 30 June 2004, 30 June 2005, 30 June 2006 and 30 June 2007 in which he gave the opinion that is set out at paragraph 11 of this chapter, Mr Dick made statements which were false or misleading. This is because, on the basis of the limited inquiries which he had made, he could not be satisfied that the reports did not fairly present the state of affairs of the organisation and the income and expenditure for the financial year. Further, he could not have considered that the records held by the National Office in relation to such income and expenditure were satisfactory. For the reasons set out at paragraphs 37 to 47 above of this chapter, I am satisfied that Mr Dick either knew that his statements were false or misleading in these respects, or that he was reckless about whether they were.

Finding 178 - Mr Dick made false or misleading statements by signing auditors reports in 2004, 2005, 2006 and 2007

- 178.** Mr Dick contravened subsection 257(10) of the RAO Schedule in that, by signing auditor's reports for each of the years ended 30 June 2004, 30 June 2005, 30 June 2006 and 30 June 2007 in which he gave the opinion that:
- (a) The organisation kept satisfactory accounting records detailing the sources and nature of the income of the organisation and the nature and purposes of expenditure; and
 - (b) The accompanying accounts and statements were properly drawn up so as to fairly present:
 - The state of affairs of the organisation as at the end of financial year; and
 - The income and expenditure, and any surplus, for the financial year;
 - (c) The accounts have been prepared in accordance with applicable Australian Accounting Standards.
- he made statements that he knew were false or misleading, or he was reckless as to whether such statements were false or misleading

Failure to date audit reports in accordance with requirements of the RAO Schedule

Evidence

49. In addition to the matters set out at paragraphs 4 to 9 above, the following matters are relevant to Findings 179 to 181 - Failing to date audit reports in accordance with requirements of the RAO which are set out below at page 932.
50. In understanding the legislative framework that is established by the RAO Schedule (as summarised in the table set out below in this paragraph), it is necessary to appreciate the importance of the order of events that must occur:
- a. At the first meeting, the committee of management must pass resolutions in accordance with paragraph 17 of the first Reporting Guidelines or paragraph 25 of the second Reporting Guidelines (as applicable);
 - b. Having viewed the signed committee of management resolution, the auditor must then sign and date his or her auditor's report; and
 - c. A second meeting of either the committee of management or of members must be held at which the full report (including the signed auditor's report) is presented.

Deadline	Requirement
<i>As soon as practicable after 30 June of each year:</i>	Committee of management must cause a GPFR to be prepared. As the committee of management statement is a constituent part of the GPFR, the committee of management must hold the first meeting at which it passes resolutions required by paragraph 17 of the first Reporting Guidelines/paragraph 25 of the second Reporting Guidelines
	After preparation of GPFR (including signing of committee of management statement), auditor must audit GPFR and date and sign the auditor's report
	Operating report must be prepared
<i>By 10 December each year:</i>	Circulate full report to members of the reporting unit
<i>By 31 December each year:</i>	Present full report to a second meeting
<i>Within 14 days of the meeting and, in any event, by 14 January immediately following:</i>	Lodge full report and designated officer's (Secretary's) certificate with AIR

51. It is necessary for the auditor²⁸⁰ to view a signed committee of management statement before signing the auditor's report because this informs the auditor of the date upon which the governing body approved, and thereby took responsibility for, the financial report.²⁸¹ By viewing the signed committee of management statement, an auditor can obtain 'sufficient appropriate audit evidence' on which to base his or her opinion on the financial report. 'Sufficient appropriate audit evidence' is 'evidence that the entity's financial report has been prepared and that those charged with governance have asserted that they have taken responsibility for it'.²⁸²
52. Paragraph 35 of AUS 702 *The Audit Report on a General Purpose Financial Report*, which applied from the first accounting period on or after 30 June 2002,²⁸³ requires that:

The auditor's report should be dated as of the date the auditor signs that report. That date should be no earlier than the date on which the financial report is signed or approved by the governing body.

²⁸⁰ Subsection 257(8) of the RAO Schedule requires the form and content of the auditor's report to be in accordance with Australian Auditing Standards.

²⁸¹ See paragraph 35 of Australian Auditing Standard AUS 702 *The Audit Report on a General Purpose Financial Report*. From 1 July 2006, an equivalent provision is set out in paragraph 54 of Australian Auditing Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*.

²⁸² These words are taken from paragraph 54 of Australian Auditing Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*.

²⁸³ See paragraph 66 of AUS 702.

Year ended 30 June 2004

53. Financial documents for the year ended 30 June 2004 were lodged with the AIR on 15 June 2005 ([FWA.004.0120](#)). Those documents contained:
- a. an operating report ([FWA.004.0120](#) at 131) that was signed by Mr Thomson on 15 December 2004;
 - b. a committee of management statement ([FWA.004.0120](#) at 132). That statement:
 - i. was signed by Mr Thomson on 15 December 2004;
 - ii. stated that a resolution was passed, as required by the first Reporting Guidelines, by the 'Committee of Management of the Health Services Union of Australia national office' on 19 October 2004, without specifying whether the meeting was of National Council or National Executive; and
 - c. an auditor's report that was signed by Mr Dick but which was undated ([FWA.004.0120](#) at 134).
54. The documents lodged on 15 June 2005 did not, however, contain a Secretary's certificate under section 268 of the RAO Schedule.
55. An AIR official wrote to Mr Thomson on 24 June 2005 ([FWA.004.0097](#)) asking that a Secretary's certificate be lodged by Friday, 8 July 2005.
56. Almost eight months later, on 3 March 2006, a Secretary's certificate ([FWA.004.0117](#)) was lodged with the AIR. The certificate:
- a. had been signed and dated by Mr Thomson on 23 February 2006;
 - b. stated that the full report was presented to a meeting of National Council on 19 October 2004;
 - c. did not contain any information regarding whether the full report (or a concise report) was circulated to members and, if so, the date of circulation.
57. The letter from the AIR to Mr Thomson dated 24 June 2005 ([FWA.004.0097](#)) also brought the following matters to Mr Thomson's attention:
- a. Documents were not lodged with the AIR within the timeframe set out in the RAO Schedule;
 - b. The auditor's report was undated; and
 - c. It is a standard obligation under the new RAO Schedule for the full report to be presented to a *general meeting of members* and that:

documents may only be presented directly to a Committee of Management meeting where the rules of an organisation contain a provision that allows up to 5% of members to call a general meeting to be held to consider the report - see s266(3). It would appear that the federal rules of the HSUA do not currently contain a provision to this effect.

If the organisation wishes in future financial years to present the documents to a Committee of Management meeting rather than a general meeting of members it will be necessary for the federal rules of the organisation to be altered to fulfil the requirements of s266(3). For example, a federal rule of this kind could be based on the wording of HSU Branch Rule 61(d)...

Year ended 30 June 2005

58. Financial documents for the year ended 30 June 2005 were lodged with the AIR on 3 March 2006 ([FWA.004.0101](#)) under cover of a letter from Mr Thomson dated 23 February 2006 ([FWA.004.0099](#)). Those documents contained:
- a. An auditor's report ([FWA.004.0101](#) at 111) that had been signed by Mr Dick and dated 29 August 2005;
 - b. A committee of management statement ([FWA.004.0101](#) at 110). That statement:
 - i. was signed by Mr Thomson on 5 September 2005; but
 - ii. does not record the date upon which the committee of management passed a resolution in accordance with the requirements of paragraph 25 of the second Reporting Guidelines;
 - c. An operating report ([FWA.004.0101](#) at 113) which was signed by Mr Thomson and was also dated 5 September 2005; and
 - d. A Secretary's certificate ([FWA.004.0100](#)). The certificate:
 - i. was signed by Mr Thomson as National Secretary but was undated;
 - ii. contained no information regarding whether the full report (or a concise report) was provided to members and, if so, the date of circulation; and
 - iii. stated that the full report was presented to:
 1. a meeting of National Executive on 6 September 2005; and
 2. a meeting of National Council on 9 September 2006 (sic);
59. While Mr Thomson has stated in his Secretary's certificate ([FWA.004.0100](#)) that the full report was 'presented at a National Executive meeting' on 6 September 2005, it is notable that minutes of that meeting do not record that the meeting passed a resolution adopting the accounts. Those minutes do, however, include the following Finance report ([HSUNO.018.0286](#)):
- The annual accounts for the National office were circulated and it was outlined by the National Secretary that a finance committee meeting would take place on the Thursday of the conference with the reports to go to the full conference on the Friday.
60. The Secretary's certificate ([FWA.004.0100](#)) also states that the full report was presented at a National Council meeting on 9 September 2006. Given that these documents were lodged with the AIR on 3 March 2006 and that reference is also made in the same certificate to presentation of the same documents to a National Executive meeting on 6 September 2005, it is likely that this is a typographical error and that the correct date of presentation to a meeting of National Council was 9 September 2005.
61. An AIR official wrote to Mr Thomson on 9 June 2006 ([FWA.004.0094](#)) with the following comments:
- a. The full report was presented to a meeting of the committee of management, rather than to a general meeting of members. Subsection 266(3) of the RAO

Schedule only allows presentation to a meeting of the committee of management where there is a 5% rule. The letter goes on:

While the Branch Rule 63(b) of the HSUA Rules was amended on 30 March 2006 to address the requirements of s266(3) it appears that the Federal Rules do not address this requirement. This matter was brought to the attention of the National Office with respect to the previous financial year - *see attached*.

Accordingly, if the National Office wishes in year ended 30 June 2006 to present the financial reports to a Committee of Management meeting then the Federal Rules will need to be amended in accordance with s266.

In the absence of any such rule change the National Office must present its financial documents for year ending 30 June 2006 (and later years) to a general meeting of members.

- b. It is necessary to date the Secretary's certificate;
 - c. The committee of management statement must include the date on which the resolution was passed by the committee of management; and
 - d. Documents must be lodged with the AIR within 14 days of the meeting to which the full report was presented.
62. The sequence of events for financial documents for the year ended 30 June 2005 indicates that Mr Dick signed his auditor's report on 29 August 2005 ([FWA.004.0101](#) at 111), seven days before Mr Thomson signed the committee of management statement ([FWA.004.0101](#) at 110) stating that it had passed the resolutions required by paragraph 25 of the second Reporting Guidelines.

Year ended 30 June 2007

63. From the financial year commencing on 1 July 2006, paragraph 54 of Australian Auditing Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report* required that:
- The auditor's report shall be dated as of the date the auditor signs that report. The auditor shall date the auditor's report on the financial report no earlier than the date on which the auditor has obtained sufficient appropriate audit evidence on which to base the opinion on the financial report. Sufficient appropriate audit evidence shall include evidence that the entity's financial report has been approved and that those charged with governance have asserted that they have taken responsibility for it.
64. On 30 April 2009 Ms Jackson lodged documents with the AIR that included a signed (but undated) auditor's report and an unsigned and undated committee of management statement for the year ended 30 June 2007 ([FWA.005.0050](#)).
65. Accordingly it appears that Mr Dick failed to date his auditor's report for the year ending 30 June 2007 when he signed it.

Conclusions

66. For the reasons set out at paragraphs 53 to 57 above of this chapter, I am satisfied that Mr Dick failed to date his auditor's report for the year ended 30 June 2004.

67. For the reasons set out in paragraphs 58 to 62 above of this chapter, I am satisfied that Mr Dick signed his auditor's report for the financial year ending on 30 June 2005 on 29 August 2005, which was seven days before Mr Thomson had signed the committee of management statement on 5 September 2005.
68. For the reasons set out in paragraphs 63 to 65 above of this chapter, I am satisfied that Mr Dick failed to date his auditor's report for the year ended 30 June 2007.

Findings 179 to 181 - Failing to date audit reports in accordance with requirements of the RAO Schedule

- 179.** Mr Dick failed to date his auditor's report for the year ended 30 June 2004 thereby contravening:
- the requirement in subsection 257(9) of the RAO Schedule that "The auditor's report must be dated as at the date that the auditor signs the report"; and
 - the requirement in subsection 257(8) of the RAO Schedule, which requires the form and content of the auditor's report to be in accordance with Australian Auditing Standards. Paragraph 35 of the Australian Auditing Standard AUS 702 requires an auditor to date his audit report 'as of the date the auditor signs that report'.
- 180.** Mr Dick signed his auditor's report on 29 August 2005 for the financial year ending on 30 June 2005, seven days before Mr Thomson signed the committee of management statement stating that it had passed the resolutions required by paragraph 25 of the second Reporting Guidelines thereby contravening the requirement in subsection 257(8) of the RAO Schedule that the form and content of the auditor's report must be in accordance with the Australian Auditing Standards, by failing to meet the requirements of paragraphs 35 of AUS 702.
- 181.** Mr Dick failed to date his auditor's report for the year ended 30 June 2007 thereby contravening:
- the requirement in subsection 257(9) of the RAO Schedule that "The auditor's report must be dated as at the date that the auditor signs the report"; and
 - the requirement in subsection 257(8) of the RAO Schedule which requires the form and content of the auditor's report to be in accordance with Australian Auditing Standards. Paragraph 35 of Australian Auditing Standard AUS 702 *The Audit Report on a GPFR* requires an auditor to date his audit report 'as of the date the auditor signs that report'.

PART 4

**OTHER MATTERS WHICH I HAVE
CONSIDERED
DURING MY INVESTIGATION BUT
REGARDING WHICH
I HAVE NOT MADE
FINDINGS OF CONTRAVENTION**

Introduction to Part 4

1. During the Inquiry and subsequent Investigation I considered in some detail a number of matters regarding which I ultimately decided not to make findings of contravention. Part 3 of my report sets out those matters and the reasoning behind my decision that a finding of contravention could not, or should not, be made.
2. Part 4 considers the following matters:
 - a. Financial reporting requirements of the RAO Schedule;
 - b. Payments made by the HSU after Ms Karene Walton ceased employment;
 - c. The Dental Campaign;
 - d. National Council expenses;
 - e. Requirements of the Rules;
 - f. Campaign expenditure; and
 - g. Failure of Ms Jackson to attend meetings of National Executive.

Chapter 13 - Financial Reporting Requirements of the RAO Schedule

1. I have made findings in Chapter 9 regarding contraventions of Parts 2 and 3 of Chapter 8 of the RAO Schedule by the National Office reporting unit at:
 - a. Finding 164 - Making donations using National Office funds without at page 847;
 - b. Finding 165 - Failing to keep financial records in relation to expenditure by Mr Thomson at page 849;
 - c. Findings 166 to 168 - Failing to keep financial records at page 852;
 - d. Findings 169 and 170 - Failing to prepare an operating report and committee of management statement for the year ended 30 June 2007 at page 863; and
 - e. Finding 171 - failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended at page 867.
2. I have also made findings in Chapter 5 regarding contraventions by Mr Thomson with respect to reporting requirements at:
 - a. Finding 67 - failing to present the full report to the National Council meeting on 19 October 2004 on page 449;
 - b. Finding 68 - Signing the committee of management statement for year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed at page 453;
 - c. Finding 69 - Failing to present financial reports for year ended 30 June 2006 to the committee of management meeting on 13 September 2006 at page 456; and
 - d. Findings 70 and 71 - Failing to prepare financial documents for year ended 30 June 2007 at page 460;
3. This chapter sets out matters regarding which I have not made any findings of contravention of the financial reporting requirements of the RAO Schedule for the reasons set out below.
4. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2.

A reporting unit with no members

5. Since Part 3 of Chapter 8 of the RAO Schedule places obligations upon reporting units, it is necessary to consider the structure of the HSU as provided for by its Rules in order to determine the reporting units within the HSU. Under the terms of Rule 48 (which provides for the Branches of the Union) all of the members of the HSU are members of one of the Branches of the Union. With the exception of Victoria and Tasmania, there is one Branch in each State of Australia (with members in the

Australian Capital Territory belonging to the New South Wales Branch (see Sub-rule 48(l)) and members in the Northern Territory belonging to the South Australian Branch (see Sub-rule 48(m)). During the period in which Mr Thomson was National Secretary there were five Branches in Victoria and two branches in Tasmania, with membership of those branches being determined in each State on an occupational basis.

6. The practical result of the membership structure that is determined for the HSU by Rule 48 is that there are no members of the Union who are not also members of a Branch as set out in Rule 48. Each of the eleven Branches that were in existence during the period in which Mr Thomson was National Secretary were 'reporting units' in their own right as determined by subsection 242(3) of the RAO Schedule.²⁸⁴ While the National Office was a separate reporting unit by virtue of the operation of subsection 242(5) of the RAO Schedule, it was a reporting unit with no members.
7. The legislative requirements that are set out in sections 265, 266 and 268 of the RAO Schedule all turn upon requirements that are placed upon the reporting unit with respect to its members:
 - a. Subsection 265(5) requires a reporting unit to provide a copy of the full report and a copy of the operating report to its members, free of charge. They must be provided no less than 21 days before the general meeting of members to which the reports are to be presented, which general meeting of members must occur within six months of the end of the financial year;
 - b. Subsection 266(1) requires the full report to be presented to a general meeting of members of the reporting unit within six months of the end of the financial year; and
 - c. Subsection 268 requires the reporting unit to lodge the full report and the Secretary's certificate within 14 days of the general meeting of members to which the full report was presented.
8. The fact that the National Office of the HSU while Mr Thomson was National Secretary had no members makes application of the requirements in section 265, 266 and 268 of the RAO Schedule somewhat incongruous. Quite simply, they had no application in practice as there were no members to whom the full report could be circulated or presented and, since there could be no presentation of documents to a meeting of members (and the Rules did not meet the requirements of subsection 266(3) which would have allowed presentation of the full report to the committee of management), there was no meeting within 14 days of which documents were required to be lodged with the AIR.

²⁸⁴ No certificate was ever issued by the Industrial Registrar under section 245 of the RAO Schedule stating that the HSU was divided into reporting units 'on an alternative basis'.

Compliance with Part 3 of Chapter 8 of the RAO Schedule

Year ended 30 June 2003

9. The first year in which the RAO Schedule applied to the HSU National Office was the financial year ended 30 June 2003. The full report and designated officer's certificate for the year were required to be lodged with the AIR by no later than 14 January 2004.
10. FWA's electronic records show that financial documents were lodged with the AIR on 13 July 2004 but that those documents were not signed or dated. An AIR official spoke to Nurten Ungun on 15 July 2004 and subsequently to Mr Thomson on 30 July 2004 requesting the lodgement of signed and dated documents, which occurred on 9 August 2004 (that is, almost seven months late).
11. FWA has been unable to locate in its archives the financial documents lodged by the Union for the financial year ended 30 June 2003. In the absence of documentation that supports FWA's electronic records, I do not believe that it is open to me to make any findings regarding reporting requirements for the year ended 30 June 2003.

Year ended 30 June 2004

12. Financial documents for the year ended 30 June 2004 were lodged with the AIR on 15 June 2005 (FWA.004.0120). Those documents contained:
 - a. an operating report (FWA.004.0120 at 130) that was signed by Mr Thomson on 15 December 2004;
 - b. a committee of management statement (FWA.004.0120 at 132). That statement:
 - i. was signed by Mr Thomson on 15 December 2004;
 - ii. stated that a resolution was passed, as required by the first Reporting Guidelines, by the 'Committee of Management of the Health Services Union of Australia national office' on 19 October 2004, without specifying whether the meeting was of National Council or National Executive; and
 - c. an auditor's report that was signed by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd but which was undated (FWA.004.0120 at 133).
13. The documents lodged on 15 June 2005 did not, however, contain a Secretary's certificate under section 268 of the RAO Schedule.
14. An AIR official wrote to Mr Thomson on 24 June 2005 (FWA.004.0097) asking that a Secretary's certificate be lodged by Friday, 8 July 2005.
15. Almost eight months later, on 3 March 2006, a Secretary's certificate (FWA.004.0117) was lodged with the AIR. The certificate:
 - a. had been signed and dated by Mr Thomson on 23 February 2006;
 - b. stated that the full report was presented to a meeting of National Council on 19 October 2004;

- c. did not contain any information regarding whether the full report (or a concise report) was circulated to members and, if so, the date of circulation.
16. The letter from the AIR to Mr Thomson dated 24 June 2005 (FWA.004.0097) also brought the following matters to Mr Thomson's attention:
- a. Documents were not lodged with the AIR within the timeframe set out in the RAO Schedule;
 - b. The auditor's report was undated; and
 - c. It is a standard obligation under the new RAO Schedule for the full report to be presented to a *general meeting of members* and that:

documents may only be presented directly to a Committee of Management meeting where the rules of an organisation contain a provision that allows up to 5% of members to call a general meeting to be held to consider the report - see s266(3). It would appear that the federal rules of the HSUA do not currently contain a provision to this effect.

If the organisation wishes in future financial years to present the documents to a Committee of Management meeting rather than a general meeting of members it will be necessary for the federal rules of the organisation to be altered to fulfil the requirements of s266(3). For example, a federal rule of this kind could be based on the wording of HSU Branch Rule 61(d)...

Compliance with Part 3 of Chapter 8 of the RAO Schedule

17. As stated at paragraph 31 of chapter 2, in the absence of a 5% rule, during the period in which Mr Thomson was National Secretary the National Office was required both to provide the full report (or a concise report) to members and to present the full report to a meeting of members (rather than to the National Council or National Executive) under sections 265 and 266 of the RAO Schedule respectively. Further, paragraph 265(5)(a) of the RAO Schedule required the full report (or concise report) to be provided to members no less than 21 days prior to the meeting at which the full report was presented.
18. While there is no information before FWA regarding the date upon which the full report (or concise report) was circulated, even assuming that the meeting that was held on 19 October 2004 had been a meeting of members rather than of National Council, documents that are before FWA indicate that the full report²⁸⁵ cannot have been circulated to members no less than 21 days before that meeting (that is, by 29 September 2004) because:
 - a. The operating report (FWA.004.0120 at 130) is dated 15 December 2004; and
 - b. The committee of management statement (FWA.004.0120 at 132) is also dated 15 December 2004. Further, the resolution was passed by the committee of management on the same date as the meeting (that is, 19 October 2004).

²⁸⁵ See paragraph 265(5)(a)

19. Documents that are before FWA also indicate with respect to the meeting that was held on 19 October 2004 that:
- a. the meeting was a meeting of the National Council (see FWA.004.0117) and not a general meeting of members;
 - b. the full report cannot have been presented to the meeting because:
 - i. the operating report (FWA.004.0120 at 130) is dated 15 December 2004; and
 - ii. the committee of management statement (FWA.004.0120 at 132) is also dated 15 December 2004.
20. Further, in looking at section 268 of the RAO Schedule (which requires that a reporting unit lodge a copy of the full report and the Secretary's certificate within 14 days of the date of the meeting to which the full report was presented) the full report and Secretary's certificate should have been lodged with the AIR by no later than 2 November 2004. The full report was not, however, lodged with the AIR until 15 June 2005 (some 7½ months later) and the Secretary's certificate was not lodged until 3 March 2006 (some 16 months later).
21. While in the year ended 30 June 2004 the National Office has:
- a. As set out at paragraph 19.a, failed to present the full report to a meeting of members as required by section 266 of the RAO Schedule;
 - b. As set out at paragraph 19.b, failed to present to the meeting that was held on 19 October 2004 all of the documents that make up the full report as required by subsection 266(1) of the RAO Schedule;
 - c. As set out at paragraph 18, failed to provide to members all of the documents that make up the full report (or a concise report) no less than 21 days before the meeting at which the full report is to be presented as required by subsection 265(5)(a) of the RAO Schedule; and
 - d. As set out at paragraph 20, failed to lodge the full report and Secretary's certificate within 14 days of the date upon which the full report was presented to a meeting, as required by subsection 268 of the RAO Schedule;
- there can have been no contraventions of the RAO Schedule by the reporting unit since the legislative scheme is framed such that the requirements of sections 265, 266 and 268 cannot apply to a reporting unit that has no members.
22. It is therefore not open to me to find that there have been contraventions by the reporting unit in the year ended 30 June 2004 of the requirements of sections 265, 266 and 268 of the RAO Schedule, despite failure of the reporting unit to comply with requirements of those provisions.

Compliance by National Secretary with Rule 32

23. Sub-rule 32(f) requires the National Secretary to 'lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner'.

24. Since, in my view, sections 265, 266 and 268 of the RAO Schedule cannot apply to a reporting unit that does not have any members, the National Secretary is not required by the RAO Schedule to 'lodge', 'file with' or 'furnish to' the Industrial Registrar any documents under those sections. I therefore do not believe that it is open to me to find that, in failing to meet the requirements of those sections, the National Secretary has contravened Sub-rule 32(f).
25. Information that is before FWA indicates that the documents that were presented to a meeting of National Council on 19 October 2004 could not have been the full report, as set out at paragraph 19.b. It is also clear that the auditor's report that was presented to that National Council meeting was undated (FWA.004.0120 at 133).
26. Sub-rule 32(h) also requires the National Secretary to 'draw up a report and balance sheet to be submitted to the National Council at its biennial Meeting and forward a copy of the same to each branch'. There is no express requirement in Sub-rule 32(h), however, that the report that is presented to National Council must be a report that contains all of the documents, or otherwise meets any of the requirements of, the RAO Schedule. It is not even expressly required that the report that is presented has been audited. As such, in my view it is not open to me to find that the National Secretary has contravened Sub-rule 32(h) in failing to present all of the documents that constitute the full report to National Council on 19 October 2004.

Failure of auditor to date his audit reports in accordance with requirements of the RAO Schedule - compliance with subsection 257(8)

27. The information that has been provided in the Secretary's certificate ([FWA.004.0117](#)) and in the committee of management statement ([FWA.004.0120](#) at 132) indicates that the committee of management passed the resolutions that are set out in the committee of management statement on the same date as the full report was presented to National Council. This means that both the first and second meetings must have occurred on the same date, that is 19 October 2004.
28. As set out paragraphs 50 to 52 of chapter 12 on pages 927 and 928, the auditor is required to sign his auditor's report after the first meeting (having viewed the signed committee of management statement) but before the second meeting.
29. As Mr Dick's report was signed but undated, however, there is insufficient information before me to determine whether Mr Dick viewed a signed committee of management statement after the first meeting on 19 October 2004 and prior to signing his auditor's report. As a result, I am unable to determine whether a contravention of the RAO Schedule occurred.

Year ended 30 June 2005

30. Financial documents for the year ended 30 June 2005 were lodged with the AIR on 3 March 2006 (FWA.004.0101) under cover of a letter from Mr Thomson dated 23 February 2006 (FWA.004.0099). Those documents contained:
 - a. An auditor's report (FWA.004.0101 at 111) that had been signed by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd and dated 29 August 2005;

- b. A committee of management statement (FWA.004.0101 at 110). That statement:
 - i. was signed by Mr Thomson on 5 September 2005; but
 - ii. does not record the date upon which the committee of management passed a resolution in accordance with the requirements of paragraph 25 of the second Reporting Guidelines;
 - c. An operating report (FWA.004.0101 at 113) which was signed by Mr Thomson and was also dated 5 September 2005; and
 - d. A Secretary's certificate (FWA.004.0100). The certificate:
 - i. was signed by Mr Thomson as National Secretary but was undated;
 - ii. contained no information regarding whether the full report (or a concise report) was provided to members and, if so, the date of circulation; and
 - iii. stated that the full report was presented to:
 - 1. a meeting of National Executive on 6 September 2005; and
 - 2. a meeting of National Council on 9 September 2006 (sic);
31. While Mr Thomson has stated in his Secretary's certificate (FWA.004.0100) that the full report was 'presented at a National Executive meeting' on 6 September 2005, it is notable that minutes of that meeting do not record that the meeting passed a resolution adopting the accounts. Those minutes do, however, include the following Finance report (HSUNO.018.0286):
- The annual accounts for the National office were circulated and it was outlined by the National Secretary that a finance committee meeting would take place on the Thursday of the conference with the reports to go to the full conference on the Friday.
32. The Secretary's certificate (FWA.004.0100) also states that the full report was presented at a National Council meeting on 9 September 2006. Given that these documents were lodged with the AIR on 3 March 2006 and that reference is also made in the same certificate to presentation of the same documents to a National Executive meeting on 6 September 2005, it is likely that this is a typographical error and that the correct date of presentation to a meeting of National Council was 9 September 2005.
33. An AIR official wrote to Mr Thomson on 9 June 2006 (FWA.004.0094) with the following comments:
- a. The full report was presented to a meeting of the committee of management, rather than to a general meeting of members. Subsection 266(3) of the RAO Schedule only allows presentation to a meeting of the committee of management where there is a 5% rule. The letter goes on:

While the Branch Rule 63(b) of the HSUA Rules was amended on 30 March 2006 to address the requirements of s266(3) it appears that the Federal Rules do not address this requirement. This matter was brought to the attention of the National Office with respect to the previous financial year - *see attached*.

Accordingly, if the National Office wishes in year ended 30 June 2006 to present the financial reports to a Committee of Management meeting then the Federal Rules will need to be amended in accordance with s266.

In the absence of any such rule change the National Office must present its financial documents for year ending 30 June 2006 (and later years) to a general meeting of members.

- b. It is necessary to date the Secretary's certificate;
- c. The committee of management statement must include the date on which the resolution was passed by the committee of management; and
- d. Documents must be lodged with the AIR within 14 days of the meeting to which the full report was presented.

Compliance with Part 3 of Chapter 8 of the RAO Schedule

- 34. There is no information before FWA regarding whether the full report was circulated to members. It is therefore not possible to determine whether the requirements of subsection 265(5) of the RAO Schedule were met.
- 35. As stated at paragraph 31 of chapter 2, in the absence of a 5% rule, during the period in which Mr Thomson was National Secretary the National Office was required both to provide the full report (or a concise report) to members and to present the full report to a meeting of members (rather than to the National Council or National Executive) under sections 265 and 266 of the RAO Schedule respectively. Further, paragraph 265(5)(a) of the RAO Schedule required the full report (or concise report) to be provided to members no less than 21 days prior to the meeting at which the full report was presented.
- 36. While there is no information before FWA regarding the date upon which the full report (or concise report) was circulated, even assuming that the meetings that were held on 6 and 9 September 2005 had been a meeting of members rather than of National Executive or of National Council, documents that are before FWA indicate that the full report²⁸⁶ cannot have been circulated to members no less than 21 days before either of those meetings because:
 - a. The auditor's report (FWA.004.0101 at 111) is dated 29 August 2005;
 - b. The committee of management statement (FWA.004.0101 at 110) is dated 5 September 2005; and
 - c. The operating report (FWA.004.0101 at 113) is also dated 5 September 2005.
- 37. The Secretary's certificate (FWA.004.0100) also states that the meetings that were held on 6 and 9 September 2005 were meetings of National Executive and National Council and not a general meeting of members.
- 38. While it seems certain that the full report was presented to a meeting of National Executive on 6 September 2005, it seems likely that the full report was also presented to a meeting of National Council on 9 September 2005. Assuming that the full report was presented to National Council on 9 September 2005 and that

²⁸⁶ See paragraph 265(5)(a) of the RAO Schedule.

section 268 allowed the reporting unit 14 days from that date in which to lodge the full report and Secretary's certificate with the AIR, documents should have been lodged with the AIR by 23 September 2005. No documents were lodged with the AIR, however, until 3 March 2006, being more than five months after the time allowed for lodgement by section 268.

39. While in the year ended 30 June 2005 the National Office has:
- a. As set out at paragraph 37, failed to present the full report to a meeting of members as required by section 266 of the RAO Schedule;
 - b. As set out at paragraph 36, failed to provide to members all of the documents that make up the full report (or a concise report) no less than 21 days before the meeting at which the full report is to be presented as required by subsection 265(5)(a) of the RAO Schedule; and
 - c. As set out at paragraph 38, failed to lodge the full report and Secretary's certificate within 14 days of the date upon which the full report was presented to a meeting, as required by subsection 268 of the RAO Schedule;

there can have been no contraventions of the RAO Schedule by the reporting unit since the legislative scheme is framed such that the requirements of sections 265, 266 and 268 cannot apply to a reporting unit that has no members.

40. In my view it is therefore not open to me to find that there have been contraventions by the reporting unit of the requirements of sections 265, 266 and 268 of the RAO Schedule, despite failure of the reporting unit to comply with the timeframes set out in the legislative scheme.

Compliance by National Secretary with Rule 32

41. Sub-rule 32(f) requires the National Secretary to 'lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner'.
42. Since, in my view, sections 265, 266 and 268 of the RAO Schedule cannot apply to a reporting unit that does not have any members, the National Secretary is not required by the RAO Schedule to 'lodge', 'file with' or 'furnish to' the Industrial Registrar any documents under those sections. I therefore do not believe that it is open to me to find that, in failing to meet the requirements of those sections, the National Secretary has contravened Sub-rule 32(f).

Signing of an inaccurate statement by the National Secretary - Criminal Code Act 1995 (Cth)

43. At Finding 68 - Signing the committee of management statement for year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed, on page 453 in chapter 5, I have found that Mr Thomson signed an inaccurate statement.
44. I have also considered whether Mr Thomson knowingly signed a false committee of management statement regarding the date of passage of the committee of management resolution for the year ended 30 June 2005.

45. Section 137.1 of the *Criminal Code Act 1995* (Cth) (**the Code**) makes it an offence to provide false or misleading information in some circumstances. Section 137.1(1) provides:

- (1) A person is guilty of an offence if:
 - (a) the person gives information to another person; and
 - (b) the person does so knowing that the information:
 - (i) is false or misleading; or
 - (ii) omits any matter or thing without which the information is misleading; and
 - (c) any of the following subparagraphs applies:
 - (i) the information is given to a Commonwealth entity;
 - (ii) the information is given to a person who is exercising powers or performing functions under, or in connection with, a law of the Commonwealth; or
 - (iii) the information is given in compliance or purported compliance with a law of the Commonwealth.

False or misleading in a material particular

46. To be guilty of an offence under section 137.1, the relevant information must be false or misleading in a material particular.²⁸⁷ The term ‘false or misleading in a material particular’ appears in a number of statutes. The full Federal Court decision in *Minister for Immigration, Local Government and Ethnic Affairs v Dela Cruz* (1992) 110 ALR 367 is often cited as authority for the meaning of this term. In that decision the Court found that the term ‘material’ requires no more and no less than that the false particular must be of moment or of significance, and not merely trivial or inconsequential. The Court went on to say that a statement will be false or misleading in a material particular if it is relevant to the purpose for which it is made. Minutes of the National Executive meeting on 13 October 2005 (HSUNO.018.0281) record that the committee of management resolution was not passed until that date. A statement that is relied upon or provided to another person before this date which states *that the resolution had been passed* is clearly false in a material particular.

Information given in compliance with a law of the Commonwealth

47. The offence that is created by section 137.1(1)(c)(iii) requires that a person ‘gives information’ to another person, and the information is given ‘in compliance or purported compliance with a law of the Commonwealth’. It would appear that both the HSU²⁸⁸ and the AIR²⁸⁹ was a ‘person’ for the purposes of the Code.

²⁸⁷ Section 137.1(2) of the Code.

²⁸⁸ Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that ‘person’ includes a body politic or corporate as well as an individual.

²⁸⁹ The Code defines a ‘person’ to include a Commonwealth authority that is not a body corporate.

48. According to the Secretary's certificate (FWA.004.01000), the National Office reporting unit provided the full report (which included the misleading statement) to the following persons:
- a. The National Executive meeting on 6 September 2005 (in compliance with subsection 266(1) of the RAO Schedule);
 - b. The National Council meeting on 9 September 2005 (in compliance with subsection 266(1) of the RAO Schedule); and
 - c. The AIR (in compliance with section 268 of the RAO Schedule).
49. Although it is not clear from the Secretary's certificate whether the full report was provided to members (as the certificate is silent in this regard - see FWA.004.0100), the full report was given to meetings of the National Executive and National Council and subsequently given to the AIR in compliance with a law of the Commonwealth. The elements of section 137.1(1)(c)(iii) appear to be made out in relation to the reporting unit presenting the committee of management statement to the National Executive and National Council and lodging it with the AIR.

Knowing the information is false and misleading

50. Part 2.5 of the Code sets out some additional provisions dealing with corporate criminal responsibility that must also be considered. As a general principle, the Code applies to bodies corporate in the same way as it applies to individuals, that is, a body corporate may be found guilty of an offence.
51. With respect to any fault elements of an offence, section 12.3(1) of the Code provides (my emphasis):
- If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly **authorised** or **permitted** the commission of the offence.
52. In the present case, the fault element is knowledge that the relevant statement was false or misleading. Section 12.3(2) provides that the means by which the necessary 'authorisation' or 'permission' may be established include:
- a. Proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
 - b. Proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
 - c. Proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or
 - d. Proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.
53. The full report was lodged with the AIR under cover of a letter dated 23 February 2006 that had been signed by Mr Thomson (FWA.004.0101). In addition to the committee of management statement which did not record the date the committee of

management passed a resolution in accordance with the requirements of paragraph 25 of the second Reporting Guidelines, the Secretary's certificate signed by Mr Thomson was undated, it contained no information regarding whether the full report (or a concise report) was provided to members, and if so, the date of circulation and furthermore went on to state that the full report was presented to a meeting of National Council on 9 September 2006 (seven months later than the date of the secretary's certificate).

54. Taking the totality of the correspondence lodged by Mr Thomson on 23 February 2006, it is clear that a less than thorough approach was taken by Mr Thomson in its production - documentation is undated, lacking in detail and, in one instance, noting a date that was still in the future.
55. A less than thorough approach is indicative of behaviour which breaches section 285 of the RAO Schedule but in this instance, in my view, it falls short of intentionally providing false or misleading information as it is inconceivable that someone intentionally setting out to provide false or misleading information would include a date still in the future.
56. Similarly, in this instance, in my view, such behaviour falls short of recklessly providing false or misleading information, although it is not as clear that it does so. Nevertheless, I have taken into account that the documentation as a whole contains only one material aspect which can be said to be false or misleading even though it suffers from other deficiencies.

Year ended 30 June 2006

57. Financial documents for the year ended 30 June 2006 were lodged with the AIR on 28 September 2006 (FWA.004.0063). Those documents contained:
 - a. an unsigned and undated operating report (FWA.004.0063 at 64);
 - b. a committee of management statement (FWA.004.0063 at 74). That statement:
 - i. was signed by Mr Thomson on 27 September 2006; and
 - ii. stated that the committee of management had passed a resolution in relation to the GPFR on 13 September 2006;
 - c. a Secretary's certificate (FWA.004.0063 at 73). That certificate:
 - i. was signed by Mr Thomson on 27 September 2006; and
 - ii. stated that a concise report was circulated to members on 27 September 2006; and
 - iii. stated that the full report was presented to 'a meeting of the committee of management of the reporting unit on the 13 of September 2006'; and
 - d. the first page only of an auditor's report (FWA.004.0063 at 75) which did not have any information regarding the name of the auditor, whether the auditor formed an opinion regarding the GPFR, whether the auditor signed the report and, if so, on what date.

58. An AIR official wrote to Mr Thomson on 4 October 2006 (FWA.004.0076) seeking a complete copy of the auditor's report and further information regarding the apparent circulation of a concise report (given reference to a concise report in the Secretary's certificate). That correspondence also made comments regarding:
- a. Compliance of the operating report with regulation 159(c) of the RAO Regulations;
 - b. Donations totalling \$6,114 being disclosed in the accounts. The letter sought lodgement under subsection 237(1) of particulars of any loan, grant or donation should any of the donations made by the reporting unit during the year have exceeded the \$1,000 threshold; and
 - c. Presentation of the full report to a meeting of the committee of management, despite the absence of a 5% rule. Advice from the AIR in its letter dated 9 June 2006 (FWA.004.0094) was extracted and the National Office was again advised that, in the absence of certification of an alteration to the rules of the National Office, it would be necessary in future for the full report to be presented to a general meeting of members.
59. As no response had been received to the letter of 4 October 2006 (FWA.004.0076), a further letter was sent to Mr Thomson from the AIR on 31 October 2006 (FWA.004.0080). On 8 December 2006 a letter was received by the AIR under Mr Thomson's signature (FWA.004.0081) attaching:
- a. the second page of the auditor's report (FWA.004.0082) which was signed and dated by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd on 26 September 2006; and
 - b. a copy of the concise report (FWA.004.0082 at 83) that was circulated to members on 27 September 2006, which also included:
 - i. a copy of the operating report (FWA.004.0082 at 84) which, unlike the unsigned and undated operating report that had been lodged on 28 September 2006 (FWA.004.0063 at 64), had been signed and dated by Mr Thomson on 26 September 2006;
 - ii. a committee of management statement (FWA.004.0082 at 90) - unlike the statement that had been lodged on 28 September 2006 (FWA.004.0063 at 74), this statement did not include the date upon which a resolution was passed and was signed and dated by Mr Thomson on 26 September 2006; and
 - iii. an auditor's report on the concise report (FWA.004.0082 at 91) that was signed and dated by Mr Dick of Dick & Smith (Elsternwick) Pty Ltd on 26 September 2006.

Compliance with Part 3 of Chapter 8 of the RAO Schedule

60. Piecing together the correspondence between the Union and the AIR regarding the financial documents for the year ended 30 June 2006, the following sequence of events appears to have occurred:

- a. A resolution was passed by the committee of management on 13 September 2006:
 - i. a committee of management statement (FWA.004.0082 at 90) that had been signed by Mr Thomson on 26 September 2006 did not include the date upon which the resolution was passed by the committee of management; but
 - ii. a second committee of management statement that was signed by Mr Thomson on 27 September 2006 (FWA.004.0063 at 74) states that a resolution was passed by the committee of management on 13 September 2006.
 - b. The full report was also presented to a meeting of the committee of management on 13 September 2006 (see FWA.004.0063 at 73);
 - c. A committee of management statement (FWA.004.0082 at 90) was signed by Mr Thomson on 26 September 2006 (which did not include the date of the resolution);
 - d. Mr Dick signed the auditor's reports on the full report (FWA.004.0082) and on the concise report (FWA.004.0082 at 91) on 26 September 2006;
 - e. Mr Thomson also signed the operating report on 26 September 2006 (FWA.004.0063 at 64);
 - f. A second committee of management statement (which did include the date of the resolution) was signed by Mr Thomson on 27 September 2006 (FWA.004.0063 at 74);
 - g. A copy of the concise report was circulated to members on 27 September 2006 (see FWA.004.0063 at 73); and
 - h. The full report (FWA.004.0063) and Secretary's certificate (FWA.004.0063 at 73) were lodged with the AIR on 28 September 2006.
61. FWA has not been provided with any minutes of any National Executive meeting that may have been held, and to which the full report may have been presented, on 13 September 2006. Minutes of a National Executive meeting on 7 and 8 August 2006 (HSUNO.018.0220), however, do set out a 'draft plan for conference' on '13th September' to '15th September'. Although FWA has not been provided with any minutes of meetings of National Council between 2003 and 2007, this reference to a meeting of National Council on 13 September 2006 does suggest that the full report for the year ended 30 June 2006 was presented to a meeting of National Council on 13 September 2006.
62. As stated at paragraph 31 of chapter 2, in the absence of a 5% rule, during the period in which Mr Thomson was National Secretary the National Office was required both to provide the full report (or a concise report) to members and to present the full report to a meeting of members (rather than to the National Council or National Executive) under sections 265 and 266 of the RAO Schedule respectively. Further, paragraph 265(5)(a) of the RAO Schedule required the full report (or concise report)

to be provided to members no less than 21 days prior to the meeting at which the full report was presented.

63. The Secretary's certificate (FWA.004.0063 at 73) states that the concise report was circulated to members on 27 September 2006, that is two weeks after the meeting at which the full report was presented.
64. Documents that are before FWA also indicate with respect to the meeting that was held on 13 September 2006 that:
 - a. the meeting was a meeting of the committee of management (FWA.004.0063 at 73) and not a general meeting of members;
 - b. the full report cannot have been presented to the meeting because:
 - i. the operating report is dated 26 September 2006 (FWA.004.0063 at 64);
 - ii. the committee of management statements are dated 26 September 2006 (FWA.004.0082 at 90) and 27 September 2006 (FWA.004.0063 at 74);
 - iii. the auditor's report on the full report (FWA.004.0082) is dated 26 September 2006.
65. While in the year ended 30 June 2006 the National Office has:
 - a. As set out at paragraph 64.a, failed to present the full report to a meeting of members as required by section 266 of the RAO Schedule;
 - b. As set out at paragraph 64.b, failed to present to the meeting that was held on 13 September 2006 all of the documents that make up the full report as required by subsection 266(1) of the RAO Schedule; and
 - c. As set out at paragraph 63, failed to provide the concise report to members no less than 21 days before the meeting at which the full report is to be presented as required by subsection 265(5)(a) of the RAO Schedule;

there can have been no contraventions of the RAO Schedule by the reporting unit since the legislative scheme is framed such that the requirements of sections 265 and 266 cannot apply to a reporting unit that has no members.

66. In my view it is therefore not open to me to find that there have been contraventions by the reporting unit of the requirements of sections 265 and 266 of the RAO Schedule, despite failure of the reporting unit to comply with the timeframes set out in the legislative scheme.

Compliance by National Secretary with Rule 32

67. Sub-rule 32(f) requires the National Secretary to 'lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner'.
68. Since, in my view, sections 265 and 266 of the RAO Schedule cannot apply to a reporting unit that does not have any members, the National Secretary is not required by the RAO Schedule to 'lodge', 'file with' or 'furnish to' the Industrial Registrar any documents under those sections. I therefore do not believe that it is open to me to

find that, in failing to meet the requirements of those sections, the National Secretary has contravened Sub-rule 32(f).

69. The documents that were presented to the committee of management meeting on 13 September 2006 could not have been the full report, as set out at paragraph 64.b of this chapter. Significantly, neither the committee of management statement nor the auditor's report can have been presented to that meeting as neither of those documents had been signed as at the date of the meeting.
70. For reasons set out above at paragraph 26 of this chapter, however, in my view it is also not open to me to find that the National Secretary has contravened Sub-rule 32(h) in failing to present all of the documents that constitute the full report to the committee of management meeting on 13 September 2006.

Year ended 30 June 2007

71. Financial documents for the National Office for the year ended 30 June 2007 were required to be lodged with the AIR by no later than 14 January 2008. On 31 July 2008 (FWA.004.0021) an AIR official sent a letter to Ms Kathy Jackson, who had been appointed National Secretary on 14 December 2007 following the resignation of Mr Thomson, seeking lodgement of the outstanding financial documents. A further letter again seeking lodgement of outstanding financial documents for financial years ended 30 June 2007 and 30 June 2008 was sent by an AIR official on 4 March 2009 (FWA.005.0087).
72. On 6 April 2009 the Industrial Registrar sent a letter to Ms Jackson (FWA.005.0082) again seeking lodgement (by 14 April 2009) of the outstanding financial documents for financial years ended 30 June 2007 and 30 June 2008. A response was received from Ms Jackson under cover of letter dated 7 April 2009 (HSUNO.019.0139) in which she confirmed that financial statements for the year ended 30 June 2007 had not been lodged 'due to an oversight'. Ms Jackson stated that 'I will set out to rectify this, urgently.'
73. On 9 April 2009 (FWA.005.0078) the Industrial Registrar responded to Ms Jackson's letter of 7 April 2009 and again stated his expectation that the financial report for the year ended 30 June 2007 would be lodged with the AIR by 14 April 2009. Since no documents were received by that date, an AIR official telephoned Ms Jackson on 16 April 2009 requesting lodgement of the outstanding 2007 financial report. Lodgement of the report was again sought in a letter to Ms Jackson from the Industrial Registrar dated 1 May 2009 (FWA.010.0006).
74. A letter dated 30 April 2009 from Ms Jackson to the Industrial Registrar (FWA.005.0050) enclosed financial documents of the National Office for the year ended 30 June 2007 (FWA.005.0035). Those documents contained:
- a. an unsigned and undated operating report (FWA.005.0035 at 36);
 - b. an unsigned and undated Secretary's certificate (FWA.005.0035 at 46) which did not contain any information regarding provision of documents to members or presentation of the full report to a meeting;

- c. an unsigned and undated committee of management statement (FWA.005.0035 at 46) which did not include the date upon which the committee of management had passed a resolution as required by paragraph 25 of the second Reporting Guidelines; and
 - d. an auditor's report that has been signed but not dated (FWA.005.0035 at 48) by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd.
75. Ms Jackson's letter of 30 April 2009 (FWA.005.0050) stated that:
- The Designated Officer's certificate and the Certificate of the Committee of Management have not been signed by the then National Secretary, and I am not able to sign them as I was not the National Secretary at the time. However I have examined the records of the HSU and can confirm that the documents lodged are copies of the documents provided to the National Executive at its meeting on 6 December 2007.
- I am unable to state whether the documents were provided to members as I do not know, but have now had them posted to the Union's website.

Provision of report to members and presentation to a meeting

76. As stated at paragraph 31 of chapter 2, in the absence of a 5% rule, during the period in which Mr Thomson was National Secretary the National Office was required both to provide the full report (or a concise report) to members and to present the full report to a meeting of members (rather than to the National Council or National Executive) under sections 265 and 266 of the RAO Schedule respectively. Further, paragraph 265(5)(a) of the RAO Schedule required the full report (or concise report) to be provided to members no less than 21 days prior to the meeting at which the full report was presented.
77. The documents that were lodged by Ms Jackson on 30 April 2009 contained an unsigned and undated Secretary's certificate (FWA.005.0035 at 46) which did not contain any information regarding the provision of documents to members or presentation of the full report to a meeting.
78. I do not have any information before me that would enable me to determine whether documents were provided to members as required by subsection 265(1) of the RAO Schedule. Even assuming documents were provided to members, however, the information that is before me indicates that any documents that may have been circulated to members could not have been the full report (or a concise report) as required by subsection 265(1) since the documents that were lodged on 30 April 2009 (FWA.005.0035) contained:
- a. An operating report that was unsigned and undated (FWA.005.0035 at 36); and
 - b. A committee of management statement that was unsigned and undated (FWA.005.0035 at 46); and
 - c. An auditor's report was signed but not dated (FWA.005.0035 at 48).
79. Similarly, I do not have any information before me in a Secretary's certificate regarding whether the full report was presented to a meeting. Even if the reporting unit had purported to present the full report to a meeting, however, the information that is before me indicates that any documents that may have presented to a meeting

could not have been the full report as required by subsection 266(1) of the RAO Schedule because:

- a. The operating report that was unsigned and undated (FWA.005.0035 at 36); and
- b. The committee of management statement that was unsigned and undated (FWA.005.0035 at 46); and
- c. The auditor's report that was signed but not dated (FWA.005.0035 at 48).

80. I do have some information before me that suggests that the reporting unit may have purported to present the full report to the meeting of National Executive on 6 December 2007. The terms of the resolution that was passed by National Executive at that meeting do suggest that the National Executive purported, in the one resolution, to both approve the full report and then to pass the resolution required by paragraph 25 of the second Reporting Guidelines. That resolution was in the following terms (HSUNO.024.0014):

RESOLUTION

Moved Rosemary Kelly/Steve Pollard; that

“The Financial Statements of the Health Services Union be amended to reflect the correct name of the Union (Health Services Union and not Health Services Union of Australia) be received and adopted and the recommendation contained in the Committee of Management Certificate be received, accepted and endorsed.”

- Carried

81. Given the chronological order of events that must occur in the preparation and presentation of the documents that make up the full report (as set out at paragraphs 26 and 27 of chapter 2), however, it is not possible for the same resolution to both pass the resolution as required by paragraph 25 of the second Reporting Guidelines and to approve the full report.
82. Further, even if the full report had been presented to the meeting of National Executive on 6 December 2007, the requirements of subsection 266(1) of the RAO Schedule could not have been met in any event since the absence of a 5% rule required the National Office reporting unit to present its full report to a general meeting of members rather than to a meeting of the committee of management.
83. Taking the information that is before FWA at its highest and presuming that documents for the year ended 30 June 2007 were both circulated to members and then presented to a meeting of National Executive on 6 December 2007, the National Office reporting unit has:
- a. As set out at paragraph 82, presented documents to a meeting of the committee of management rather than to a general meeting of members;
 - b. As set out at paragraph 79, failed to present the full report to the meeting that was held on 6 December 2007;
 - c. As set out at paragraph 78, failed to provide the full report to members; and

- d. As required by section 268 of the RAO Schedule, failed to lodge the full report with the AIR within 14 days of the meeting on 6 December 2007 (that is, by 20 December 2007).

Nevertheless, there can be no contraventions of the RAO Schedule by the reporting unit since the legislative scheme is framed such that the requirements of section 265, 266 and 268 cannot apply to a reporting unit that has no members.

84. It is therefore not open to me to find that there have been contraventions of sections 265, 266 and 268 of the RAO Schedule, despite failure of the reporting unit to comply with the requirements of those provisions.

Failure of Ms Jackson to produce a GPFR and an operating report for the 2007 financial year as soon as practicable

85. Information that is relevant to this matter is set out at paragraphs 16 to 96 at pages 873 to 894 in chapter 10.

86. The following alleged contravention was put to Ms Jackson in Schedule 1 (FWA.015.0004) to my letter of 14 December 2011 (FWA.015.0001):

Ms Jackson failed to produce a committee of management statement and an operating report as soon as practicable after the end of the 2006/2007 financial year:

- the obligation is placed upon the National Secretary from time to time to produce the general purpose financial report and operating report pursuant to the provisions of the *Workplace Relations Act 1996*
- it was incumbent upon Ms Jackson once she took up office as National Secretary in December 2007 to produce a general purpose financial report and an operating report 'as soon as practicable' after the end of the 2006/2007 financial year;
- while it was not practicable for Ms Jackson to produce (or cause to be produced) a general purpose financial report and an operating report before the date upon which the auditor advised FWA that the reports would be lodged in May 2010, it was practicable they be produced within a shorter time frame than the 14 further months that it did take for a committee of management statement and operating report to be signed by Ms Jackson after May 2010

87. Schedule 1 (FWA.015.0004) of my letter to Ms Jackson of 14 December 2011 (FWA.015.0001) identified these alleged contraventions as being contraventions of subsections 253(1) and 254(1) of the RAO Schedule by reason of Ms Jackson's failure to produce a committee of management statement and an operating report as soon as practicable after the end of the 2006/2007 financial year. In substance, the basis of this alleged contravention was particularised as follows:

- a. the obligation is placed upon the National Secretary to produce the general purpose financial report and operating report;
- b. once Ms Jackson became National Secretary it was incumbent upon her to produce these reports "as soon as practicable" after the end of the 2006/2007 financial year; and

- c. while it was not practicable for her to produce such reports before May 2010, it was practicable that they be produced within a shorter time frame than the further 14 months which it took for her to sign these reports after May 2010.

Mr Jackson's submissions

88. Ms Jackson identifies four particular matters which she relies on to say that she has not breached subsections 253(1) or 254(1) of the RAO Schedule. However it is only necessary to deal with the fourth of these matters.
89. At paragraph [80] of her submission, Ms Jackson states that:
 - a. Subsection 253(1) casts an obligation upon a "reporting unit" (in this case, the National Office) to prepare a general purpose financial report;
 - b. Subsection 254(1) casts an obligation upon "the Committee of Management" as a collective, to prepare an operating report;
 - c. Ms Jackson is a natural person, and is not a "reporting unit" or a "Committee of Management". Accordingly she cannot breach subsections 253(1) or 254(1).

Conclusions

90. Ms Jackson's contention that is set out above in paragraph 89 is correct.
91. It is true that Sub-rule 32(f) of the HSU Rules required Ms Jackson, as National Secretary, to:

lodge and file with and furnish the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner.
92. However, while the HSU Rules may place obligations upon the National Secretary in relation to tasks which the RAO Schedule requires the National Office (or the Committee of Management) to perform, the RAO Schedule imposes those obligations upon the National Office (or the Committee of Management) and not on Ms Jackson personally. As such, Ms Jackson cannot breach subsections 253(1) or 254(1) of the RAO Schedule.

Chapter 14 - Entitlements of National Office employees

1. I have made a finding of contravention by Mr Thomson regarding matters concerning Ms Walton at Finding 6 - Payment of \$25,000 per annum to Karene Walton on page 197.
2. This chapter sets out further information about matters concerning Ms Walton that I considered during the Investigation but regarding which I have not made any findings.
3. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2

Entitlements paid out to Ms Walton at cessation of her employment by the HSU

4. Rule 36²⁹⁰ deals with the funds and property of the Union. Sub-rule 36(a) provides that the funds and property of the Union shall consist of -
 - (iv) any superannuation or long service leave or other fund operated or controlled by the Union as a whole in accordance with these rules for the benefit of its officers or employees;
5. Sub-rule 36(b) creates an exception to the general power that is vested in National Council and National Executive regarding expenditure on the general administration of the Union:
 - ...For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.
6. Payment by the National Office of wages and other associated benefits (such as allowances and long service leave) would, necessarily, fall within the 'general administration' of the Union, provided that National Council had appointed the employee and had determined his or her wages and other conditions of employment.
7. An email from Belinda Ord to the members of the Finance Committee dated 17 July 2007 (HSUNO.018.0127) proposed two prospective dates for a Teleconference and stated that as soon as a date and time for the teleconference was finalised, Ms Ord would advise and send out a spreadsheet "with Long Services and Annual Leave calculations re Karene Walton." A further email sent by Ms Ord to the members of the Finance Committee on the same day (HSUNO.018.0124) attached this foreshadowed spreadsheet. It is not clear what role the Finance Committee had in relation to the calculation of, or payment of, Ms Walton's long service and annual leave entitlements upon the cessation of her employment by the HSU National Office.

²⁹⁰ This rule was numbered Rule 37 between 30 March 2006 and 8 June 2006.

8. On 29 May 2007, the HSU National Office issued invoices to the following branches relating to Karene Walton's payout entitlements:

Branch	Amount	Doc number
NSW Branch	\$23,515.01	HSUNO.011.0091
Tas No 1 Branch	\$4,775.09	HSUNO.011.0092
Tas No 2 Branch	\$28.94	HSUNO.011.0094
Vic No 1 Branch	\$9,507.00	HSUNO.011.0093
Vic No 2 Branch	\$3,848.44	HSUNO.011.0095
Vic No 3 Branch	\$2,155.70	HSUNO.011.0096
Vic No 4 Branch	\$1,413.02	HSUNO.011.0097
Vic No 5 Branch	\$482.26	HSUNO.011.0098
WA Branch	\$2,917.67	HSUNO.011.0099

9. The HSU National Office sent out these invoices to the above branches but then credited some of these amounts.
- Invoice from HSU National Office to HSU Vic No 2 branch, dated 1 July 2007, advises a credit re invoice 29 May 2007 payout entitlements for Karene Walton of -\$3,848.44 (HSUNO.011.0415)
 - Invoice from HSU National Office to HSU NSW branch, dated 1 July 2007, advises a credit re invoice 29 May 2007 payout entitlements for Karene Walton of -\$23,515.01 (HSUNO.011.0427)
 - Invoice from HSU National Office to HSU Tas No 1 branch, dated 1 July 2007, advises a credit re invoice 29 May 2007 payout entitlements for Karene Walton of -\$4,755.09 (HSUNO.011.0430)
 - Invoice from HSU National Office to HSU WA branch, dated 1 July 2007, advises a credit re invoice 29 May 2007 payout entitlements for Karene Walton of -\$2,917.67 (HSUNO.011.0437)
10. It is not clear why the National Office invoiced the Branches for contributions in the case of Ms Walton's accrued employee entitlements or why some (but not all) of these changes appear to have been recredited to the Branches.
11. Nevertheless, there are no apparent contraventions of the RAO Schedule or of the Rules in these arrangements.

Payments made by the HSU National Office after Ms Walton ceased being an employee of the HSU National Office

Mobile Telephone

12. In a letter to Karene Walton dated 14 May 2007, Mr Thomson authorised a mobile telephone number to be ported to Karene Walton (HSUNO.022.0056).
13. The Rules require the National Secretary to control and conduct the business of the Union between meetings of National Executive. As outlined in the memorandum provided to you on the HSU Union Rules, this obligation must necessarily contemplate that the National Secretary will expend the funds of the Union.
14. Where funds are being expended other than on the general administration of the Union (or for purposes that are not reasonably incidental to the general administration of the Union), the prior authority of the National Council or the National Executive must be sought. The Rules do not go so far as to allow the National Secretary to expend Union funds on matters that fall outside the 'general administration of the Union' or 'purposes reasonably incidental thereto' without seeking the prior authority of National Council or National Executive.
15. A mobile telephone could reasonably be considered to be part of the organisation's general administration. It would be reasonable to presume that the National Office would expend funds, as part of its general administration, on infrastructure that supports employment of its staff, such as telephones.
16. However, as Karene Walton was not an employee of the National Office in May 2007 when the mobile number was ported to her, I have considered whether Mr Thomson should have authorised that this number be ported to Ms Walton, and whether by doing so he exposed the National Office to liability for the cost of telephone calls made by a non-employee of the National Office who was not using the phone to conduct duties on behalf of the National Office.
17. There is no evidence that any expense was incurred by the National Office when the telephone number was ported to Ms Walton. I do not have any evidence before me that the National Office paid for the cost of telephone calls made by Ms Walton after the telephone number had been ported to her.
18. In the absence of evidence that the National Office was paying for the cost of telephone calls during the period in which Ms Walton was employed by the ACTU, it is not open to me to find that payments were being made by the National Office.

Car lease

19. The HSU paid for a leased car for Ms Walton in June 2008. A Tax invoice from Orix Australia to HSU National Office for Karene Walton car lease rental Honda Accord Euro Sedan, start date 28 October 2005, transaction date 28 June 2008, \$789.38 (HSUNO.012.0200) states that this vehicle was still leased to Ms Walton in June 2008.

20. However, Karene Walton says that when she ceased employment with the ACTU in January 2008 (and the arrangement under which the HSU paid her \$25,000 per annum thereby also ceased), she returned the leased car to HSU: [PN 245-265]

MR NASSIOS: In terms of your car - - -

MS WALTON: Yes.

MR NASSIOS: - - - did you receive a leased vehicle paid for by the HSU national office in about October 2005?

MS WALTON: Yes.

MR NASSIOS: Do you recall whether this was possibly salary sacrifice, additional remuneration, or any particular basis upon which it was provided to you?

MS WALTON: I think it's just part of the package of employment.

MR NASSIOS: Okay. It seems like this lease was entered into only three weeks before the ACTU wrote to - well, in October 2008, proposing a secondment.

MR RAWSON: October 2005.

MR NASSIOS: My apologies. Yes, sorry, my apologies. Was the car lease in any way related to the ACTU secondment?

MS WALTON: No. Not to my knowledge. I don't know how that worked. My understanding is that the vehicles lease and they renew at a particular time. I don't know when that is. I don't have those details.

MR RAWSON: Did you have a lease before this one?

MS WALTON: There was a - I have always had a car in terms of that role. So that could have just been - you know, it's however many years and it's time to renew.

MR NASSIOS: Okay.

MS WALTON: Generally they tended to - I can't remember exactly, but I think it's about every three years, cars turn over as a general thing.

MS CARRUTHERS: That would make sense if you joined in late 2002, to get it renewed in late 2005.

MR NASSIOS: Now, the lease was still being paid in June 2008.

MS WALTON: Yes, I don't have that car, because I have left, so that car was returned to the HSU when I left.

MR RAWSON: By "leave", do you mean April 07, or in January 08?

MS WALTON: I'm talking about January 08.

MR RAWSON: So in June 08, you weren't still using that - - -

MS WALTON: No.

21. Information before me indicates that:
 - a. A car was leased by the HSU for Ms Walton while she was an employee of the HSU from 2002 onwards;
 - b. After her resignation from the HSU in April 2007, Ms Walton retained use of the leased vehicle;
 - c. The leased vehicle was returned by Ms Walton to the HSU upon cessation of her employment with the ACTU in January 2008; and
 - d. The National Office received a tax invoice for lease of the vehicle in June 2008.
22. There is no evidence before FWA that National Executive approved an arrangement where the National Office continued to pay for the lease of a vehicle which was supplied to Ms Walton after her resignation from employment with the HSU in April 2007. While the arrangement that the HSU would pay \$25,000 per annum to Ms Walton while she was an employee of the ACTU was at least evidenced in a letter that was discussed by National Executive at its meeting on 28 and 29 March 2007 (HSUNO.018.0151), there is no evidence at all before FWA that National Executive even discussed any arrangements regarding Ms Walton's continued use of a vehicle that was leased by the HSU.
23. If the National Office was paying for a leased vehicle for Ms Walton after her resignation as an HSU employee then National Executive or National Council were, in my view, required by Sub-rule 36(b) to authorise that arrangement. Payment of a car lease by the HSU in these circumstances could not be considered to be part of the 'general administration of the Union' or for a purpose that was reasonably incidental thereto. While the general administration of the Union would include payment of salaries and other costs associated with employees of the Union (such as the provision of a mobile telephone or a leased vehicle), Ms Walton was not an employee of the Union after April 2007.
24. Further, payment of a lease for a vehicle that is being used by someone who is not an employee of the Union could not be considered to be part of the 'business of the Union'. As a result, it could not be said that Sub-rule 32(n) would have empowered Mr Thomson to agree to such an arrangement.
25. While Ms Walton has said that she was provided with a vehicle by the HSU, there is no documentary evidence before FWA that it was the National Office (with Mr Thomson's authority) that was making lease payments on the vehicle between April 2007 and January 2008, although that would seem likely to have been the case. It may have been, for instance, that the costs were passed on by the National Office to the branches.
26. In the absence of evidence that the National Office was actually paying for the leased vehicle during the period in which Ms Walton was employed by the ACTU, it is not open to me to find that payments were being made by the National Office.
27. As a further, although minor, point, whenever the vehicle was transferred to another HSU employee, minutes of National Executive should have recorded a resolution authorising the provision of a leased vehicle to that employee as part of their terms

and conditions of employment. While it seems likely, there is no information before FWA, however, regarding whether the vehicle was provided to another employee or whether it, for instance, sat idle until the lease expired. It is therefore not open to me to make a finding on this point.

Car insurance

28. In Schedule 2 (FWA.018.0050) to my letter to Mr Thomson dated 12 December 2011 (FWA.018.0001) I put the following alleged contravention:

You have contravened Sub-rule 32(n) by failing to conduct and control the business of the HSU between meetings of National Executive by authorising payment of \$837.00 for insurance on the vehicle that had been supplied to Ms Walton when Ms Walton had ceased employment with the HSU.

29. Ms Walton resigned from the HSU in April 2007 (Walton PN 299-300).

30. In interview, Ms Walton stated that she does not recall that the HSU paid for her car insurance. (Walton PN 266 - 269)

MR NASSIOS: On 19 November 2007, the HSU made an EFT payment of \$837 to AAMI for your car insurance. Do you know why that would have been?

MS WALTON: In what date, sorry?

MR NASSIOS: 19 November 2007.

MS WALTON: No, I don't know. What is that, AAMI? As insurance? No, I'd need to go back and check records, sorry.

31. Mr Brown states that payments relating to Ms Walton's car insurance was not disclosed to the National Executive: (Brown PN 236 - 241)

MR NASSIOS: Do you know why the national office would have been paying Karene Walton's car insurance in November 2007?

MR BROWN: Absolutely no-idea and wasn't aware that that was the case.

MR NASSIOS: Did you know that Karene Walton still had a HSU Diners Card in October 2007?

MR BROWN: Not specifically, no.

MR NASSIOS: Was this ever discussed or disclosed to the national executive?

MR BROWN: No.

32. No minutes of meetings of National Executive record authorisation of the payment of insurance for Ms Walton's vehicle.

Mr Thomson's submissions

33. Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 32(n) of the Rules. I have failed to provide sufficient evidence to establish whether the payment of \$837 was for Ms Walton's vehicle.
 - b. In addition, it should be noted that at the time the payment was supposed to have been made, the car that Ms Walton had used while employed by the HSU was in the possession of the HSU and was being used by Mr Mark McLeay, who was employed by the HSU at the relevant time.
 - c. It is of concern that I have again failed to interview key and relevant witnesses in respect of this allegation and ask relevant questions, instead forming preliminary conclusions based on inadequate evidence.

Conclusions

34. On the basis of Mr Thomson's submission that Ms Walton's car was provided to Mr McLeay after Ms Walton's resignation from the HSU, I do not consider that the car insurance was paid by the National Office in contravention of the Rules.

Authorisation of expenditure relating to Ms Angela Humphries to be paid by the National Office

35. In Schedule 2 (FWA.018.0050) to my letter of 12 December 2011 (FWA.018.0001) I put the following alleged contravention to Mr Thomson:

You contravened subsection 285(1) of the RAO Schedule by failing to exercise your powers and discharge your duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when you failed to clarify Mr Williamson's remarks at the executive meeting in August 2006 by ensuring that the fact that the National Office was paying for a "mini lease" of a vehicle to be used by Ms Humphries was reported to the National Executive.

A reasonable person in your position as National Secretary would have ensured that this fact was reported to the National Executive.

36. Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening subsection 285(1) of the RAO Schedule. The appointment of Ms Humphries was approved by the National Executive. It was understood that expenses would be involved with that appointment and it was common practice and common knowledge that when people were engaged to work on campaigns that those individuals were either provided with money for petrol, or a vehicle.
 - b. There is no requirement that the National Secretary inform the National Executive that the National Office was paying for a vehicle for Ms Humphries and

a reasonable person in the position of National Secretary having the knowledge that Mr Thomson had, would not have clarified Mr Williamson's remarks at the National Executive meeting. The provision of the vehicle was consistent with Mr Thomson's power and the objects of the HSU.

37. I have set out at paragraphs 524 to 529 of chapter 5 my conclusions regarding the contravention by Mr Thomson of Sub-rule 36(b) by authorising expenditure of National Office funds on a motor vehicle lease for Ms Humphries.
38. On the basis of the material put by Mr Thomson, I do not find he has contravened subsection 285(1) of the RAO Schedule.

Chapter 15 - The Dental Campaign

Consideration given by the National Executive to the Dental Campaign

National Executive meeting held on 7 December 2006

1. The minutes of the National Executive meeting held on 7 December 2006 (HSUNO.018.0192) record the following statement under the heading 'Dental health Campaign':

Discussion and progress on this campaign was noted. Executive agreed with the outline and that this along with the Rights at Work Campaign would be the focus of the union's federal election campaigning in 2007.

National Executive meeting held on 2 February 2007

2. The minutes of the National Executive meeting held on 2 February 2007 (HSUNO.018.0170) record the following statement, under the heading 'Dental Campaign Update':

The National Secretary gave a comprehensive update of where the planning was with the dental campaign. Discussion occurred around the ANF and LHMU involvement in the campaign and it was agreed that if those unions were not prepared to make some financial contribution to the campaign then the HSU would run it alone.

3. The minutes also contain the following statement under the heading 'Election resources and funding':

The National Secretary spoke about the need to raise resources for the dental campaign and associated federal election issues dealing with production of common material. He outlined that the union needed to look at raising \$200,000 to properly run the campaigns.

It was agreed this money needed to be looked at and that this matter would be discussed further on the 7th February 2007.

4. Mr Thomson however told FWA at interview (Thomson PN 291) that:

We didn't again raise that money. There was no agreement to do that. The - what there was agreement to do in terms of that was to use existing resources within the national office for that campaign, which we did and we distributed material to all the branches. I can't remember all of the material other than the very innovative toothbrush which said, 'Don't give Medicare the brush,' or something like that. So there were thousands of these toothbrushes in every branch that we'd done as part of that campaign. We also took a group of people who had been on dental waiting lists, and we flew them to Canberra and did a press conference there and took them around to various pollies, both Labor and Liberal, because the union's position wasn't the position of either major party in the campaign.

5. Mr Thomson said (Thomson PN 295) that the costs of the dental campaign 'came out of existing resources' because the National Office had its 'budget lines' and 'just redirected money that would have been used for other campaigns into that one.'

National Executive meeting held on 28 and 29 March 2007

6. The minutes of the National Executive meeting held on 28 and 29 March 2007 (HSUNO.018.0151) record, as an action arising from the previous meeting, that:
 11. The National Secretary update the Dental plan and circulate to branches. In addition the national Secretary circulate a request to branches on the numbers of toothbrushes they are seeking.
7. Under the Heading 'Dental Campaign' the minutes record:

The National Secretary reported on the progress of the national dental campaign. Discussion occurred around the toothbrush promotion, the state dental meetings and the possibility of a national dental day.

The National Secretary also reported on the research that was planned and the costs related to that.
8. The minutes also record the passing of a resolution that:

The cost of the research for the dental scheme be billed to branches on a per capita basis.
9. Ms Jackson told FWA (Jackson (1) PN 219) that expenditure on the dental campaign was approved by the National Executive.

National Executive meeting held on 22 and 23 August 2007

10. The agenda for the National Executive meeting held on 22 and 23 August 2007 (FWA.004.0060) indicates that Karinda Flavell was to report on 'Dental - Senate Inquiry into Cost of Living Pressures on Older Australians'.

Who worked on the Dental Campaign?

11. At interview Mr McLeay told FWA that he did not have specific carriage of the Dental Campaign and that Karinda Flavell did the majority of work on the Dental Campaign under the direction of the National Executive (McLeay PN 55).

Expenditure incurred by the National Office on the Dental Campaign

Newsphotos May 2006 \$40

12. Mr Thomson said (Thomson PN 639) that he thought that a payment to 'News Photos' in May 2006 of \$40 was for the purchase of a photo of the launch of the dental campaign. There is no other evidence before FWA which indicates what this payment was for. However I am of the view that a payment of \$40 for what appears to be a Newspaper photograph could fall within the general administration of the Union or a purpose reasonably incidental thereto, particularly if, as claimed by Mr Thomson, it did relate to the launch of a national union campaign.

Newspoll Market Research October 2006 \$4,994

13. Financial records of the HSU record that on or about 27 October 2006 the HSU paid Newspoll Market Research the sum of \$4,994 (HSUNO.003.0201).

14. Mr Thompson was asked by FWA to explain what the payment in connection with Newspoll Market Research related to. Thomson stated that Newspoll were commissioned to undertake polling connected with dental care.

15. Mr Thompson gave the following evidence about the matter (Thomson PN 1593 - 1597):

MR NASSIOS: Now, during the period of October and December 2006, the national office of the SGE account made the following payments, \$4994 on 27 October for Newspoll Market Research, \$8815 on 27 October, same date, to Novocastrian, and I think this is different to the collectables we were talking before, \$1000 on 4 December 2006 to Sydney Wedding Music.

MS CARRUTHERS: They're all in your MYOB. Do you want the dates again?

MR THOMSON: Yes. I know the first one.

MR RAWSON: The first two are 27 October 06.

MR THOMSON: 06. Yes. The Newspoll Market Research was some questions that we had Newspoll do on dental care, I think, and/or aged care. We did it a few times. There should be more that you see there that we've done some polling on the issues that we were campaigning around. The Novocastrian, I'm not sure what that was. It looks like it's a function that's been held there with that amount of money for - - -

16. Dr Kelly states that she did not know what the payment to Newspoll related to and that the payment was not discussed or approved by the National Executive (Kelly PN 706-709):

MR NASSIOS: In October, November 2006, the national office's SGE account made the following payments; \$4900 or so on 27 October for Newspoll Market Research, \$1478 on 25 November for Golden Years Collectables, \$1000 on 4 December to Sydney Wedding Music and \$1500 on 6 December to Dobell FEC. Do you know what these payments were for?

DR KELLY: No, I don't.

MR NASSIOS: Were these payments discussed or approved by the national executive?

DR KELLY: No, they weren't.

17. Ms Stevens gave evidence that she understood the expenditure was in connection with the dental care campaign (Stevens PN 237-240).

MR NASSIOS: In October or November of 2006 there were some payments made, and like I can give you certainly the specific figures but if I just mentioned the organisations that Newspoll Market Research, Golden Years Collectibles, Sydney Wedding Music and Dobell FEC, which I have mentioned previously. Do you know what those expenditures would have been for?

MS STEVENS: The first one again, could you - - -

MR NASSIOS: Newspoll Market Research.

MS STEVENS: I think that was for the dental under Medicare. That sounds like - I mean, as far as I know the HSU did do polling, you know, on certain issues but they were running a campaign to get dental covered under Medicare - bloody great idea I think - and, yes, so they came back with, I think it was 98 per cent of people said that they would agree of an increase to the Medicare levy if it meant dental was under Medicare so, yes, that was a pretty - that was the big one.

18. No documents have been produced by the HSU to FWA evidencing that the payment made in connection with Newspoll Market Research was authorised by the National Council and the National Executive.
19. No evidence has been produced by HSU to FWA substantiating that the payment made in connection with Newspoll Market Research was for the purpose of carrying out the objects of the union.
20. In the circumstances I am of the view that the expenditure by Mr Thomson in connection with Newspoll Market Research was not expenditure on, or for a purpose reasonably incidental to, the general administration of the union. It is clear that the transaction with and the expenditure paid to Newpoll Market Research were not specifically authorised by the National Council and the National Executive.
21. However it is also possible that this research was, or was one aspect of, the research which the National Executive later approved at its National Executive meetings on 2 February 2007 referred to at paragraph 2 above and on 28 and 29 March 2008 referred to at paragraphs 7 and 8 above. In all the circumstances, and while the minutes of the resolution passed on 28 March 2007 ought to have been more clearly expressed, the available evidence does suggest that it is more than likely that this expenditure was authorised by one of these National Executive resolutions.

Payments to Essential Media Communications

22. On 30 April 2007 Essential Media Communications (**EMC**) raised an invoice addressed to 'Health Services Union - National' (HSUNO.010.0195) for what was described in the invoice as:

Communications Consultation - April 07	\$6,000.00
Design HSU Dental Health Mouth on Stick	\$275.00
Design HSU Tooth brush packaging	\$352.00
Travel Costs for Mr M Robinson to attend meeting with Craig Thomson in Sydney	\$315.13

23. The total amount invoiced, including GST, was \$7,636.34.

24. On 30 April 2007 EMC raised an invoice addressed to 'Health Services Union - National' (HSUNO.006.0259) for what was described in the invoice as:

Communications Consultation - July 07	\$6,000.00
Design HSU Close the GAP A5 flyer. Purchase image and supply PDF	\$748.00
Re work design for HSU Dental Tooth Brush Art	\$242.00
Media Release 29/06 - Dental care needs national solution	\$56.60

25. The total amount invoiced, including GST, was \$7,751.26.
26. The MYOB spreadsheet which was circulated at the National Executive meeting on 18 and 19 March 2008 (HSUNO.017.0036) lists an outstanding debt due to EMC at that date of \$9,044.20. It seems likely that this debt included the amount of \$7,751.26 which was invoiced by EMC on 30 April 2007. The minutes of that National Executive meeting (HSUNO.018.0001) indicate that this spreadsheet was tabled and discussed during the meeting, in the context of a discussion about a large number of unpaid invoices. In all the circumstances it appears that:
- it is possible that this payment could have been approved by the National Executive resolution on 2 February 2007 referred to at paragraph 2 above;
 - in any event the evidence suggests that the invoice was unpaid as at 18 March 2008; and
 - at least by 18 March 2008 the National Executive was seized of the need to make a decision as to whether or not it should authorise payment of this invoice.

In all the circumstances the available evidence does not support a finding that this invoice, if paid, was not authorised by the National Executive.

Research undertaken by University of Canberra

27. On 31 May 2007 the HSU National Office raised an invoice to the NSW Branch in the amount of \$12,279.25 (\$13,507.18 including GST) (HSUNO.011.0386). The invoice described the fee as being for:

Agreement between University of Canberra and Health Services Union to undertake research to cost alternate models of dental care for Australians

28. Similar invoices were raised by the National Office to other Branches as follows:

Branch	Reference	Amount (including GST)
Vic No 1 Branch	HSUNO.011.0387	\$5,230.78
Vic No 2 Branch	HSUNO.011.0388	\$2,209.30
Vic No 3 Branch	HSUNO.011.0389	\$1,238.30
Vic No 4 Branch	HSUNO.011.0390	\$280.29
Vic No 5 Branch	HSUNO.011.0391	\$280.29
WA Branch	HSUNO.011.0392	\$1,676.19

Branch	Reference	Amount (including GST)
SA Branch	HSUNO.011.0393	\$231.63
Tas No 1 Branch	HSUNO.011.0394	\$2,732.49
Tas No 2 Branch	HSUNO.011.0395	\$16.82

29. It appears clear from handwritten annotations made upon a copy of the invoice issued to the NSW Branch (HSUNO.012.0275) that these costs had been apportioned between the branches on a per capita basis.

30. On 1 September 2007 the HSU National Office raised invoices to the following Branches which described the charge as being for:

Agreement between University of Canberra and Health Services Union to undertake research to cost alternate models of dental care for Australians - FINAL INVOICE.

Branch	Reference	Amount (including GST)
Vic No 1 Branch	HSUNO.011.0413	\$5,331.68
Vic No 2 Branch	HSUNO.011.0381	\$2,251.92
Vic No 3 Branch	HSUNO.011.0380	\$1262.19
Vic No 4 Branch	HSUNO.011.0382	\$285.70
Vic No 5 Branch	HSUNO.011.0383	\$285.70
WA Branch	HSUNO.011.0384	\$607.97
SA Branch	HSUNO.011.0385	\$236.10
NSW Branch	HSUNO.011.0409	\$131,767.75
QLD Branch	HSUNO.011.0410	\$97.14
TAS No 1 Branch	HSUNO.011.0411	\$2,785.20
Tas No 2 Branch	HSUNO.011.0412	\$17.15
Total		\$144,928.50

31. The invoice to the WA Branch is curious, since it itemises a charge of \$1,708.53 (including GST) but then states a 'Balance Due' of only \$607.97.

32. On 4 January 2008 the University of Canberra wrote to the National Office of the HSU (HSUNO.012.0273) enclosing a Statement addressed to the HSU National Office for the month ending 21 December 2007 (HSUNO.012.0272). The statement identifies an outstanding overdue account for payment, dated 27 August 2007, in the sum of \$28,029. The covering letter indicates that several reminders have been sent in respect of this invoice. This amount appears to have been paid by a Branch, most likely the Victoria No 3 Branch, through an account with the Commonwealth Bank on 28 March 2008 (HSUNO.012.0281). The handwritten annotation 'refunded in June & paid to Uni of Canberra' suggests that the National Office repaid the Branch these monies in June 2008.

33. In his maiden speech to Parliament on 19 February 2007 (PUB.001.0003) Mr Thomson said:
- My union did some research, through Auspoll, looking at the affordability of dental care. That Auspoll research was conducted in eight marginal seats and found that half the adults surveyed said they put off treatment for their kids because of the cost.
34. However it is also possible that this research was, or was one aspect of, the research which the National Executive approved at its National Executive meetings on 2 February 2007 referred to at paragraph 2 above and on 28 and 29 March 2008 referred to at paragraphs 7 and 8 above. In all the circumstances, and while the minutes of the resolution passed on 28 March 2007 ought to have been more clearly expressed, the available evidence does suggest that it is more than likely that this expenditure was authorised by one of these National Executive resolutions.

Payments made to Branded Products

35. On 1 May 2007 Branded Products Pty Ltd issued an invoice to the HSU National Office for 150 Custom made T shirts (HSUNO.006.0202). The total value of the invoice was \$2,933.15.
36. On 16 August 2007 Branded Products Pty Ltd raised an invoice to the HSU National Office (HSUNO.012.0277) in the sum of \$10,857 (including GST). The invoice states that the charge is for 10,000 toothbrushes 'with a 1 colour (green) printed logo in 1 position on the toothbrush' and that it 'comes in a full colour printed logo on one side of the cardboard box'. The logo is stated to be 'Fixed Dental Care'. A handwritten annotation on the invoice reads 'Paid by HSU Vic #3 28.3.08'. This amount appears to have been paid by the HSU Victoria No 3 Branch through an account with the Commonwealth Bank on 28 March 2008. The handwritten annotation suggests that the National Office repaid the Branch these monies in June 2008.
37. A MYOB Statement dated 27 October 2007 (HSUNO.006.0199) and an SGE internet banking receipt of the same date (HSUNO.006.0200) indicates that an amount of \$2,933.15 was paid by the National Office to Branded Products Pty Ltd on that date.
38. Mr Thomson was asked if a payment to Branded Products on 27 October 2007 of \$2,933.15 meant anything to him. Mr Thomson replied that (Thomson PN 971-973):
- Other than what it says on the thing there which is T-shirts. Again, unless I saw it - we bought T-shirts for all sorts of campaigns, this may have been - well, I'm actually seeing it - it was ordered by Karene Walton which suggests it was more likely to be a Your Rights at Work shirt. Our Your Rights at Work shirts - what is the date of this? 1/5/2007. I think they were probably for our conference that year possibly. One of the great missed marketing opportunities was that - and I suppose it's worth telling you because it shows the interrelationship between the Your Rights at Work and the election, is that we had shirts that, you know, had the Your Rights at Work logo on them but in one of the classic just misses we had Rudd 07 on them as well too. ... Rather than Kevin 07 which came out not long afterwards but - and I'm pretty sure that's what this one was.
39. A table headed 'Payments made by HSU Vic 3 Branch for National Office' and bearing the date 28 March 2008 (HSUNO.012.0326) lists payments totalling \$67,284.06. One of these payments is the sum of \$10,857 to Branded Products.

40. Ms Stevens told FWA that Branded Products did not mean anything to her (Stevens PN 252). But she added:
- The only two things that I can remember the HSU getting done were the sunscreen which I spoke about earlier and the toothbrushes, and the toothbrushes were for the campaign - custom-made T-shirts. No, I can tell you they weren't for Coastal Voice, so, because I did those myself so I bought some \$2 T-shirts and screen printed them so I know it wasn't for those.
41. When Dr Kelly was asked about the payment of \$2,933 to Branded Products her first reply was (Kelly PN 727): 'Look, we did get some toothbrushes.' In a further answer (Kelly PN 729) she continued to speculate, although without being certain, that this payment could have been for toothbrushes.
42. The MYOB spreadsheet which was circulated at the National Executive meeting on 18 and 19 March 2008 (HSUNO.017.0036) lists an outstanding debt due to Branded Products at that date of \$10,857. This appears to relate to the invoice dated 16 August 2007 which is referred to at paragraph 36 above. The minutes of that National Executive meeting (HSUNO.018.0001) indicate that this spreadsheet was tabled and discussed during the meeting, in the context of a discussion about a large number of unpaid invoices. Moreover, the same amount also appears in a spreadsheet produced by the National Office titled 'Payments made by HSU Vic 3 Branch for National Office (HSUNO.012.0326. That spreadsheet bears a date of 28 March 2008. It appears that Ms Jackson must have caused the Victoria No 3 Branch to make this payment on behalf of the National Office (presumably between 18 and 28 March 2008), and then presented this spreadsheet to the National Executive at a later date in order to discuss reimbursement of the amounts set out therein by the National Office.
43. In all the circumstances it appears that:
- a. It is possible that this payment could have been approved by the National Executive resolution on 2 February 2007 referred to at paragraph 2 above;
 - b. in any event the evidence suggests that the invoice was unpaid as at 18 March 2008;
 - c. at least by 18 March 2008 the National Executive was seized of the need to make a decision as to whether or not it should authorise payment of this invoice;
 - d. The invoice was paid by the Victoria No 3 Branch, most likely between 18 and 28 March 2008.
44. In all the circumstances the available evidence does not support a finding that this payment, if paid by the National Office, was not authorised by the National Executive.

Payment made to First Herald Pty Ltd

45. An SGE Credit Union Receipt dated 19 September 2007 (HSUNO.010.0242) indicates that on that date the HSU National Office made an electronic payment of \$90 to First Herald Pty Ltd. The Narration contained in the receipt is 'dentalcare2007'. A document which appears to be a payment instruction from

ebay.com (HSUNO.010.0241) appears to indicate that this payment was for purchase and shipping of two 'Human Anatomical Skeleton Expansion Teeth Model.'

46. It appears from a further SGE Credit Union receipt dated 25 September 2007 (HSUNO.010.0227) that the National Office made a further electronic payment of \$90 to First Herald Pty Ltd. Again the receipt includes the narration 'dentalcare2007'.
47. Given the modest sum of money that this invoice was for, and the fact that on its face the invoice appeared to be for equipment which was clearly appropriate as part of a National Dental Campaign which had been authorised by the National Executive in minutes of several National Executive meetings, I am of the view that the payment of this invoice fell within the general administration of the Union or a purpose reasonably incidental thereto, and was therefore within Mr Thomson's authority to authorise under Sub-rule 36(b).

Payment made to the Centre for Policy Development

48. The Centre for Policy Development rendered an invoice to the HSU dated 19 September 2007 for \$10,000. The invoice records that it relates to a 'Donation' of September 2007. (HSUNO.001.0142)
49. The Minutes of meeting of HSU National Executive of 2 February 2007 at Canberra record the following details (HSUNO.018.0170):

12. New Matilda

The National Secretary reported that he and the National President had been approached in regard to sponsorship of new Matilda. The Secretary gave a run down of New Matilda and encouraged Executive Members to look at the website. He indicated that following a meeting with the National President himself and New Matilda a recommendation would come to the next executive meeting.

50. The Minutes of National Executive meeting in Sydney on 28 March and 29 March 2007 record that the Executive approved the HSU becoming a member of Centre for Policy Development and that it pay an annual contribution of \$10,000 (HSUNO.018.0151).
51. The minute records the following details.

Action arising from minutes

16. That the HSU become a stakeholder in New Matilda as requested by making an annual contribution of \$10,000 to that organisation.

The minutes record the following at item 12

12. New Matilda

Discussion occurred following the National Secretary's report on the meeting that occurred between the President, Secretary and New Matilda.

Moved: T Jacobson Seconded: T Seymour

'That the HSU become a stakeholder in New Matilda as requested by making an annual contribution of \$10,000 to that organisation'

CARRIED

52. Mr Thompson was asked by FWA to explain the payment to the Centre for Policy Development. He said that it was referred to in the minutes of meetings as 'New Matilda'. The Centre was a 'think tank' that wrote papers on issues. Mr John Menadue headed the organisation. The payment was not a donation but in fact a membership that entitled the HSU to receive research and the HSU could suggest areas for research (Thomson PN 1691-1716):

MR NASSIOS: Okay. The Centre for Policy Development.

MR THOMSON: Yes.

MR NASSIOS: \$10,000 payment to that Centre on 24 September 2007.

MR THOMSON: We did discuss that, in fact some of the minutes you showed me earlier had that reference in there, it was at that stage called 'Matilda' I think was what it was called so it was a different - they changed their name but it was---

MR RAWSON: New Matilda?

MR THOMSON: New Matilda, yes. That was specifically an item taken in relation to that.

MR NASSIOS: All right. But you will have to refresh my memory, I must admit I can't recall what that would have been so - - -

MR THOMSON: We - there was a - one of our executive meetings it was a specific item and I just - the only reason I particularly remember was because it was in the minutes that you provided to me.

MR NASSIOS: Sure. As I say, just for my purpose what exactly is it?

MR THOMSON: It's a think tank. They write papers on issues; John Menadue was heading it up.

MR NASSIOS: Yes.

MR THOMSON: They were particularly doing stuff in relation to health reform.

MR NASSIOS: All right.

MS CARRUTHERS: Was that related to the dental campaign as well at all?

MR THOMSON: They were writing various things about that. I mean I don't have the - one of the minutes that you have given me here talks about it and says that there will be a recommendation coming to the - that's the executive but it was agreed and done but it was called New Matilda at that stage.

MR NASSIOS: Okay.

MR RAWSON: I don't know whether we've actually covered what it was for? Were they - did you commission them to do something?

MR THOMSON: No, they went to various groups to try and get seeding funding so they could exist as an organisation.

MR RAWSON: So was it - - -

MR THOMSON: We met with them about that and there were - one of the issues in health was a lack of policy and research that had been done. That

was a particular area that they were looking at. John Menadue in particular had done projects in New South Wales with New South Wales Health and they took the decision that, you know, we should be paying for that.

MR RAWSON: So, what - the invoice calls it a donation - - -

MS CARRUTHERS: Yes, it does.

MR RAWSON: It essentially was I gather?

MR THOMSON: Well, it was actually a membership is really what it was. We were entitled to - it wasn't a donation, it was a membership and you were entitled to receive the research from them for a period of time, suggest research and those - - -

MR RAWSON: So like a subscription?

MR THOMSON: It was interactive, yes. But it was interactive, it wasn't - interactive in that you had the opportunity of making suggestions as to areas that you think that they should do work on as well.

53. Mr Brown told FWA at interview (Brown PN 395-400) that he thought a payment made by the National Office to the Centre for Policy Development on 27 September 2007 of \$10,000 was for research into whether dental health should be included as a Medicare item, and if so what the costing would be, so as to enable the HSU to lobby the Federal Government. He said that these payments would have been discussed or approved by the National Executive, but could not say why the invoice to the Centre for Policy Development would have described the payment as a donation.

54. Ms Jackson gave evidence that the payment of a donation was approved by the National Executive. She said that it related to the dental campaign (Jackson (1) PN 246-249):

MR NASSIOS: All right. The Centre for Policy Development is next.

MS JACKSON: Yes.

MR NASSIOS: If I can hand up an invoice in relation to that centre and ask similar questions.

MS JACKSON: This was definitely approved by the national executive. They did - it says donation but it was actually a donation in relation to a search that they did at the time and I can't remember what it was about. It was a Dental Campaign, I think there was a Dental Campaign, but this was definitely approved.

55. Mr Williamson has given the following evidence on the matter (Williamson PN 1617-1626).

MR NASSIOS: On 24 September 2007 the national office paid \$10,000 to the Centre for Policy Development. The invoice describes the payment as a donation. Do you know what this payment was for?

MR WILLIAMSON: If my memory serves me correctly it was for some work that was done by an organisation. I can't remember the exact details of it now but I can definitely recall it being discussed and endorsed by the national executive.

MR NASSIOS: Is it possible it was for a dental campaign?

MR WILLIAMSON: It could well be - I think. I'm not a hundred per cent certain of that but if my memory serves me that's the sort of - revolved around that time. Sorry.

MR NASSIOS: Do you have any idea why the word 'donation' would appear on it?

MR WILLIAMSON: I have no idea.

MR NASSIOS: We have reviewed - - -

MR WILLIAMSON: Because I think they are a - policy development, I think they might be a - might be some taxation relief. I don't know. I have no idea.

MR NASSIOS: All right.

MR WILLIAMSON: I'm only guessing.

56. In all of the circumstances and having regard to the evidence set out or referred to above, in my view the transaction and the payment of \$10,000 to the Centre for Policy Development in September 2007 was approved by the National Executive at its meeting held on 28 and 29 March 2007.

Chapter 16 - National Council Expenses

1. I have made findings regarding some National Council expenses at:
 - a. Finding 48 - Authorisation of invoice from Marriott Hotel to be paid by the National Office at page 322;
 - b. Findings 49 and 50 - Authorisation of invoice from University House to be paid by the National Office at page 327; and
 - c. Finding 51 - Authorisation of invoice from Hyatt Catering to be paid by the National Office at page 329.
2. I also considered, but did not make findings regarding, further National Council expenses as set out in this chapter.
3. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2

National Council/Conference - September 2006

4. As noted at paragraphs 43 and 49.c of chapter 9, it appears that a meeting of National Council took place on 13 to 15 September 2006, although FWA has not been provided with any minutes of National Council meetings in 2003 through to 2007. This meeting is referred to in the minutes of the National Executive meeting held on 15 to 16 February 2006 as 'this year's council meeting' (HSUNO.018.0259) and in the minutes of the National Executive meeting held on 7 and 8 August 2006 as 'conference' (HSUNO.018.0220).

Payments in September 2006

5. Entries appear on Mr Thomson's Diners Card Statement for the Ship Inn on 14 September 2006 for \$30 and Sydney Harbour Marriott on 15 September 2006 for \$184.95. (HSUNO.021.0232). It seems highly likely that these expenses were incidental expenses relating to the National Council/Conference meeting in September 2006 but FWA has no direct evidence to confirm this.
6. Additionally, MYOB data for the period 1 July 2006 to 30 June 2007 also shows (WIT.WIL.001.0082) that on:
 - a. 1 November 2006 an electronic payment of \$2,224.56 was made by the National Office to the Marriot Hotel; and
 - b. 20 February 2007 an electronic payment of \$265 was made by the National Office to the Marriot Hotel.
7. There is no direct evidence to suggest that these payments related to the Sydney National Council/Conference meeting in September 2006. It is possible however that these payments were residual payments relating to National Council/Conference meeting in September 2006.

8. Given the paucity of evidence regarding these transactions that is before FWA, I have not made any findings regarding payments to:
 - a. The Ship Inn on 14 September 2006 for \$30;
 - b. Sydney Harbour Marriott on 15 September 2006 for \$184.95;
 - c. Marriot Hotel on 1 November 2006 for \$2,224.56; or
 - d. Marriot Hotel on 20 February 2007 for \$265.

Payments to ANU University House in 2007

Payment to ANU University House on 29 August 2007 of \$9,872

9. A Statement of Account sent by University House at ANU dated 2 July 2007 to the National Office includes an entry for 11 May 2007 for \$9,872 (HSUNO.010.0184).
10. MYOB data (HSUNO.010.0182, HSUNO.008.0140) confirms that an electronic payment was made to the ANU of \$9,872 on 29 August 2007.
11. In particular, the MYOB Purchases [Supplier Detail] Ledger for the period July 2007 to December 2007 (HSUNO.008.0140) describes the payment to ANU for \$9,872²⁹¹ as *Room Hire for National Council*. This suggests that the \$9,872 related to hire of a conference room or hall in which to hold the National Council meeting in Canberra in May 2007. Given that there were in the order of 75 delegates to National Council, together with the seven National Officers, there would have been 80 or so people attending the National Council meeting. This would have required a fairly large room to be hired over the two days on 6 and 7 May 2007. It is possible that this charge also included the provision of morning and/or afternoon tea and lunch, although there is no evidence before FWA regarding this particular question.
12. Rule 24 requires the Branches to pay for the 'fares and expenses' associated with attendance by their Branch delegates at National Council meetings. I have set out at paragraph 473 of chapter 5 that the ordinary meaning of an 'expense' is a 'cost or charge' while a 'fare' relates to the 'price of conveyance or passage' (Macquarie Concise Dictionary, 4th edition, 2006). The requirement in Rule 24 that Branches pay for the fares and expenses of Branch delegates therefore appears to mean that Branches are required to pay not only for costs associated with travel, such as airfares, car hire or taxis, but also all other costs or charges associated with a National Council meeting, including accommodation, food and beverages.
13. Costs associated with the hire of a conference room or hall in which to hold the National Council meeting would not fall within the definition of 'fares and expenses' of Branch delegates who are attending that meeting. While some of the 'expenses' that Branches are required under Rule 24 to pay may include the cost of food and while it is possible that the cost of the 'room hire' did include provision of at least some food, there is no information before FWA that this was in fact the case.

²⁹¹ The ledger lists the amount paid to the Australian National University as being \$8,974.55, which is the figure exclusive of GST. If 10% GST (namely \$897.46) is added on to this figure, the total amount is \$9,872.00.

14. As a result, I do not believe that it is open to me to find that authorisation by Mr Thomson of payment by the National Office of \$9,872 to the Australian National University on 29 August 2007 for 'room hire for National Council' was in contravention of Rule 24. Further, in my view the payment by the National Office of the cost of such room hire would fall within the general administration of the Union and so could, under the Rules, have been authorised by Mr Thomson without reference to National Council or National Executive.

Payment to ANU University House on 9 May 2007 of \$586

15. A Statement of Account from ANU dated 2 April 2007 (HSUNO.010.0185) lists an entry for \$586 on 5 February 2007. It is probable that this charge was a deposit made for the accommodation at ANU between 6 to 9 May 2007 for the National Council/Conference, however there is no direct evidence to suggest this.
16. MYOB data for period 1 July 2006 to 30 June 2007 confirms that an electronic payment was made by the National Office to the ANU on 9 May 2007 for \$586 (WIT.WIL.001.0082).

Payment to ANU University House on 25 October 2007 \$69.89

17. MYOB data for period 1 July 2007 to 31 December 2007 indicates that on 25 October 2007 an electronic payment of \$69.89 was made by the National Office to the ANU. (HSUNO.008.0059).
18. It is possible that this payment related to the National Council meeting/conference that may have been held in May 2007 in Canberra however there is no direct evidence to suggest this.

Payment to ANU University House on 12 September 2006 of \$194.75

19. MYOB data for period 1 July 2006 to 30 September 2006 indicates that on 12 September 2006 the HSU National Office made a payment of \$194.75 to the ANU. (HSUNO.003.0173)
20. There is no evidence to suggest that this payment relates to a National Council meeting. While there was a National Council meeting in September 2006, that meeting was held in Sydney rather than Canberra. There is therefore no evidence before FWA regarding why this payment was made to University House and certainly no evidence which suggests that it was made in contravention of Rule 24.

Chapter 17 - Requirements of the Rules

1. I have made numerous findings throughout this report regarding contraventions of the Rules of the HSU.
2. There are a number of other matters regarding the Rules which I have also considered but regarding which I have not made findings. Those matters are set out in this chapter.
3. General information regarding the regulatory framework, including legislation and the Rules of the HSU, that applied to the National Office while Mr Thomson was National Secretary is set out in chapter 2.

Compliance with Rule 32

Sub-rule 32(b) - summoning of meetings and the keeping of minutes

The Keeping of Minutes

4. Information has been set out at paragraph 140 of chapter 4 that minutes are a complete record of every decision that is reached by a meeting. The precise words of all motions and amendments that are proposed and whether the proposals were carried or rejected should appear in the minutes.
5. Decisions that are reached by a meeting are recorded in the form of motions that are moved by members authorised to speak in the meeting. A motion is a formal proposal by a member that the meeting should resolve in certain terms. While motions are normally proposed and seconded (although this is not strictly necessary in law), the Chair puts the question by restating it and outlining the procedure for voting. At the conclusion of the voting process, the chair indicates whether the motion or resolution has been adopted or lost.²⁹²
6. Information has also been set out at paragraph 141 of chapter 4 that Sub-rule 32(b)²⁹³ requires the National Secretary to 'keep or cause to be kept correct minutes' of National Executive meetings. As minutes are required to be a complete record of every decision that is reached by National Council and National Executive, including the precise words of all motions and whether such motions were carried, it is not up to the discretion of the National Secretary (or other minute taker) as to whether or not a motion should be recorded in the minutes.
7. As has been noted at paragraph 59 of chapter 5, Rule 30²⁹⁴ also requires the National President to chair meetings and, 'upon the minutes being confirmed', to

²⁹² Magner at [8.05]

²⁹³ This Rule was numbered Sub-rule 33(b) between 30 March 2006 and 8 June 2006.

²⁹⁴ This Rule was numbered Rule 30 between 30 March 2006 and 8 June 2006.

'sign the Minute Book in the presence of the meeting'. By signing the minutes, the chair signifies the assent of the meeting to the minutes.²⁹⁵

Were Minutes Kept by the National Secretary?

8. Mr Thomson told FWA (Thomson PN 131-139) that minutes were kept of meetings of National Council and National Executive. He also said that he could recall Mr Williamson signing the minute book in the presence of meetings, although he could not say definitively that this happened every time. Mr Thomson also stated (Thomson PN 139) that minutes of National Council meetings were kept in the national office premises in Melbourne 'right next to the minutes of the executive'.
9. Ms Jackson told FWA (Jackson (1) PN 100) that, while she can recall meetings of the National Executive where minutes of previous meetings were adopted, or changed, she has been unable to find a folder containing minutes of National Executive meetings from the period before she was National Secretary. She said (Jackson (1) PN 102) there was no hand-over of the Minute book between herself and Mr Thomson.
10. Mr Williamson was asked in interview whether a minute book for National Executive existed: (Williamson PN 36-41):
 - MR NASSIOS: Does such a minute book exist?
 - MR WILLIAMSON: There were minutes prepared. There weren't minute books in the form that I had them in New South Wales as such. They were in a folder and so they weren't in a minute book as such. So in a - like I can remember in a lever arch file, yes.
 - MR NASSIOS: Do they still exist?
 - MR WILLIAMSON: Sorry?
 - MR NASSIOS: Do they still exist, those particular lever arch files we're talking about?
 - MR WILLIAMSON: Well, having now had this inquiry we've now revealed that they don't exist and they had to be all put back together. So I was as surprised as any to find out that they didn't exist.
11. Mr Williamson said (Williamson PN 48) that he signed the minutes in the actual course of National Executive meetings once they had been confirmed.
12. However Mr Williamson said that he no longer has any copies of National Council minutes (Williamson PN 145).
13. Mr Williamson said (Williamson PN 50) that the same process existed for minutes of National Council meetings.
14. Fair Work Australia has been provided with Minutes of National Council meetings held on:
 - a. 16 April 2002 (HSUNO.023.0364);
 - b. 23 July 2002 (HSUNO.023.0195);

²⁹⁵ Magner at [6.55]

- c. 23 October 2002 (HSUNO.023.0001).
15. FWA has not been provided with any Minutes of National Council meetings occurring after 23 October 2002 and prior to Mr Thomson's resignation as National Secretary on 14 December 2007. Ms Jackson confirmed to FWA (Jackson (2) PN 15-25) that the National Office does not hold minutes of any National Council meeting which occurred between 16 August 2002 and 1 March 2008.
 16. An email from Belinda Ord dated 16 September 2005 (HSUNO.018.0203) to the members of the Finance Committee states that it attaches an 'excel spreadsheet which should cover issues raised at National Conference'. However we have not been provided with any minutes or other records of this meeting or conference. Indeed it is not clear from this email whether the meeting referred to was a formal meeting of National Conference.
 17. FWA has also obtained minutes of most meetings of the National Executive during the period in which Mr Thomson was National Secretary of the HSU. However in every instance except minutes of the meetings on 14 December 2007 (HSUNO.025.0012), 23 January 2008 (HSUNO.025.0018) and 25 February 2008 (HSUNO.017.0041), the copies of minutes provided are draft copies that have not been signed by the National President confirming that they are correct copies (as required by Rule 30).
 18. FWA issued a Notice to the National Secretary of the Union, Ms Jackson, on 20 December 2010 requiring her to produce to FWA (amongst other things) any formal or draft minutes of meeting of National Executive and National Council between 16 August 2002 and 1 March 2008 (FWA.006.0018). Following her interview with FWA on 11 April 2011, FWA sent Ms Jackson an email on 12 April 2011 seeking copies of documents that were listed in that email as still missing from FWA's records ([FWA.021.0006](#)). Mr Dan Hill was subsequently able to provide FWA on 5 September 2011 with draft minutes of a National Executive meeting on 16 December 2005 (which is incorrectly titled in the minutes as 16 December 2006) (FWA.020.0092).
 19. The HSU has been unable to provide FWA with copies of minutes (whether formal or in draft) of National Executive meetings on:
 - a. 5 and 6 December 2002 (although an Agenda has been provided);
 - b. 7 February 2007, although it is unclear whether a National Executive meeting was, in fact, held on that date (see [FWA.021.0018](#));
 - c. 22-23 August 2007, although it is again unclear whether a National Executive meeting was, in fact, held on that date (see [FWA.021.0018](#));
 - d. 20 December 2007, although it is again unclear whether a National Executive meeting was, in fact, held on that date (see [FWA.021.0018](#)).
 20. Sub-rule 32(b) requires the National Secretary to keep, or cause to be kept, 'correct minutes of meetings of National Council and National Executive'. On many occasions (as outlined at paragraph 19) National Office has not been able to provide any minutes at all (and, most notably, could not provide minutes of any meeting of National Council between 2003 and 2007) or only draft minutes. In many other

instances, the National Office has only been able to provide draft minutes, which have not been signed by Mr Williamson as National President as required by Rule 30. Such draft minutes cannot be taken to embody the assent of the National Executive to the minutes, and are not sufficient to constitute 'correct minutes' as required by Sub-rule 32(b).

21. While I believe that it is open to me to find that there has been a contravention of Sub-rule 32(b), there is insufficient evidence before FWA that would enable me to find that Mr Thomson, in particular, has contravened Sub-rule 32(b). Mr Thomson has given evidence that minutes of National Executive and National Council meetings were kept in the Melbourne office during the time he was National Secretary (Thomson PN 131-139). He has also said that records in general 'certainly were there when I was the national secretary' (Thomson PN 432) and Ms Ord (who resigned from employment with the National Office after Mr Thomson had already left) also stated in interview that records were retained in the National Office when she left (Ord (1) PN 95-99). While Ms Jackson has alleged that documents were destroyed (Jackson (2) PN 327), there is no evidence before FWA supporting that allegation. Although the National Office has been unable to produce records, the reason why the records have been lost, and the time at which this occurred, is unclear.

The Summoning of Meetings

Sub-Rule 32(b) - Summon all meetings of National Council and National Executive

22. Sub-rule 32(b) also requires the National Secretary to 'summon by notice in writing to each member thereof...all meetings of the National Council and National Executive'.
23. Rule 22²⁹⁶, as amended from time to time, required (at a minimum) that National Council meetings occur in October 2002, October 2004, between September and November 2006 and between September and November 2007. Documents that have been provided to FWA, however, do not evidence any meetings of National Council in October 2004, between September and November 2006 or between September and November 2007.
24. I have set out at Finding 157 - Failure to hold meetings of National Council on page 837 in chapter 9 my finding that the National Council has contravened Rule 22 by failing to hold properly constituted meetings of National Council in October 2004, between September and November 2006 and between September and November 2007.
25. There is no information before FWA, however, regarding whether or not meetings were summoned in October 2004, between September and November 2006 or between September and November 2007. It is possible, although it does seem unlikely, that the National Secretary did summon the meetings but that they did not subsequently occur. I therefore do not believe that there is sufficient information before FWA that would allow me to find that the National Secretary contravened the requirement in Sub-rule 22(b) to summon such meetings of National Council.

²⁹⁶ See paragraph 26 and following of this chapter.

Sub-rules 32(e) and (j) - the Keeping of Records

26. Information is set out at paragraphs 5 to 13 of chapter 5 regarding obligations that are set out in Sub-rules 32(e) and (j) and in the RAO Schedule regarding the keeping of records.

27. Mr Thomson agreed (Thomson PN 1181) with the summary contained in the BDO Kendall report of his explanation to BDO Kendall of the process for approving transactions made using National Office credit cards:

We asked Thomson to explain the process for approving transactions made using Union credit cards, including the CBA MasterCard. The transactions consist of payments and cash withdrawals. He advised as follows:

(a) Invoices and receipts for payments were kept by the cardholder.

(b) Where receipts and Invoices were not obtained, a voucher was completed by the cardholder setting out the details and description of the expense paid or use made of the cash withdrawal.

(c) When the card statements were received by 'the Union, the expenditure items listed on the statement were reviewed by the cardholder and the corresponding Invoice, receipt or voucher was attached to that statement and forwarded to the financial controller at the National Office.

(d) Upon receipt of the card statements and attached supporting documents, the financial controller checked that there was a supporting receipt or voucher for each transaction and if there was not, the financial controller would contact the cardholder for details of that transaction.

(e) The financial controller entered the payment transactions in the Union's, MYOB accounting system applying the items to specific accounts.

(f) A profit and loss statement was prepared from MYOB by the financial controller, 'which' reported actual income and expenditure against budgeted income and expenditure with variances. This was provided to the meetings of the Executive/Finance Committee where the actual expenditure line items were compared to budget.

(g) Thomson indicated that this review constituted approval of the total expenditure under review.

28. FWA has sought all transactional records from the National Office for the period during which Mr Thomson was National Secretary. On 18 June 2009 Ms Jackson provided FWA with 12 folders of documents which constitute the only records of financial transactions during Mr Thomson's period as National Secretary that are held by the National Office of the HSU. However the HSU has been unable to produce physical records for most transactions of the National Office during this period.

29. On 30 October 2009 the National Office also provided FWA with MYOB data files, which contain a General Ledger containing records of all transactions passing through the National Office's SGE Account between 1 July 2006 and 3 March 2008.

30. Mr Thomson told FWA (Thomson PN 71) when asked how he went about achieving compliance with Sub-rule 32(e):

Essentially in terms of those issues, they were issues for the financial controller, to make sure that we were putting out reports in. Yes, that was part of her job. She was someone who came on board after about eight or nine months I think of my time there, because the way in which the accounts of the national office on a day-to-day basis were done was there was a person who was employed essentially by the number 1 branch who was given to us to assist in terms of those things, and I think that's probably how they had done it in the past, and I felt after a period of time that that wasn't good enough, that we needed someone specifically that we employed who was looking after how our accounts were operating and making sure we met those obligations.

31. Mr Thomson also told FWA that it was Ms Ord's job to bank monies received and enter associated records (Thomson PN 78-79). Later (Thomson PN 108) he added:

Look, I should - if I wasn't a hundred per cent clear on it, I just clarify that in relation to the records, it was Belinda Ord's job to look after those. As to their disappearance or them not being there, or whatever, that was something that I was not aware of until after I had left. They certainly were there when I was the national secretary and I know that because we were frequently asked questions at national executive about particular items and so forth and asked to produce those sorts of records. So it wasn't clear - - -

32. Mr Thomson told FWA (Thomson PN 97):

There were records when I left. We had record keeping that was being done. I don't know what happened to them. I don't know whether it was because there were a number of moves of the office that they genuinely got lost or whether there were other reasons as to them disappearing, but they disappeared. I had Belinda Ord ring me at one stage when she was still there - and she wasn't there for that long after I finished but - saying that, you know, she'd been asked by Kathy for the records and she keeps giving them to her and she keeps asking, 'Do I know why?' I said, 'Look, that's none of my business, but you know, as long as you've given her what she needs to have, that's fine.' So I can't really answer that question any more than that. There were records.

33. Mr Thomson confirmed (Thomson PN 97-101) that the records of the National Office remained in Melbourne even after he moved to Sydney, although he did not recall how they were stored because 'it wasn't my particular area'.

34. Ms Ord also told FWA (Ord (1) PN 95-99) that at the first premises she worked for the HSU National Office the financial records were stored in a cupboard, and that in the second 'temporary' premises she worked at they were kept in the office. She said that:

when we moved again to where the HSU is now situated, a lot of that moving was done because Kathy had staff come in and move stuff, move it over, and we kind of got to the office and stuff was there. So it was just moved from one office to another, to another.

35. Ms Ord said that she was sure that the records were in the National Office when she left (Ord (1) PN 99):

I know for a fact it was, because I know that Iaan Dick asked for it several times and he - I feel, I actually feel like he tried to embarrass me by telling me that I hadn't given it to him, and I found the relevant paperwork in Kathy's office and went in there because she hadn't locked the door and I gave it back to him once again. And I think that he did that in front of people purposely.

36. Mr Dick told FWA (Dick PN 95-97) about the HSU process for retention of records:

Well, they used to be pretty good. I used to be able to find anything I wanted but in the last 18 months it appears all the records have disappeared, but that wasn't what I was used to. Anything I wanted I could find. You know, it was all filed quite nicely but from when I went to do the exit audit I couldn't find anything. You know, the records were everywhere and when following on from the exit audit, when I was getting ordered to report to RQ there was gaps everywhere and that wasn't what I was used to. Everything was well filed, all findable. ... It's like a whole batch of records got lost.

37. Mr Dick said (Dick PN 141) that as far as he knew there were no records retained by Mr Thomson in Gosford (which I take to mean a reference to the campaign office in Long Jetty), although it was possible that Mr Thomson had kept records relating to his credit cards in Gosford.

38. Ms Jackson told FWA (Jackson (1) PN 45) that when she commenced as the National Secretary there were not any internal financial control systems in the National Office.

39. Ms Jackson also told FWA (Jackson (2) PN 321) that at the time that Mr Thomson resigned, on 14 December 2007, the National Office had moved to La Trobe Street, Melbourne, but that none of the National Executive knew they had moved:

What happened then though - so Craig goes. The national office has moved out of Victoria Street and into this rabbit warren at La Trobe Street. It was just a cupboard basically. But I don't think any of us knew that they'd moved. I think they just moved. The building was being sold and all that sort of stuff and they hadn't decided where to move the national office. But to cut a long story short, the national office at that time post, say, December until about February just went totally - the staff in it that were in Melbourne, it was very hard to get any access out of them. It was almost like, you know, they had been ordered or instructed, I know that for a fact, not to produce stuff or be of any assistance to us as in the incoming team.

40. Ms Jackson continued (Jackson (2) PN 324-327):

I believe - my feeling was at the time that it was very hard just to even get them to, you know, provide us - for example, we were getting the exit audit ready but getting information in for the exit audit was very difficult to get from the clerical staff that worked in the office at the time, or the one clerical staff member who was Belinda Ord at the time, and that's - it was around that time that I then went up to the national office, that's where I worked, to find out, you know, where everything was and could she provide stuff to me, and it was all like, you know, 'Here's this folder.' You would have to - so for example she would hand it to me and I'd say, 'What's this, Belinda?' She'd like, 'I don't know.' That's when at that - I think it was in about late January of that - of 2008 now, that - maybe it was in February.

But anyway earlier that year we were - I then went down with the auditor and the auditor was working in a little room next to Belinda and that's when I walked into her office and said to her, 'Is there any other folder because the auditor says there should be more stuff than this,' and she said no there wasn't. But when I bent over - I could - I had noticed these - there were black folders that were sitting they were folders, uniform looking folders just sitting under her desk and that's when I pulled them out. I bent over and pulled them out and said, 'What are these?' She goes, 'They're accounts.' I said, 'Well, do you think - has the auditor seen them,' and she was very non-committal whether the auditor had seen them or not. But anyway my point is I then went in there, grabbed them

all and took them all to the room next door and the auditor then saw them. But they weren't given to us like in the previous weeks or even asking for stuff. So I think a lot happened between that December and January, February.

... I believe at that time - this is my own personal belief. At that time documents may have been destroyed because I understand that Mr Thomson is saying that - to everyone that's got an ear in Canberra and anywhere else that I've done this to set him up and I just want to make it very, very clear that, although Craig Thomson and I do not get along on a political level or a personal level, I did not set him up, you know. If there were files there I would have given them to you and he as the national secretary at the time should have kept every file. If you ask me for any files during my time as national secretary, I'd give you every single file that I had, and an explanation if I didn't have it.

41. Ms Jackson told FWA (Jackson (1) PN 23) that in late 2007 the Victoria No 1 Branch of the HSU (which had been leasing space to the National Office) sold its building in Victoria Street Carlton, and the National Office moved to La Trobe Street, Melbourne. She said (Jackson (1) PN 27) that all of the National Office's files went into storage at that time. She said that the National Office had had three different storage facilities where files were kept, without labels or inventory. She said (Jackson (1) PN 25-27) that when she became National Secretary in January 2008 the National Office moved its records out of the Victoria Street premises into the South Melbourne premises. She said (Jackson (1) PN 47) that when she first became National Secretary it looked like the National Office was keeping records, because when she viewed monthly credit card statements while participating in Ms Ord's hand-over at the time she left she had observed that receipts were attached to statements. She said (Jackson (1) PN 160) that electronic records were not on the National Office's computers by the time that they moved to South Melbourne.
42. Dr Kelly was also unable to tell FWA (Kelly PN 214) why the National Office would be missing most of its financial records. She only became aware of this when it was reported to the National Executive after Mr Thomson's resignation (Kelly PN 216). She thought this probably occurred during the course of the Exit Audit (Kelly PN 226). She considered (Kelly PN 218) that the records must have been disposed of, as they had been audited every year, and she had been able to ask questions about matters from within the current financial year and get responses.
43. On 28 September 2011 an official of FWA received a telephone call (WIT.THO.006.0002) from Mr Thomson advising that Ms Ruth Kershaw, who had been employed as a researcher in the National Office while Mr Thomson was National Secretary, had reportedly given a statement to police saying that Ms Jackson had been 'openly gloating' about destroying National Office records.
44. The HSU National Office has been unable, despite several requests, to provide to FWA most of the physical and electronic records evidencing transactions of the National Office while Mr Thomson was National Secretary. Further, the HSU National Office could not provide FWA with minutes evidencing authorisation under the Rules of many transactions, including in particular transactions relating to the appointment of staff, determination of wages or authorisation of expenditure that was not on general administration of the Union. Some of these records are missing completely while others (such as most minutes) have been provided in draft form only.

45. In my view, it is not necessary for me to seek further information from Ms Kershaw or Ms Jackson regarding the allegation that Ms Jackson has, in fact, destroyed National Office records, as reported by Mr Thomson to FWA on 28 September 2011. There is a large body of information before FWA which suggests that records of the National Office were being kept:
- a. Mr Thomson has said that records were being kept at the time he resigned as National Secretary (Thomson PN 108).
 - b. Ms Ord has also stated in interview that, despite the National Office moving a couple of times, she was sure that the records were still in the office when she left in early 2008 (Ord (1) PN 95-99); and
 - c. Ms Jackson has also said that, while leave records were poorly kept, when she became the National Secretary 'it looked like they were keeping records [of credit cards] as in you pulled up say January 2007 or January 2006 and all the invoices, all the receipts were attached to that person's credit card and that look intact' (Jackson (1) PN 47).
46. It is possible, however, that records of the National Office were lost due to the re-location of the office a number of times and to records being placed in storage while Mr Thomson was National Secretary:
- a. Ms Jackson has given evidence that in 2003 the office was in Drummond St in Carlton, then it moved to Victoria Street in Carlton, then to 'this A'Beckett Street thing' which 'was a post office box' (Jackson (1) PN 21). Then in 2007, probably before October, the National Office moved out to Latrobe Street 'to a sort of suite but all their files went into storage at that time' (Jackson (1) PN 23);
 - b. Both Mr Thomson (Thomson PN 96-101) and Ms Ord (Ord PN 95-99) have also given evidence that the National Office moved a number of times; and
 - c. Mr Dick has stated (Dick PN 140-142) that record keeping was in a 'state of flux' because they were originally kept in Mr Thomson's time at the Union's premises and 'then they had some storage somewhere and then they shifted offices so they shifted offices twice I think until their current premises...and I don't know what's happened with all of the records'.
47. Added to this is the fact that some records from 1 July 2006 through to March 2008 have been located while other records from that same period of time cannot be found. In addition, there does not seem to be any particular 'pattern' to those records which have been found and those which have not. Some of the records that are in existence relate to transactions that appear never to have been properly authorised (such as a transaction slip from Nolta Pty Ltd on 11 June 2005 which appears to relate to the purchase of escort services (HSUNO.018.0288)) whereas others relate to matters that were authorised (such as arrangements for the secondment to (HSUNO.022.0069), and subsequent employment by (HSUNO.022.0046), the ACTU of Ms Walton).
48. As with the requirement to keep minutes, however, while it is open to me to find that there has been a contravention of Sub-rules 32(e) and (j), there is insufficient evidence before FWA that would enable me to find that Mr Thomson, in particular,

has contravened these sub-rules. Mr Thomson has told FWA in interview that records in general 'certainly were there when I was the national secretary' (Thomson PN 432) and Ms Ord (who resigned from employment with the National Office after Mr Thomson had already left) also stated in interview that records were retained in the National Office when she left (Ord (1) PN 95-99). While Ms Jackson has alleged that documents were destroyed (Jackson (2) PN 327), there is no evidence before FWA supporting that allegation. Although the National Office has been unable to produce records, the reason why the records have been lost, and the time at which this occurred, is unclear.

Internat Immobiliare

49. Information is set out at paragraphs 587 to 590 on page 354 in chapter 5 regarding a transaction on or about 7 May 2005 for \$770 with 'Internat Immobiliare' (HSUNO.010.0073).
50. My findings regarding the transaction with Internat Immobiliare are at Findings 61 and 62 - Payments to Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca on page 359.
51. I have also considered whether there has been a contravention of Sub-rules 32(e) and (j) of the Rules with respect to this transaction.
52. In my view there has been a contravention of the requirement in Sub-rule 32(e) that the National Secretary keep, or cause to be kept, records required by the RAO Schedule and the requirement in Sub-rule 32(j) that the National Secretary be responsible for the books, records, property and moneys of the Union.
53. There is, however, in my view insufficient evidence before FWA that would enable me to find that Mr Thomson, in particular, has contravened Sub-rules 32(e) and (j). Mr Thomson has given evidence that records 'certainly were there when I was the national secretary' (Thomson PN 432) and Ms Ord (who resigned from employment with the National Office after Mr Thomson had already left) also stated in interview that records were retained in the National Office when she left (Ord (1) PN 95-99). While Ms Jackson has alleged that documents were destroyed (Jackson (2) PN 327), there is no evidence before FWA supporting that allegation. Although the National Office has been unable to produce records, the reason why the records have been lost, and the time at which this occurred, is unclear.

Compliance with Rule 36

The use of electronic facilities to undertake financial transactions

Compliance with Sub-rules 36(a) and (b)

Signatories to cheques

54. The minutes of the National Executive meeting held on 19 September 2002 (HSUNO.018.0461) record a resolution that 'All officers of the National Union should be signatories for the National Union.'

Electronic funds transfer through an account with SGE

55. On 30 October 2009 the National Secretary provided FWA with MYOB files containing transactions of the National Office that occurred between 1 July 2006 and 3 March 2008. Those files evidence numerous electronic transactions by the National Office between these two dates, a small number of which were also supported by National Office documents (including internet banking receipts) that were provided to FWA on 18 June 2009. The electronic transactions that occurred between 1 July 2006 and 3 March 2008 were made using a bank account identified in the MYOB data as the 'SGE General Account'.
56. From information that was provided to FWA during interview it can be concluded that payments were made electronically by the National Office from at least 2004. Ms Ungun, who was the administrative officer and subsequently Mr Thomson's personal assistant from the time he commenced as National Secretary until her resignation in October 2004, stated in interview that she used to make payments for the National Office 'over the internet' whilst employed by the National Office (Ungun PN 84).
57. Minutes that have been provided to FWA of National Executive and National Council meetings during the period when Mr Thomson was National Secretary do not contain evidence of any resolutions that may have been passed regarding the establishment and use of electronic banking, whether with SGE or any other financial institution.
58. While minutes of National Executive meetings do contain numerous references to 'SGE', it is not clear whether these refer to the establishment of an electronic banking facility or to some other arrangement. Short, non-descriptive references to SGE can be found in minutes of several meetings of the National Executive in 2002 and 2003. The minutes of the National Executive meeting held on 30 June 2003 (HSUNO.018.0385) record that Mr Thomson discussed a proposed agreement with SGE, and advised that the bigger Branches had met with the SGE separately with regards to administration matters. The minutes record a resolution that Mr Williamson and Mr Thomson be authorised to sign the SGE Agreement on behalf of the HSU.
59. The minutes of the National Executive meeting held on 17 February 2004 (HSUNO.018.0370) record that Mr Thomson 'reported on the setting up of a business account with overdraft with SGE.' The minutes record a resolution '*That the National*

Secretary be authorised to take all steps necessary to set up a business account for the National union with SGE credit Union.'

60. Although Mr Williamson has been a Director of the SGE Credit Union since July 2003 (<http://www.sgecu.com.au/directors.asp>), the minutes do not record any disclosure by Mr Williamson of the fact that he is a Director of SGE Credit Union. (see [WIT.THO.002.0013](#))
61. An 'SGE Proposal' is also referred to in the minutes of the National Executive meeting held on 7 and 8 September 2005 ([HSUNO.024.0024](#)).
62. The minutes of the National Executive teleconference held on 13 October 2005 ([HSUNO.018.0281](#)) record that:
- Discussion occurred around the circulated proposal from SGE. After discussion about the sponsorship amounts, it was agreed that the National president would go back to SGE to seek clarification on a number of items.
63. The minutes of the National Executive meeting held on 7 and 8 November 2005 ([HSUNO.018.0272](#)) record that:
- Further discussion occurred in relation to the SGE sponsorship proposal (attached) and it was agreed that the national Secretary would write to SGE seeking clarification on the issues raised by Executive.
64. Minutes of a National Executive teleconference that is minuted as having been held on 16 December 2006 ([HSUNO.024.0166](#)) record that Mr Thomson reported on the offer of sponsorship from SGE and its terms. The minutes further record passage of the following resolution:
- That the National Secretary and the National President be empowered to sign an Agreement with SGE credit union in terms set out in the letter from SGE dated 8th December 2005.
65. Mr Dan Hill advised FWA in an email of 30 August 2011 ([FWA.021.0018](#)) that the minutes of the National Executive teleconference that are dated 16 December 2006 were, in fact, minutes of a meeting that was held on 16 December 2005. This is supported by minutes of 15 and 16 February 2006 at which the National Executive confirmed minutes of a National Executive teleconference that was held on 16 December 2005.
66. The minutes of the National Executive meeting held on 15 and 16 February 2006 ([HSUNO.018.0259](#)) record the following discussion:
5. SGE Matters
- National Secretary raised the issue of the production of membership cards and the \$34,000 allocated to produce those cards. Branches reported a range of views on this matter and some branches reported that they had already produced cards.
- The National President reported on an initiative to have membership cards double as reward cards for eftpos and credit card use. He outlined the philosophy of the scheme indicating that it was probably some months away still from finalisation. Most Branches indicated an interest in this development.
67. The minutes of that same meeting then record passage of the following resolution:

That the \$34,000 for card development be released to Branches on the basis of capitation fees paid.

68. None of the references in minutes of National Executive meetings to SGE which are discussed at paragraphs 57 to 67 above appear to be concerned with the establishment, or authorisation of the use of, electronic banking facilities.

Contravention that was put to Mr Thomson

69. I put the following alleged contravention to Mr Thomson in Schedule 2 (FWA.018.0050) to my letter of 12 December 2011 (FWA.018.0001):

You have contravened Sub-rules 36(a) and (b) by authorising the use of electronic facilities to undertake financial transactions generally without either National Council or National Executive authorising the expenditure of funds of the HSU by electronic facility for the purpose of carrying out the objects of the HSU.

Mr Thomson's submissions

70. Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening either of Sub-rules 36(a) or 36(b) of the Rules in respect of the using electronic facilities to undertake financial transactions.
 - b. As submitted at paragraphs 115 and 121 on pages 155 to 159 of chapter 3, the power of the National Secretary to expend funds without approval of the National Council or the National Executive under Sub-rules 32(n) and 36(b) was, and is, wide. It is not limited by the terms of the first sentence of Sub-rule 36(b). Furthermore the words "all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee" merely directs the mode in which cheques are to be drawn if this is the means of expenditure of funds. Accordingly, the Rules do not preclude the National Secretary from using electronic facilities to undertake financial transactions.

Conclusion

71. Having considered Mr Thomson's submissions, I am not satisfied that the Rules preclude the use of electronic banking facilities.

Sub-rule 36(g) - Statements of Loans, Grants and Donations

Statements for years ended 30 June 2003, 2004 and 2005

72. Sub-rule 36(g) (which is set out at page 96) provides that the Union shall not make any loan, grant or donation of any amount exceeding \$1,000 unless the National Council or the National Executive has approved the making of the loan, grant or donation.

73. Minutes that have been viewed by FWA of National Executive meetings during the period 16 August 2002 to 14 December 2007 do not contain any resolutions that were passed by National Executive as required by Sub-rule 36(g) approving the making of a loan, grant or donation of any amount exceeding \$1,000. No such resolutions are contained in minutes of National Council meetings held in 2002, which are the only National Council minutes that have been viewed by FWA.
74. Whether it was necessary for National Executive or National Council to pass resolutions as required by Sub-rule 36(g) depends upon whether the National Office made any loans, grant or donation exceeding the \$1,000 threshold.
75. From the information that is before FWA it is not possible to determine whether any loan, grant or donation exceeding the \$1,000 threshold was made in the financial years ending 30 June 2003, 2004 or 2005. Disclosure requirements in financial reports that were lodged with the AIR regarding grants and donations changed with the introduction of the Reporting Guidelines that were issued by the Industrial Registrar under section 255 of the RAO Schedule on 20 June 2003. The Reporting Guidelines prescribe certain disclosure requirements that apply in addition to those prescribed by Australian Accounting Standards. These additional disclosure requirements apply to each financial year that starts on or after 1 July 2003. Given that Sub-rule 36(f) provides that the financial year of the HSU shall end on 30th June in each year, the new reporting requirements first applied to the National Office of the HSU in the financial year ended 30 June 2004.
76. Paragraph 11(f) of the Reporting Guidelines requires a reporting unit to disclose balances for expenses incurred for grants or donations either in the notes to, or on the face of, the Profit and Loss Statement.
77. Financial reports that were lodged with the for the years ended 30 June 2003, 2004 and 2005 indicate the following:
 - a. Financial records for the year ended 30 June 2003 cannot be retrieved from FWA archives;
 - b. For the year ended 30 June 2004, the Statement of Financial Performance does not itemise any expenses for loans, grants or donations;
 - c. For the year ended 30 June 2005, the Statement of Financial Performance does not itemise any expenses for loans, grants or donations.
78. Despite the lack of disclosure in the financial report for the year ended 30 June 2005, the Statement of Financial Performance for the year ended 30 June 2006 includes a comparative figure for 2005 for donations of \$7,216. While this suggests that donations were, in fact, made by the National Office in the year ending 30 June 2005, this information is not (of itself) sufficient to establish that any individual donation exceeded the \$1,000 threshold.
79. In the absence of further information, there is insufficient evidence before FWA that would enable me to make a finding that the requirements of Sub-rule 36(g) were not met in the years ended 30 June 2003, 2004 or 2005.

Compliance by Mr Thomson with Sub-rule 32(f)

80. Sub-rule 32(f) (which is set out at page 94) requires the National Secretary to 'lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner'.
81. Subsection 237(1) of the RAO Schedule requires an organisation, within 90 days of the end of its financial year, to lodge with the AIR a statement of loans, grants and donations where any individual loan, grant or donation exceeded \$1,000.
82. For the reasons set out above at paragraphs 72 to 78, there is insufficient evidence before me concerning the years ended 30 June 2003, 2004 and 2005 that would enable me to determine whether the National Secretary was required by Sub-rule 32(f) to lodge statements of loans, grants and donations with the AIR under subsection 237(1) of the RAO Schedule.

Sub-rule 36(b) - expenditure on the general administration of the Union

Accommodation expenses incurred by Mr Thomson during November 2005

Alleged contravention that was put to Mr Thomson

83. I put the following alleged contraventions to Mr Thomson in Schedule 3 (FWA.018.0277) to my letter of 12 December 2011 (FWA.018.0001):

You contravened Sub-rule 36(b) by spending the monies set out in the table at paragraph 84 below on accommodation from the funds of the National Office without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

You have contravened subsection 285(1) of the RAO Schedule by failing to exercise your powers or discharge your duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending the monies set out in the table at paragraph 84 below on accommodation without the approval of either National Council or National Executive to do so. A reasonable person in your position would not have incurred this expenditure without first having obtained the approval of either National Council or National Executive to do so.

You have contravened subsection 286(1) of the RAO Schedule by failing to exercise your powers and discharge your duties as National Secretary in good faith for what you believed to be the best interests of the HSU, and for a proper purpose by spending the monies set out in the table at paragraph 84 below on accommodation. You did not believe it was in the best interests of the HSU for you to spend these monies; and it was not a proper purpose for you to spend those monies.

You have contravened subsection 287(1) of the RAO Schedule by improperly using your position as National Secretary to gain an advantage for yourself and/or Ms Thomson, namely the enjoyment of accommodation and other travel related expenditure, by

spending at least some part of the expenditure set out in the table at paragraph 84 below.

84. The following table of expenditure was put to Mr Thomson in Schedule 3 (FWA.018.0277):

Amount	Details
\$203.85	Stay in Melbourne on 10 November 2005 in accommodation booked on Wotif that day
unknown	Stay at the Rialto on Collins on 13 November 2005
\$111.35	Extras incurred in relation to stay at the Rialto on Collins on 13 November 2005
\$238.85	Stay at the Grand Hotel Melbourne on 16 November 2005
\$42.50	Extras incurred in relation to stay at the Grand Hotel Melbourne on 17 November 2005
\$238.85	Stay in Melbourne on 21 November 2005 at the Grand Hotel Melbourne
\$82.35	Extras incurred in relation to stay at the Grand Hotel Melbourne on 21 November 2005
\$917.75	Total

Evidence

85. Mr Thomson's Diners Club statement dated 20 November 2005 ([HSUNO.013.0336](#)) discloses that he made the following bookings:
- a. on 6 November 2005, \$744.82 for Qantas flights from Sydney to Melbourne on 10 November 2005, return on unknown date;
 - b. on 10 November 2005, \$543.52 for Qantas flights from Sydney to Melbourne on 13 November 2005, return on unknown date; and
 - c. on 14 November 2005, \$616.12 for Qantas flights from Sydney to Melbourne on 16 November 2005, return on unknown date.
86. This Diners Club statement also discloses that between 2 and 18 November 2005 Mr Thomson incurred the following charges:
- a. on 2 November 2005:
 - i. \$61.42 at Coles Express 1553, Killarney;
 - ii. \$43.62 taxi fare for 'airport to office';
 - iii. \$112.90 at Mercadante Wood fired Pizzeria, Carlton; and
 - iv. \$200 at Verge, Flinders Lane
 - b. on 3 November 2005, \$46.95 for taxi fare for 'city to airport'.
 - c. on 5 November 2005, \$76.05 at Coles Express 1626 Kariang.
 - d. on 6 November 2005, \$75.95 at Dick Smith (Erina).

- e. on 7 November 2005:
 - i. \$70.35 at W C Penfold Stationery Store; and
 - ii. \$70.91 at Ampol Waitara.
 - f. on 8 November 2005:
 - i. \$80 at Dekk Restaurant, Terrigal; and
 - ii. \$54 for Wilson Parking, Sydney.
 - g. on 9 November 2005:
 - i. \$59.08 at Mobil Express Food for 33.26 litres; and
 - ii. \$50.47 at Secure Parking, Wynyard Lane.
 - h. on 10 November 2005, \$203.85 at Wotif.com.
 - i. on 11 November 2005, \$78.56 at Coles Express 1553, Killarney.
 - j. on 13 November 2005, \$50.26 at Coles Express 1553, Killarney.
 - k. on 14 November 2005:
 - i. \$238.85 at Wotif.com; and
 - ii. \$111.35 at Rialto Hotel, Melbourne.
 - l. on 15 November 2005:
 - i. \$66.63 at Quix Food Store for 44.95 litres; and
 - ii. \$54 for Wilson parking, Sydney.
 - m. on 17 November 2005:
 - i. \$42.50 at Grand Hotel managed by Sofitel (ABN 49216957643002); and
 - ii. \$27 for Wilson parking, Grand Hyatt.
 - n. on 18 November 2005:
 - i. \$80.26 at Quix Food Store for 49.01 litres; and
 - ii. \$23.65 Secure parking, Wynyard Lane.
87. Mr Thomson's CBA Mastercard statement ([HSUNO.014.0050](#)) dated 25 November 2005 discloses that he incurred the following charges from 1 November to 22 November 2005:
- a. on 3 November 2005 he withdrew \$200 at a CBA ATM in 'central Melb' [sic].
 - b. on 7 November 2005 he withdrew \$200 at a Westpac ATM in Terrigal.
 - c. on 14 November 2005:
 - i. he withdrew \$400 at an ANZ ATM, at 91 Williams Street, Melbourne; and
 - ii. he withdrew \$400 at a Westpac ATM in The Entrance.

- d. on 17 November 2005:
 - i. he withdrew \$300 at a CBA ATM in East Gosford; and
 - ii. he withdrew \$200 at CBA ATM, Flinders and Elizabeth St, Victoria.
 - e. on 22 November 2005:
 - i. he withdrew \$200 at NAB ATM at 460 Collins Street; and
 - ii. he withdrew \$500 at an ATM at Qantas Domestic Terminal, Tullamarin [sic].
88. Mr Thomson's Diners Club statement dated 20 December 2005 ([HSUNO.013.0349](#)) discloses that he incurred the following charges:
- a. on 20 November 2005, he booked and paid Qantas \$542.82 for flights from Sydney to Melbourne on 21 November 2005, return on unknown date;
 - b. on 27 November 2005, he spent \$25.50 and \$160 on 'Hotel Reservations' (ABN 85092445442); and
 - c. on 28 November 2005, he booked and paid Qantas \$457.68 for flights from Sydney to Canberra on 29 November 2005, return on unknown date.
89. This Diners Club statement dated 20 December 2005 also discloses that Mr Thomson incurred the following additional charges between 10 November to 30 November 2005:
- a. on 10 November 2005, \$43.96 taxi fare for 'Melbourne arpt to Carlton' [sic].
 - b. on 13 November 2005, \$47.06 taxi fare for 'airport to hotel'.
 - c. on 14 November 2005, \$42.40 taxi fare for 'city to airport'.
 - d. on 16 November 2005, \$42.96 taxi fare for 'Melbourne arpt to Carlton' [sic].
 - e. on 17 November 2005:
 - i. \$13.88 taxi fare for 'city to city'; and
 - ii. \$43.73 for 'city to airport'.
 - f. on 20 November 2005, \$51.89 at Coles Express, Erina, Central Coast.
 - g. on 21 November 2005:
 - i. \$238.85 at Wotif.com; and
 - ii. \$49.40 taxi fare for 'airport to city'.
 - h. on 22 November 2005:
 - i. \$46.09 taxi fare for 'city to airport'; and
 - ii. \$82.35 for Grand Hotel managed by Sofitel (ABN: 49216957643002).
 - i. on 24 November 2005:
 - i. \$19.90 at Sunlite Electrical (ABN 54003833716);

- ii. \$33.90 at Sunlite Electrical;
 - iii. \$24.87 at W C Penfold Stationery Store;
 - iv. \$52.50 at Postshop, Sydney GPO \$52.50;
 - v. \$135 at Dekk Restaurant, Terrigal;
 - vi. \$65.76 at Coles Express, 1626 Kariong; and
 - vii. \$50.47 at Secure Parking, Wynyard Lane.
- j. on 26 November 2005:
- i. \$58.90 at Coles Express 1535, P Hills Est (sic); and
 - ii. \$37.31 at Coles Express 1553 Killarney.
- k. on 27 November 2005, \$80 at Doyles seafood restaurant.
- l. on 28 November 2005:
- i. \$81.68 at Calstores Pty Ltd, Chatswood; and
 - ii. \$23.29 secure parking, Wynyard Lane.
- m. on 29 November 2005:
- i. \$23.69 secure parking, Wynyard Lane; and
 - ii. \$16.38 taxi fare for 'airport to Griffith'.
- n. on 30 November 2005:
- i. \$9 at Medina Highgate Executive Apartments (ABN 36062326176); and
 - ii. \$19.65 taxi fare for 'office to Pialligo' (Canberra airport).
90. Mr Thomson's CBA Mastercard statement dated 20 December 2005 ([HSUNO.014.0052](#)) discloses that on 29 November 2005 he withdrew \$300 at an ATM at Kingston Newsagency, Canberra.
91. As at 15 November 2011 the Wotif website identified that the room rates at the Intercontinental Hotel The Rialto for Tuesday 22 November 2011 ranged between \$295 and \$475 per night ([PUB.008.0168](#)).
92. As at 15 November 2011 the Wotif website identified that the room rates at the Grand Hotel MGallery Collection for Tuesday 22 November 2011 ranged between \$295 and \$329 per night ([PUB.008.0204](#)).

Analysis

Melbourne and Central Coast - 2 November 2005 to 6 November 2005

93. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Wednesday 2 November 2005:
 - i. drove from the Central Coast to Sydney, spending \$61.42 at the Coles Express, Killarney Vale using his Diners Club card, on the way;

- ii. boarded a plane from Sydney to Melbourne (there is no evidence about how or when this flight was paid);
 - iii. spent \$43.61 on a taxi from the Melbourne airport to the city using his Diners Club card;
 - iv. spent \$112.90 at Mercadante Woodfired Pizzeria, Carlton using his Diners Club card; and
 - v. spent \$200 at Verge on Flinders Lane using his Diners Club card.
- b. on Thursday 3 November 2005:
- i. withdrew \$200 from a CBA ATM in central Melbourne using his CBA Mastercard; and
 - ii. spent \$46.95 on a taxi for city to Melbourne airport using his Diners Club card.
- c. at some point on Thursday 3, Friday 4 or Saturday 5 November 2005, returned to the Central Coast.
- d. on Saturday 5 November 2005, spent \$76.05 at the Coles Express, Kariong, NSW using his Diners Club card.
- e. on Sunday 6th November 2005 spent \$75.95 at the Dick Smith in Erina using his Diners Club card.

Central Coast and Sydney - 7 November 2005 to 9 November 2005

94. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Monday 7th November 2005:
 - i. withdrew \$200 at the Westpac ATM in Terrigal using his CBA Mastercard;
 - ii. drove to Sydney, spending \$70.91 at the Ampol in Waitara on the way;
 - iii. attended the National Executive meeting in Sydney at 10am (HSUNO.018.0272); and
 - iv. spent \$70.35 at WC Penfold Stationary Store using his Diners Club card.
 - b. on Tuesday 8th November 2005:
 - i. attended the National Executive meeting in Sydney (HSUNO.018.0272);
 - ii. spent \$54 on Wilsons Parking in Sydney using his Diners Club card; and
 - iii. that evening spent \$80 at the Dekk Restaurant in Terrigal.
 - c. on Wednesday 9th November 2005:
 - i. spent \$59.08 at the Mobil Express using his Diners Club card; and
 - ii. spent \$50.47 on Secure Parking, in Wynyard Lane, Sydney his his Diners Club card.

Sydney to Melbourne return - 10 November 2005 to 11 November 2005

95. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Thursday 10 November 2005:
 - i. used his Diners Club card to pay \$203.85 on Wotif for accommodation in Melbourne that evening;
 - ii. flew from Sydney to Melbourne (having paid Qantas \$744.82 for this flight on 6 November 2005 using his Diners Club card , as detailed at paragraph 85.a of this chapter); and
 - iii. spent \$43.96 on a taxi from Melbourne airport to Carlton using his Diners Club card.
 - b. on Friday 11 November 2005:
 - i. flew back to Sydney; and
 - ii. drove back to the Central Coast, spending \$78.56 at the Coles Express in Killarney Vale using his Diners Club card on the way home.

Sydney to Melbourne - 13 November 2005 to Wednesday 16 November 2005

96. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Sunday 13 November 2005:
 - i. drove to Sydney, spending \$50.26 at the Coles Express, Killarney Vale on the way using his Diners Club card;
 - ii. flew from Sydney to Melbourne (having paid Qantas \$543.52 for this flight using his Diners Club card on 10 November 2005, as detailed at paragraph 85.b of this chapter);
 - iii. spent \$42.40 on a taxi from Melbourne airport to the city his your Diners Club card; and
 - iv. stayed at the Rialto on Collins that evening (there is no evidence about how or when this accommodation was paid).
 - b. on Monday 14 November 2005:
 - i. checked out of the Rialto on Collins Hotel using his Diners Club card to pay \$111.35 for extras incurred during his stay the previous evening;
 - ii. withdrew \$400 from an ANZ ATM at 91 William Street using his CBA Mastercard;
 - iii. spent \$42.40 on a taxi fare from the city to Melbourne airport using his Diners Club card;
 - iv. flew back to Sydney and returned to the Central Coast; and

- v. withdrew \$400 from the Westpac ATM in The Entrance later that day using his CBA Mastercard.

Sydney to Melbourne - 15 November 2005 to 17 November 2005

97. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Monday 14 November 2005, paid Wotif \$238.85 for accommodation at the Grand Hotel managed by Sofitel on 16 November 2005.
 - b. on Tuesday 15th November 2005:
 - i. spent \$66.63 at the Quix Food store; and
 - ii. spent \$54.00 at Wilsons Parking in Sydney using his Diners Club card.
 - c. on Wednesday 16th November 2005:
 - i. flew from Sydney to Melbourne (having paid Qantas \$616.12 for this flight using his Diners Club card on 14 November 2005, as detailed at paragraph 85.c of this chapter);
 - ii. spent \$42.96 on a taxi from Melbourne airport to Carlton using his Diners Club card; and
 - iii. stayed at the Grand Hotel Managed by Sofitel.
 - d. on Thursday 17th November 2005:
 - i. withdrew \$200 at the CBA ATM on Flinders and Elizabeth streets using his CBA Mastercard;
 - ii. spent \$13.88 on a taxi using his Diners Club card;
 - iii. checked out of the Grand Hotel using his Diners Club card to pay \$42.50 for extras incurred during his stay the previous evening;
 - iv. spent \$43.73 on a taxi from the city to Melbourne airport using his Diners Club card;
 - v. flew back to Sydney;
 - vi. returned to the Central Coast of NSW; and
 - vii. withdrew \$300 from the Westpac ATM in East Gosford using his CBA Mastercard.

Sydney to Melbourne - 21 November 2005 to 22 November 2005

98. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Monday 21st November 2005:
 - i. used his Diners Club card to pay \$238.85 on Wotif for accommodation at the Grand Hotel that evening;

- ii. flew from Sydney to Melbourne (having paid Qantas \$542.82 for this flight using his Diners Club card on to Melbourne on 20 November 2005, as detailed at paragraph 88.a of this chapter);
 - iii. spent \$49.40 on a taxi from Melbourne airport to Melbourne using his Diners Club card; and
 - iv. checked in to the Grand Hotel where he stayed that evening.
- b. on Tuesday 22 November 2005:
- i. withdrew \$200 at a NAB ATM at 460 Collins St, Melbourne using his CBA Mastercard;
 - ii. checked out of the Grand Hotel using his Diners Club card to pay \$82.35 for extras incurred the previous evening;
 - iii. spent \$46.09 on a taxi from the city to Melbourne airport using his Diners Club card;
 - iv. withdrew \$500 at an ATM at the Qantas Domestic Terminal, Tullamarine using his CBA Mastercard; and
 - v. flew back to Sydney.

Sydney to Canberra - 29 November 2005 to 30 November 2005

99. On the basis of the matters set out at paragraphs 85 to 92 of this chapter, it appears that Mr Thomson:
- a. on Tuesday 29 November 2005:
- i. spent \$23.69 at Secure Parking, Wynyard Lane using his Diners Club card;
 - ii. flew from Sydney to Canberra (having paid Qantas \$457.68 using his Diners Club card for this flight on to Melbourne on 20 November 2005, as detailed at paragraph 88.c of this chapter);
 - iii. paid \$16.38 for a taxi from Canberra airport to Griffith using his Diners Club card;
 - iv. withdrew \$300 from a NAB ATM in Kingston using his CBA Mastercard; and
 - v. checked into the Medina Highgate Executive Apartments for that evening.
- b. on Wednesday 30 November 2005:
- i. checked out of the Medina Highgate Executive Apartments using his Diners Club card to pay \$9 for extras incurred during his stay;
 - ii. spent \$19.65 on a taxi for the office to the Canberra airport using his Diners Club card; and
 - iii. flew back to Sydney.

Mr Thomson's submissions

100. Holding Redlich's submissions of 2 March 2012 on behalf of Mr Thomson (FWA.024.0002) are that:
- a. He denies contravening Sub-rule 36(b) of the Rules or any of subsections 285(1), 286(1) or 287(1) of the RAO Schedule.
 - b. I have no grounds for these allegations. I have formed my own conclusions and assumptions based on credit card statements and have assumed that the 4 trips taken in November 2005 were for personal reasons. I have failed to interview Mr Thomson, or anyone from the Melbourne office, regarding Mr Thomson's trips to Melbourne during this time. My assumptions indicate my bias and failure to properly conduct the investigation.
 - c. As National Secretary, Mr Thomson was required to travel on business. All expenditure incurred on accommodation in November 2005 was for work purposes and therefore reasonably incidental to the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
 - d. The expenses incurred had been budgeted for and approved by the National Executive. As the expenses had been approved and were for a purpose reasonably incidental to the general administration of the HSU, no express approval was required from the National Council or National Executive.
 - e. He denies using his position as National Secretary to gain an advantage and denies gaining any advantage from the expenditure on accommodation in November 2005.

Conclusions

101. Having considered Mr Thomson's submissions and having reviewed the evidence, I am persuaded that the travel was part of the general administration of the Union or for purposes reasonably incidental thereto.

Mr Thomson's trip to New Zealand in March 2007

Evidence

102. Mr Thomson's Diners Club statement dated 20 March 2007 (HSUNO.015.0174) discloses that on 25 February 2007 Mr Thomson paid \$285.96 to Qantas Holidays Ltd, Australia, converted from New Zealand \$309.75 dollars at 1.0832. The Qantas Holidays Ltd, Australia, charge did not identify the related date of accommodation.
103. This Diners Club statement further discloses that Mr Thomson incurred the following additional charges
- a. on 8 March 2007
 - i. \$57.58 at the Mobil, Killara, for 43.20 litres of petrol
 - ii. \$55 at the Intercont Syd Car Pr (sic)

- b. on 9 March 2007 \$7 at Syd Airport Parking 1 (sic)
 - c. on 10 March 2007 \$49.40 taxi fare for "Suburbs to Syd Int Arpt"
 - d. on 11 March 2007:
 - i. \$78.61 at Leuven, Wellington
 - ii. \$21.40 at Leuven, Wellington
 - iii. \$71.46 at Novel Capital, Wellington.
104. There are no expenses charged on either of Mr Thomson's credit cards between 13 and 17 March 2007. On 18 March 2007 expenses on the Central Coast are again recorded on Mr Thomson's credit card statements.
105. Mr Thomson's Diners Club statement dated 20 April 2007 (HSUNO.015.0184) discloses that on 10 March 2007 \$28.46 was charged by "Se Ngugon Taxi Factoring Wg'n, N, W". The conversion was \$31.10 New Zealand dollars at a rate of 1.0926.
106. Mr Thomson's CBA Mastercard dated 27 March 2007 (HSUNO.014.0088) disclosed that on 8 March 2007 Mr Thomson withdrew \$500 cash from a CBA ATM at "Mbl Killara NSW".
107. When interviewed by the FWA, Mr Thomson stated that this trip related to a meeting with the New Zealand Nurses Union in Wellington. Mr Thomson claims that he paid for the airfares personally because he visited his family in Auckland during the trip. The exchange (Thomson PN 1896, 1902-1912) was as follows:
- MR NASSIOS: What if I take you to March 2007. It seems you've gone to New Zealand.
-
- MR NASSIOS: Can you recall what you went to New Zealand for?
- MR THOMSON: Yes, we actually met with the New Zealand Nurses Union in Wellington. That was the reason, and in fact Mr - it arose out of - I think by that time Mr Goulter, who is a New Zealander, had returned to New Zealand and had arranged for us to meet - sort of thing. I think essentially I paid for the airfares though for that trip because I think I flew into Auckland where - I have family in Auckland but these meetings were in Wellington. That's my recollection.
- MR NASSIOS: In terms of specific expenditure - - -
- MR THOMSON: Yes.
- MR NASSIOS: You know, maybe something that's called the Seng Won Taxi Factory is a taxi. I don't know.
- MR THOMSON: Yes.
- MS CARRUTHERS: That's in the second statement.
- MR NASSIOS: Can you recall that?
- MR THOMSON: I think that is a taxi.
- MR NASSIOS: All right. Something that's called Leuven Wellington, L-e-u-v-e-n.

MR THOMSON: Yes, I see those two that were there. I think that was a restaurant. I think the only charges were some food charges, and I don't even think - I think from memory there was about 15 people for coffee - stuff like that. I don't think it was even meals that we charged.

Analysis

108. On the basis of the matters set out above at paragraphs 102 to 107, it appears likely that Mr Thomson:

- a. on 25 February 2007 booked and used his Diners Club card to pay \$285.96 AUS for accommodation for one night in New Zealand, possibly the first night on 10 March 2007 in Wellington
- b. on 8 March 2007:
 - i. drove from the Central Coast to Sydney, stopping at the Mobil in Killara where he paid \$57.58 for petrol using his Diners Club card and withdrew \$500 in cash using his CBA Mastercard
 - ii. left his car at the Intercontinental Hotel car park
- c. on 9 March 2007 drove to the Sydney airport, parking his car in the regular airport parking bays,
- d. on 10 March 2007:
 - i. caught a taxi from an unknown location in the Sydney suburbs to the Sydney international airport for which he paid \$49.40 using his Diners Club card
 - ii. flew to Wellington, New Zealand
 - iii. caught a taxi from the Wellington airport to an unknown location for which he paid \$AUD28.46 using his Diners Club card
- e. on 11 March 2007 attended the Leuven restaurant in Wellington, charging two amounts of \$78.61 and \$21.41 to his Diners Club card
- f. on 12 March 2007:
 - i. checked out of the Novotel Capital, in Wellington, and paid \$71.46 for extras incurred during his stay using his Diners Club card
 - ii. possibly flew to Auckland, New Zealand, to visit family
- g. returned to Sydney on an unknown date but before Sunday 18 March 2007.

Conclusion regarding trip to New Zealand in March 2007

109. While there is no evidence that:

- a. either National Executive or National Council authorised Mr Thomson's trip to New Zealand in March 2007 or any expenses in relation to that trip;
- b. anyone else in the National Office was aware of this trip; or

- c. Mr Thomson ever reported to National Executive or National Council about this trip or about any meetings he had held during this trip

the fact that Mr Thomson paid for his own airfare to New Zealand is highly suggestive of him viewing the primary purpose of the trip as being to visit his family in Auckland.

110. Nevertheless it appears that a secondary purpose of this trip was to meet with the New Zealand Nurses Union in Wellington. Mr Thomson paid for a significant portion of the cost of this trip, including his airfares, himself. The total National Office monies which were expended on this trip were not disproportionate to the purpose of meeting with officials of another Union. I am therefore of the view that the monies expended by Mr Thomson in relation to this trip were costs which were for the general administration of the Union or for a purpose reasonably incidental to the general administration of the Union.

RAAF Edinburgh Rugby Sponsorship January 2007

Documents

111. The HSU National Office has provided FWA with a spreadsheet produced from MYOB data which lists payments made by the National Office between 1 January 2007 and 31 March 2007 (HSUNO.003.0244) That spreadsheet identifies the following electronic payment:

22.1.07 EFT RAAF Edinburgh - Purchase Value: \$3,500.

112. The payment also appears at page 11 of the HSU National Office's General Ledger for 1 July 2006 to 30 June 2007 (HSUNO.029.0001), where the transaction is described as:

RAAF Edinburgh Rugby Sponsorship

113. The HSU National Office has not provided any other documents to FWA which evidence or explain this transaction.

Witnesses

114. Mr Thomson told FWA that he was unable to recall why a payment of \$3,500 was made on 22 January 2007 to RAAF Edinburgh rugby sponsorship but he agreed that Ms Ord would not have made this payment without indicating to him that she was doing so (Thomson PN 1632-1641):

MR NASSIOS: Okay. There was an RAAF Edinburgh rugby sponsorship in January 2007.

MS CARRUTHERS: 22 January.

MR NASSIOS: 22 January 2007, there's a figure of \$3500 in relation to that sponsorship.

MR THOMSON: I don't know what that is, I can't recall that at all.

MR NASSIOS: Can I ask, when you say you can't recall, how would these payments have been made? I mean who would have made these payments since they're coming out of the, you know, the general account?

- MR THOMSON: Sure. Well, yes, they would have been made by Belinda. I mean there may well be an explanation. I'm just saying I can't recall what that is, I'm not even trying - I've tried not to be evasive.
- MR NASSIOS: No, that's - well, did - - -
- MR THOMSON: That one I just - I can't immediately think of why we would be paying that.
- MR NASSIOS: Belinda wouldn't have paid these without some way indicating to you that they are being paid.
- MR THOMSON: That's right. No, I wouldn't have thought so.
- MR NASSIOS: Okay.
- MR THOMSON: Yes.
- MR NASSIOS: So I just wanted to make sure that other people are not doing things - - -
- MR RAWSON: There's no-one else in the national office who would purport to authorise a payment like this without reference to you, is there?
- MR THOMSON: No.

115. During her second interview with FWA Ms Ord was asked about this payment (Ord (2) PN 147-154):

- MR NASSIOS: All right. I will just get my thoughts for a moment, but in the meantime can I ask you about a RAAF Edinburgh Rugby sponsorship of \$3,500?
- MS ORD: Yeah. I wouldn't recall the amount but I do recall the - -
- MR NASSIOS: Okay.
- MS ORD: The name rings a bell.

116. However Ms Ord was not able to provide any further information about this transaction.

117. Dr Kelly was asked about this transaction at interview with FWA and said that she did not know what it was for, and that it had not been discussed or approved by the National Executive (Kelly PN 710-712).

Analysis

118. There is no evidence other than the MYOB data about what this payment was for, or why it was made. The MYOB data describes the payment as being for 'RAAF Edinburgh Rugby Sponsorship'. It seems that, for whatever purpose, the payment was made by way of sponsoring a rugby team.

119. No person interviewed by FWA could remember anything about this payment, apart from Ms Ord's very general recollection that 'the name rings a bell'.

120. However Mr Thomson agreed that neither Ms Ord nor anybody else would have made this payment without reference to him.

121. In all the circumstances it appears that:
- a. the payment of \$3,500 to what was described as 'RAAF Edinburgh rugby sponsorship' was not expenditure on the general administration of the Union or a purpose reasonably incidental to the general administration of the Union;
 - b. the payment of those monies was not authorised by either National Council or National Executive; and
 - c. accordingly, the payment of those monies may have contravened sub-rule 36(b).
122. Unlike the payments to the Julie Williamson Fundraising Appeal, Golden Years Collectables, Central Coast Convoy for Kids and Dads in Education, however, Mr Thomson could not recall in interview that the National Office had made a payment to RAAF Edinburgh Rugby. Although Mr Thomson accepted that neither Ms Ord nor anybody else would have made this payment without reference to him, there is no evidence about who did purport to authorise this payment. Even Ms Ord was unable to say whether it was her who had processed the payment, or who had authorised the payment.
123. In the circumstances, in my view the evidence does not permit a finding that any particular person, on the balance of probabilities, purported to authorise this payment.

Open Channel Co-op

124. Mr Thomson's CBA Mastercard for the period to 25 September 2003 records a transaction on 25 August 2003 with Open Channel Co-op of Fitzroy for \$1,150 (HSUNO.014.0014).
125. Mr Thomson's CBA Mastercard for the period to 27 September 2004 records a transaction on 2 September 2004 with the Open Channel Co-op for \$88 (HSUNO.014.0031).
126. No documents have been produced by the HSU to FWA evidencing that the transactions with and the payments made to the Open Channel Co-op were authorised by the National Council and the National Executive.
127. No evidence has been produced by HSU substantiating that the transactions with and the payments made by Mr Thomson to the Open Channel Co-op were for the purpose of carrying out the objects of the union.
128. Mr Thomson has informed FWA that the expenditure related to the production of a DVD for the HSU and that at a later point in time the union undertook the development of the DVD in-house (Thomson PN 1320-1330):

MR THOMSON: Yes. I mean, the first one is accommodation in Sydney. The second one is in relation to the production of a DVD for the union.

MS CARRUTHERS: Sorry, which transaction is that one?

MR THOMSON: 28 August 2003.

MS CARRUTHERS: You're the only one with the list now.

MR THOMSON: Sorry.

MS CARRUTHERS: That's the Open Channel Co-op?

MR THOMSON: Yes.

MS CARRUTHERS: Sorry. Open Channel Co-op was production of a DVD, did you say?

MR THOMSON: Mm.

MS CARRUTHERS: Okay.

MR THOMSON: Which we soon started to do in-house after that...

129. Ms Ungen had no recollection of expenditure relating to the Open Channel (Ungun PN 381).
130. While the only evidence relating to this purchase came from Mr Thomson, it is likely that the expenditure related to the production of a DVD for the HSU. As such, in my view, there is insufficient information before FWA that would enable me to find that the expenditure was not related to the general administration of the Union or for purposes reasonably incidental thereto.

Social Change Media

131. Financial records of the HSU record that on or about 12 September 2007 the HSU paid the sum of \$2,200 to Social Change Media (HSUNO.008.0005 at 0025; HSUNO.004.0003; HSUNO.008.0140 at 0053).
132. No documents have been produced by HSU to FWA evidencing that the transactions with and the payments made to Social Change Media were authorised by the National Council and the National Executive;
133. Mr Thompson was asked by FWA to explain the payment to Social Change Media. He said that Social Change Media set up the HSU website and maintained the system. The engagement of the organisation was terminated around September 2007 (Thomson PN 1682-1690):
- MR NASSIOS: Okay. Social Change Media, 12 September 2007.
- MR THOMSON: Yes.
- MR NASSIOS: A figure of \$2,200.
- MS CARRUTHERS: Here we go.
- MR THOMSON: Yes.
- MR NASSIOS: Does that mean anything to you?
- MR THOMSON: Social Change had done our web site originally and were looking after it although I think we may have - they also did the Tasmanian web site as well too. This one was not to anyone's attention though in my office but I don't think the - well, I'm not sure if there's another - I'm not sure who John Pascoe is.
- MR NASSIOS: No, I'm not going to be able to assist you on that one so - - -

MR THOMSON: We stopped using them at some stage. I would have thought it was before September 2007 but our engagement with them was entirely related to our - to the web site.

134. Dr Kelly states that the payment to Social Change Media was not discussed or approved by the National Executive. She thought the transaction may have related to research in connection with a dental care program (Kelly PN 722-725):

MR NASSIOS: On 12 September 2007 the national office paid \$2200 to Social Change Media. Do you know what this payment was for?

DR KELLY: No, I don't.

MR NASSIOS: Was this payment discussed or approved by the national executive?

DR KELLY: To my knowledge, no. There was - there were some pieces of research done because the national office was running a campaign around dental care and we did commission some research, and around that time there may have been something, I'd have to look in the minutes and refresh my memory. There was a bit of discussion about doing some focus groups about - around dental care. So it may be that that was discussed in that context but that was very specific around focus groups looking at people's opinions of dental care, and whether there should be any Medicare and those sorts of things as a political issue, and that went to national executive and I think we spent some money on getting some research done by a university around those issues. So there were some things discussed but the rest of it, no.

135. Mr Brown states that to his knowledge the payment to Social Change Media was not discussed or approved by the National Executive. He understood the organisation hosted or maintained the web site of the national office (Brown PN 424-427):

MR NASSIOS: 12 September 2007, the national office paid \$2200 to Social Change Media. Do you know what this payment was for?

MR BROWN: No, I don't. Social Change Media, as I understand it, hosts or maintained the web site of the national office and I think it was - so is hosted there so it could be something related to that. It may not be directly related to anything to do with Dobell but again I don't know. I can't be sure.

MR NASSIOS: Was this payment discussed or approved by the national executive?

MR BROWN: Not to my knowledge.

136. Ms Ord also recalled that Social Change Media was engaged in relation to the HSU website (Ord (1)PN 513 - 516):

MR NASSIOS: Okay. In September of 2007 there was a payment of two and-a-bit thousand to something called Social Change Media. Does that ring any sort of bells?

MS ORD: The name of that business does. I do think we did things with them over a period of time, Social Change Media. I think that they may have originally had something to do with our website I think. Social Change Media. That name definitely is familiar. I do think that would not have been the only bill we paid them.

MR NASSIOS: All right, so you suspect there is a connection there to the HSU in terms of potentially the website?

MS ORD: There's definitely a connection, and they did do websites. I think. I shouldn't say that they did do website stuff. But my memory tells they did, but I could be wrong.

137. In all of the circumstances I consider that the payments made in respect of Social Change Media was expenditure on, or for a purpose reasonably incidental to, the general administration of the Union and within Mr Thomson's authority to incur and authorise payment. I consider that the establishment and maintenance of a website is a necessary and appropriate expense to have incurred in support of the business activities of the Union.

Renewal of car insurance for Mr Thomson and Ms Katie Hall in November 2007

138. Insurances on the motor vehicles leased by the HSU and used by Mr Thomson and Ms Hall were renewed by payment by the National Office of the premiums to AAMI on 19 November 2007. Evidence of payment is recorded in:
- a. Bpay receipts (HSUNO.006.0327; HSUNO.001.0205; HSUNO.006.0329); and
 - b. receipts for payment (HSUNO.006.0326; HSUNO.001.0204; HSUNO.006.0328).
139. Shortly after the date the insurance policies were renewed, Mr Thomson and Ms Hall resigned from the HSU (WIT.WIL.001.0267).
140. The position is summarised in the table below:

Staff member	Date insurance renewed	Resignation date	Amount of insurance
Mr Thomson	19 November 2007	14 December 2007	\$1,238.00
Ms Hall	19 November 2007	31 December 2007	\$380.45

141. Mr Thompson has advised FWA that the motor vehicles used by himself and Ms Hall were leased and were covered by insurance. The insurances on the vehicles were renewed as a matter of course when they were to expire. He gave the following evidence about the matter (Thomson PN 1717-1720):

MR NASSIOS: All right. I'm going to ask you some questions about some car insurance payments that were made on 19 November 2007. Now, those payments were made for yourself, Mark McLeay, Katie Hall, Karene Walton and one other person. Now, I'm asking you these questions because in a case of Matt Burke and Ms Walton, they were no longer HSU employees at that time and I have to say at that time you would have obviously been hoping not to be one as well. Do you know who approved these payments?

MR THOMSON: The - they must have just come up as in the regular - the cars were leased and had insurance on them. I am presuming they came up. I think the one in relation to Matt was approved by me as part of his expenses that was there. The Karene one, I can't particularly

remember why we were still paying that then. That may well be part of her agreement but I don't have that detail in front of me. Yes.

MR NASSIOS: The way you're expressing this - the car didn't belong to you?

MR THOMSON: No, these are leased vehicles except for - with the exception of Matt's

142. Mr Williamson had no knowledge about the payments and could not comment whether it was appropriate expenditure of the HSU national office (Williamson PN 599 - 616):

MR NASSIOS: Five payments were made from the HSU SGE account to AAMI, an insurance company, on 19 November 2007 for car insurance; Craig Thomson, Mark McLeay, Katie Hall, Karene Walton and one other person. It does appear that the HSU also paid Matthew Burke's car registration.

MR WILLIAMSON: Whose registration, sorry?

MS CARRUTHERS: Matt Burke.

MR NASSIOS: Matt Burke.

MS CARRUTHERS: So there's a - the very last statement is a Diners Club statement for Matt Burke, and there's a transaction with NRMA Hut. So if you keep going, see there's a Diner's statement there for Matt Burke?

MR WILLIAMSON: Okay, yes, yes.

MS CARRUTHERS: If you open it up I have highlighted one transaction with NRMA Hut, the last page, I think, yes, which is the first transaction and the second transaction is insurance.

MR WILLIAMSON: No idea.

MR NASSIOS: As Ms Walton and Mr Burke were no longer HSU employees at that time, and Mr Thomson was obviously hoping to resign within a very short period. Do you know who would have approved these payments, just a couple of weeks before Mr Thomson's resignation.

MR WILLIAMSON: No idea.

MR NASSIOS: Can I ask you if you know who the fifth car insurance payment was for?

MR WILLIAMSON: Who?

MR NASSIOS: The fifth. We know of four but there's five payments been made.

MR WILLIAMSON: I have no idea.

MR NASSIOS: Could those insurance payments possibly be appropriate expenditure for the HSU national office?

MR WILLIAMSON: I can't comment on that.

MR NASSIOS: Did the national executive or the national council ever authorise that expenditure?

MR WILLIAMSON: I'm not aware of that.

143. Ms Ord was questioned about her knowledge as to when Mr Thomson returned his leased vehicle and the HSU procedures when a person resigns. She stated that she could not remember when Mr Thomson returned his vehicle and did not know if there was a standard procedure regarding the return of vehicles. (Ord (2) PN 39 - 44)
144. Given that as at the date that payment was made for the renewal of the car insurances (19 November 2007) neither Mr Thomson nor Ms Hall had given notice that they were resigning from the HSU it does not appear to have been inappropriate for the renewal payments to have been made. With ongoing leases of the vehicles, it would have been appropriate to renew the insurance policies. The lease agreements are likely to have required the vehicles to be covered by insurance at all times. It was also possible for the HSU to arrange for another staff member to use the vehicles.
145. In all of the circumstances I consider that the payments made in respect of the renewal of motor vehicle insurances over vehicles used by Mr Thomson and Ms Hall in November 2007 was expenditure on, or for a purpose reasonably incidental to, the general administration of the Union.

Postshop (other than Central Coast)

146. Credit card statements rendered in relation to Mr Thomson's Diners cards record two entries for expenses incurred by him at the Postshop located at Sydney GPO. Details of Mr Thomson's expenditure at the Postshop are as follows:

Date	Location	Amount	Reference
24 Nov 2005	Postshop Sydney GPO	\$52.50	HSUNO.013.0349
11 Dec 2006	Postshop Sydney GPO	\$100.00	HSUNO.015.0139

147. FWA has not obtained evidence concerning the nature of the expenditure incurred by Mr Thomson with the Postshop. Mr Thomson was not questioned about the matter seeking an explanation for the expenses.
148. It is noted that Mr Thomson had only two transactions charged to his Diners card for the Postshop, and the transactions were some time ago, dating back to late 2005 and late 2006.
149. Having regard to the facts that the transactions:
- occurred approximately two years prior to the 2007 federal election;
 - were made in Sydney, rather than on the Central Coast;
 - occurred at a retail shop where it could be expected that purchases would be made on ordinary office supplies; and
 - were for modest amounts which are consistent with them having been for office supplies that might be purchased for the general administration of the Union, or a purpose reasonably incidental to the general administration of the Union

in all of the circumstances I am of the view that it is likely that the expenditure was on, or for a purpose reasonably incidental to, the general administration of the Union.

Nationwide news

150. Statements of expense rendered in relation to Mr Thomson's Diners card record entries relating to expenses incurred with Nationwide News.
151. Details of the charges of Nationwide News charged to Thomson's Diners card account are recorded in HSUNO.018.0025.
152. The relevant entries are described in the table below.

Date	Description	Amount	Casebook ID
28 October 2005	Nationwide News	\$180.70	HSUNO.013.0336
28 October 2005	Nationwide News	\$180.70	HSUNO.013.0336
18 April 2006	Nationwide News	\$180.70	HSUNO.002.0075
18 April 2006	Nationwide News	\$180.70	HSUNO.002.0075
16 October 2006	Nationwide News	\$180.70	HSUNO.015.0113
16 October 2006	Nationwide News	\$180.70	HSUNO.015.0113
20 April 2007	Nationwide News	\$361.40	HSUNO.015.0198
3 July 2007	Nationwide News	\$361.40	HSUNO.002.0316
6 July 2007	Nationwide News	- \$264.10	HSUNO.002.0316
TOTAL		\$1542.90	

153. HSU has not produced any documentation indicating what the expenditure incurred by Mr Thomson with Nationwide News related to. Mr Thomson was not questioned by FWA about the expenses in the course of his interview. There is no record in the minutes of the National Executive that it authorised expenditure with Nationwide News.
154. An internet search of Nationwide News Pty Limited, however, indicates that the company is a wholly owned subsidiary of News Limited, the Australian arm of News Corporation. Nationwide News 'has the highest selling daily newspaper in NSW, The Daily Telegraph; the highest selling newspaper in Australia, The Sunday Telegraph; Australia's highest selling national broadsheet, The Australian; and the leading racing newspaper, the Sportsman' (www.truelocal.com.au/business/nationwide-news-pty-limited-news-limited/surry-hills). In the circumstances it seems likely that the expenditure related to a subscription for either The Daily Telegraph or The Australian. Further, the fact that charges for the same amount were debited to Mr Thomson's credit card twice on the same date on three occasions (28 October 2005, 18 April 2006 and 16 October 2006) suggests that there were two subscriptions and that newspapers were delivered to two addresses (possibly being one to the National Office and one to Mr Thomson's residential address). Given that Mr Thomson was National Secretary of a large trade union, in my view it is likely to have been expenditure on the general administration of the Union or for purposes reasonably incidental thereto.

Payments to the NSW Union in respect of superannuation contributions for Mr Thomson

Wages and conditions of National Office employees

155. Information regarding the determination of wages and conditions of National Office staff is set out at paragraphs 3 to 25 on pages 165 and 166 in chapter 4.

Appointment and salary of National Secretary

156. An undated Resolution of National Council (but which is recorded separately in the minutes of the National Council meeting of 23 July 2002 ([HSUNO.023.0195](#))) records the carriage of a resolution that from 1 July 2002 the National Secretary shall be paid a salary of \$130,000 per annum, with Superannuation 'SGC plus 10% (no change)', provision of a fully maintained and fuelled late model motor vehicle for personal use or a car allowance in lieu taken as salary, and any relevant conditions or entitlements as apply to allied health professionals in the Victorian Public Hospital System ([HSUNO.023.0033](#)).
157. Minutes of that same National Council meeting on 23 July 2002 record the resignation of National Secretary Rob Elliott with effect from 16 August 2002 and the carriage of a motion that National Council, in accordance with Sub-rule 29(h)(i)(a) appoints Craig Thomson as National Secretary from 16 August 2002.
158. On 12 October 2004²⁹⁷ Mr Thomson was declared elected unopposed as National Secretary of the HSU for a two year term (under transitional provisions in Rule 74²⁹⁸) until a further election for National Officers in 2006. On 4 September 2006 Mr Thomson was again declared elected unopposed as National Secretary²⁹⁹ for a four year term.³⁰⁰

Reimbursement by the National Office of superannuation contributions that were made on Mr Thomson's behalf by the NSW Union

159. Correspondence which has been viewed by FWA suggests that the NSW Union was making superannuation contributions on Mr Thomson's behalf which were then, by agreement, reimbursed by the National Office. A letter from Mr Williamson, signed as General Secretary of the NSW Union and on the letterhead of the NSW Union, to Mr Thomson, addressed as the National Secretary, dated 29 May 2007, ([HSUNO.006.0131](#)) regarding 'SASS Superannuation Payments' identifies payments 'paid on [your] behalf as agreed for reimbursement' by the National Office for the months of April to June 2007 totalling \$7,349.34.

²⁹⁷ E2004/215 (FWA.010.0002)

²⁹⁸ Alterations to the Rules were certified on 17 January 2001 for the purpose of synchronising elections across the Union in 2006. A new Rule 74 - *Special Rule for Synchronisation of Elections* provided that officers of the Union who were elected in 2004 would hold office for two years, as per Sub-rule 74(d)(i), from completion of the biennial National Council meeting in 2004. An ordinary election (for a four year term) would then take place in 2006 in accordance with the ordinary provisions of the Rules, as per Sub-rule 74(d)(ii).

²⁹⁹ E2006/127 (PUB.011.001)

³⁰⁰ Rule 29B(a)(i).

160. A similar letter, dated 17 August 2007 ([HSUNO.006.0130](#)), identifies superannuation payments of the same amount made on Mr Thomson's behalf for the months of July to September 2007 for reimbursement. It appears that these payments were not actioned as at 12 October 2007. On that date Mr Barry Gibson, financial controller of the NSW Union, emailed Ms Ord, copied to Mr Williamson, seeking processing of these two invoices ([HSUNO.006.0137](#)). An internet banking receipt for a transaction that was conducted by the National Office on 16 October 2007 ([HSUNO.006.0136](#)) indicates that the National Office paid \$14,698 to 'HSU Sydney' for 'SASS - C Thomson'. This appears to be payment of the two invoices dated 29 May 2007 and 17 August 2007 as reimbursement of superannuation contributions to SASS Superannuation that had been made by the NSW Union between April and September 2007.
161. A further invoice was issued by Mr Williamson to Mr Thomson on 12 November 2007, requesting payment of the same sum in respect of superannuation contributions for the months of October to December 2007 ([HSUNO.007.0271](#)). However a further letter dated 10 January 2008 concerning reimbursement of contributions from October to December 2007 was sent by Mr Williamson to Mr Thomson ([HSUNO.007.0270](#)) reflecting an adjustment in the figures due to Mr Thomson's resignation as National Secretary on 14 December 2007. The letter of 10 January 2008 sets out 'expenses paid on [Mr Thomson's] behalf as agreed for reimbursement' for October to December 2007 as:
- | | |
|------------------------|------------|
| 2 x \$2,349.78 Oct/Nov | \$4,699.56 |
| 2 weeks only December | 1,174.89 |
| | \$5,874.74 |
162. A handwritten annotation to the letter states: 'Belinda this replaces previous invoice NOTE 2 weeks only Dec 07. The annotation bears the signature of Barry Gibson, the financial controller of the NSW Union.
163. The documents provided by the National Office do not explain the terms of any agreement between the National Office and the NSW Union about the payment of Superannuation Contributions on Mr Thomson's behalf. In particular:
- the arrangement is not referred to in any minutes of National Council or National Executive provided to FWA; and
 - the arrangement is not recorded in any documents provided by the National Office to FWA.
164. Mr Thomson has an obligation under Sub-rule 32(n) to conduct and control the business of the HSU.
165. It appears to me that the requirements of Sub-rules 21(c) and 27(a) were not met. There is sufficient evidence to be satisfied that the National Office made a payment to the NSW Union on 16 October 2007 which was reimbursement of superannuation contributions that had been made on Mr Thomson's behalf by the NSW Union. Further, Sub-rules 21(c) and 27(a) require the National Council or National Executive to determine the 'conditions' of Officers of the HSU and payments with respect to superannuation contributions would fall squarely within the 'conditions' under which

Mr Thomson was employed by the National Office. There is no evidence before FWA that National Council or National Executive ever authorised the arrangement under which National Office reimbursed the NSW Union for superannuation contributions made by the NSW Union on Mr Thomson's behalf.

166. It appears that Mr Thomson knew about this arrangement, since the letters and invoices referred to at paragraphs 159 and following of this chapter were each addressed to Mr Thomson.

Alleged contraventions that were put to Mr Thomson, the National Office and Mr Williamson

Mr Thomson

167. The following alleged contravention was put to Mr Thomson in Schedule 3 (FWA.018.0277) to my letter of 12 December 2011 (FWA.018.0001):

Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary in the circumstances of the National Office by allowing the National Office to make payments to the NSW Union in respect of superannuation payments made by the NSW Union on his behalf.

A reasonable person in Mr Thomson's position as National Secretary would have ensured that funds of the National Office were not used to make payments to the NSW Union which were referable to his own superannuation in circumstances in which such payments were not part of the remuneration package which had been approved by National Council for the National Secretary.

National Office

168. The following alleged contravention was put to the National Office in Schedule 1 (FWA.016.0004) to my letter of 14 December 2011 (FWA.016.0001):

The National Office contravened Sub-rule 21(c) and Sub-rule 27(a) by entering into an arrangement with the organisation which was registered under the *Industrial Relations Act 1996* (NSW) as the 'Health Services Union' (**NSW Union**) under which the National Office would reimburse the NSW Union for superannuation contributions made by it on Mr Thomson's behalf when that arrangement had not been authorised by either the National Council or the National Executive.

Mr Williamson

169. The following alleged contraventions were put to Mr Williamson in Schedule 1 (FWA.019.0004) my letter of 14 December 2011 (FWA.019.0001):

1. Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in relation to the arrangement under which the National Office reimbursed the 'Health Services Union' (**NSW Union**), which is registered under the *Industrial Relations Act 1996* (NSW), for superannuation contributions on Mr Thomson's behalf:
 - neither National Council nor National Executive ever authorised the arrangement under which National Office reimbursed the NSW Union for superannuation contributions on Mr Thomson's behalf;

- Mr Williamson knew (or ought to have known) that the arrangement was in place.
- 2. Mr Williamson failed to discharge his duties as National President with the degree of care and diligence that a reasonable person would exercise if they were National President in the circumstances of the National Office, as required by subsection 285(1) of the RAO Schedule in relation to the arrangement under which National Office reimbursed the NSW Union for superannuation contributions on Mr Thomson's behalf, in that:
 - neither National Council nor National Executive ever authorised the arrangement under which National Office reimbursed the NSW Union for superannuation contributions on Mr Thomson's behalf
 - Mr Williamson knew (or ought to have known) that the arrangement was in place
 - as National President Mr Williamson was obliged by Rule 30 to see that the Rules are rigidly adhered to.

Submissions in response

Mr Thomson's submissions

170. In their submissions of 2 March 2012 (FWA.024.0002) Holding Redlich submit on behalf of Mr Thomson that he denies contravening subsection 285(1) of the RAO and that my conclusions and assumptions in respect of this alleged contravention are 'factually incorrect'.

National Office submissions

171. Slater & Gordon (FWA.022.0484) state that they have not independently investigated the subject this alleged contravention and that their submissions are put on the assumption that each of the factual allegations can be made out. Their submissions are that:
- a. No rule contravention by any person or entity is apparent from the particulars;
 - b. What appears is that:
 - i. The National Secretary's remuneration arrangements generally, including the fixing of amounts payable by way of superannuation were fixed and approved by National Council in July 2002, as required by the Rules.
 - ii. The approved remuneration arrangements were given effect to, in part, by way of reimbursement arrangements.
 - iii. There is no material which suggests that:
 - 1. The HSU made payments in respect of Mr Thomson's superannuation that were any higher or lower than the amounts which ought to have been paid pursuant to the approved remuneration arrangements or otherwise; or
 - 2. Mr Thomson or the NSW Union received any improper benefit as a consequence of the reimbursement arrangements; or

3. The National Office was exposed to or incurred any improper or unnecessary liability to Mr Thomson, the trustees of Mr Thomson's superannuation fund or anyone else, as a consequence of the reimbursement arrangements.
- iv. If the reimbursement arrangements were as described, then it would appear that those arrangements were no more than one of a number of means by which the approved remuneration arrangements might have been administered. The means of administration of the approved remuneration arrangements are not a matter which required approval of National Executive or National Council, if the approved remuneration arrangements were otherwise given effect to.
- v. The functions of National Council included the functions of fixing and determining remuneration and terms and conditions of national offices such as that held by Mr Thomson. It was and is not reserved exclusively to National Council or National Executive to determine the means of execution of those matters once determined.

Mr Williamson's submissions

172. In their letter of 3 February 2012 (FWA.022.0556) on behalf of Mr Williamson, Uther Webster & Evans state that:

Prior to Mr Thomson commencing duty as the National Secretary of the HSU, [Mr Thomson] was employed as the Assistant Secretary of the Health Services Union, an organisation of employees registered pursuant to the *Industrial Relations Act 1996* (NSW), now known as the HSUEast. Mr Williamson was, and still is, employed as the General Secretary of that organisation. Mr Thomson approached Mr Williamson with a request as to whether it would be possible for him to remain a member of the State Authority Superannuation Scheme (SASS). SASS is a defined benefit scheme with respect to which HSUEast is a recognised employer contributor. As you would be aware, the NSW Government closed the defined benefit scheme many years ago and replaced with an accumulation fund known as State First Super (SFS). At this time there were a number of contributors to SASS and this remains the case today. In fact, if a member of the union decides to come and work for HSUEast, he or she can remain members of SASS and continue to have access to the defined benefits scheme. Mr Williamson has advised that he made enquiries of SASS and was advised that Mr Thomson could remain a member if he continued to have continuity of payments from the state registered union when he became National Secretary.

Each quarter an invoice was raised for his contributions (6%) and the National Office was requested to reimburse the state registered union for the superannuation contributions which it had made on Mr Thomson's behalf. Mr Williamson sees this as being no different than the National Office, as the employer, making payments, which it is legally obligated to make in any event, to a relevant superannuation fund, via the agency of the state registered union, in the same way that superannuation payments are made on behalf of other National Office staff. It is acknowledged that the state registered union was not the employer, but had it withheld Mr Thomson's contributions, the National Office would have been in breach of the law regarding withholding of superannuation payments.

No approval from the National Council or the National Executive was sought, or required, for the payment of superannuation contributions on behalf of other National Office staff and there is no valid reason why this should have this (sic) been required in relation to Mr Thomson. The rules of the HSU do not require National Council or National Executive approval for such matters. These matters are purely administrative in nature.

... the National Council resolved that the National Secretary be paid a salary of \$130,000 per annum, with superannuation "SGC plus 10% (no change)". What then occurred in relation to Mr Thomson's superannuation contributions was entirely consistent with that resolution. The method by which those superannuation payments were to be made is not a matter that would normally require the attention of the National Council or the National Executive.

No illegality has occurred concerning this matter. Mr Thomson's superannuation payments were made, and there is no basis for a finding that either Rule 30 or subsection 285(1) of the [RO Act] has been breached.

The National Finance Committee met regularly and received reports on income and expenditure over the period of Mr Thomson's employment. Mr Williamson is not a member of the National Finance Committee, but as far as he is aware, no member of that committee raised this matter as an issue.

Further, the financial records of the HSU are regularly audited as is required by law. As far as Mr Williamson is aware, this issue has never been raised by the auditors.

To the extent that there was any obligation to raise this matter with the National Council or the National Executive (and we strongly submit that there was not) that obligation lay with Mr Thomson as National Secretary, and not with Mr Williamson.

In relation to [these alleged contraventions], it is submitted that, at all times, Mr Williamson acted in good faith for a proper purpose in a matter in which he had no personal interest.

Conclusions

173. Having considered the responses put by Mr Thomson, the National Office and by Mr Williamson, I am satisfied that there is sufficient information before me in rebuttal of the alleged contraventions that were put to the National Office and to Mr Williamson in my letters of 14 December 2011 and that no finding should be made.

Chapter 18 - Campaign Expenditure

1. My findings regarding expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell are set out in chapter 7.
2. This chapter sets out further issues that I considered regarding expenditure on Mr Thomson's campaign but regarding which I have not made any findings.

Katie Hall and the La Trobe campaign

Decision to employ Katie Hall

3. The earliest reference to Ms Hall in any documentation provided to FWA by the HSU National Office is in the Minutes of the National Executive meeting held on 15 and 16 May 2006 (HSUNO.018.0241) which, under the heading 'seconded employee' identifies Ms Hall as 'the Nominee from the HSU for a Victorian Seat'.
4. The HSU National Office has provided a spreadsheet headed 'Annual Leave Calculation Projected - 6/12/07' (HSUNO.017.0008). This spreadsheet sets out details relating to the accrued annual leave balance of employees of the National Office. The spreadsheet indicates that Ms Hall had a 'credit date' (presumably the date on which she commenced employment with the HSU National Office) of 3 July 2006. The spreadsheet also shows that Ms Hall was paid an hourly rate of \$26.31, and had accrued 33.75 days (or 270 hours) of annual leave at 5 December 2007.
5. Mr Thomson told FWA at interview (Thomson PN 309) that La Trobe:

... was a seat that we were allocated to employ a person in, and to coordinate all the unions in that seat for the WorkChoices campaign. We employed a person. Also, obviously, employing someone, you have to resource them as well too so there were ongoing issues about the resourcing of that person.
6. Apart from the fact that Ms Hall had been employed by the National Office to work on the La Trobe campaign there is no reference in any minutes of National Executive meetings to what these ongoing issues were or how they were dealt with.
7. Ms Jackson told FWA (Jackson (2) PN 115) that she could recall discussions regarding Ms Hall's employment by the HSU as part of the Your Rights at Work campaign, and that she could recall Ms Hall speaking at national executive about what she was up to (Jackson (2) PN 188).
8. The minutes of the National Executive meeting held on 7 and 8 August 2006 record the following discussion under the heading 'Matters Arising':

One matter arising from the minutes was in relation to the seconded employee to the ACTU marginal seat campaign. The National Secretary reported that Katie Hall had been appointed by the National Office and was working for over a month in the seat of La Trobe.

It was agreed Katie would provide regular updates to the Executive and that she would give a verbal report after lunch today.

The National President also informed the National Executive of the NSW Branch decision to appoint a political organiser who would be starting shortly. In addition he advised that Angela Humphries had been appointed by four NSW unions to assist in three marginal seats in NSW.

Action: Katie Hall to provide regular reports to Executive on her work in La Trobe and the marginal seat campaigning to be a regular agenda item.

9. This resolution indicates that the National Executive intended that Ms Hall would regularly inform the National Executive of her activities in Latrobe. While Mr Williamson told FWA (Williamson PN 247) that he did not know whether La Trobe was a seat allocated by the ACTU as part of the Your Rights at Work campaign, from what other members of the National Executive have told FWA (as well from the minutes of meeting on 6 and 7 August 2006) Ms Hall's activities in La Trobe were reasonably well disclosed to the National Executive.

10. Dr Kelly agreed at interview (Kelly PN 293) that 'the employment of Katie Hall as a sort of Your Rights at Work Coordinator for the HSU' went to the National Executive and that the Branches were levied for this. When asked what she could tell FWA about La Trobe Dr Kelly said (Kelly PN 333):

I think that was the seat the Katie Hall was involved in as a ACTU Your Rights at Work campaigner, and it was agreed that, at some point, that the HSU would contribute to that campaigning work in Victoria. Katie Hall worked on that pretty assiduously and we got stuff from her about various activities that were held in the seat of La Trobe, under the guidance of - under the general branding of Your Rights at Work. Yes, so there were - I can recall picnics and, you know, Puffing Billy activities, yes. She seemed to be doing a pretty good job out there.

11. The statement in the minutes of the National Executive meeting of 7 and 8 August 2006 that Ms Hall 'was working for over a month' could be construed as advising that Ms Hall had only been employed by the National Office on a temporary basis. However, given that:

- a. Ms Hall had commenced employment with the National Office just over a month previously (on 3 July 2006);
- b. there was no suggestion from any of Mr Thomson, Ms Jackson or Dr Kelly that they had understood Ms Hall to have been employed on a temporary basis only; and
- c. the inherent unlikelihood that Ms Hall would have been employed in mid 2006 (approximately 18 months before a federal election was due) on a temporary basis of just over a month to work on campaigning in a marginal federal electorate;

it seems more probable that this statement was intended to refer to the fact that Ms Hall had commenced employment just over a month earlier, rather than to indicate that Ms Hall's employment was only temporary in nature.

12. Nevertheless, the ambiguity in this record in the minutes of what was a reasonably significant decision of the National Executive is a useful illustration of the problems

which can be created by minutes which do not include a clear and concise statement of what is determined at meetings.

Expenses relating to Ms Hall's employment

13. A form provided by the HSU headed 'vehicle release details' dated 18 July 2006 appears to show that a 'Kathryn Hall' retrieved a vehicle which had been towed from a 'Clearway Tow-A-Way zone' in the City of Port Philip on 22 August 2007 (HSUNO.010.0154). This document appears to show that Ms Hall paid \$275 to obtain the vehicle. The HSU has also produced a receipt (HSUNO.010.0154) from Nationwide Towing for \$275 dated 22 August 2007.
14. On 22 August 2007 the HSU National Office made an electronic payment to Katie Hall of \$275. The SGE Credit Union Receipt for this transaction (HSUNO.010.0155) describes this payment as 'reimburse'. It is not clear what Ms Hall was being reimbursed for or whether it was for expenditure on, or for a purpose reasonably incidental to, the general administration of the Union. However it seems likely that the National Office reimbursed Ms Hall for the cost of the payment to Nationwide Towing referred to in the previous paragraph. If so, there is no record of the National Executive or National Council having authorised this expense. The records provided by the HSU to FWA do not disclose who made the decision to authorise that reimbursement.
15. On 19 November 2007 Ms Ord wrote to Lifestyle Apartments at Ferntree referring to a booking made by Katie Hall for Monday 19 to Thursday 22 November 2007, and asking if this could be extended by a day to include Friday 23 November 2007, and asking for banking details and an invoice so that she pay this account by electronic funds transfer. (HSUNO.006.0340). Ferntree Gully is near the electorate of La Trobe. Friday 23 November 2007 was the eve of the 2007 Federal Election. An invoice dated 19 November 2007 from Lifestyle at Ferntree addressed to Katie Hall at 54 Victoria Street, Carlton VIC (HSUNO.006.0343) identifies a booking for two guests for the period of 19 to 24 November 2007, at a cost of \$845 including GST. This invoice was faxed from Lifestyle Apartments at Ferntree to Ms Ord at the HSU National Office on 19 November 2007 (HSUNO.006.0343). The HSU National Office made an electronic payment of \$845 to Lifestyle Apartments on 20 November 2007 (HSUNO.006.0338), (HSUNO.006.0339).
16. It seems reasonably clear that the National Office paid for Ms Hall to stay in accommodation in or near the La Trobe electorate in the last week of the Federal election campaign. In all the circumstances, including in particular the fact that the National Executive had authorised Ms Hall's employment for the purpose of working on the La Trobe campaign, this expenditure at least arguably would be for a purpose reasonably incidental to the general administration of the Union.

Reimbursement of the costs of employing Ms Hall

July - September 2006

17. The HSU has produced an undated spreadsheet (HSUNO.011.0003) which is headed 'Katie Hall - on cost to Branches.' The spreadsheet lists the annual salary, and other costs associated with Ms Hall's employment by the HSU National Office, and then apportions the quarterly amount of these costs to each Branch on the basis of the number of members of each Branch as at 30 June 2006.
18. An invoice dated 1 July 2006 from the HSU National Office to the Victoria No 3 Branch (HSUNO.011.0043) itemises the salary and other costs of employment of Ms Hall for the months of July, August and September 2006 and expresses these as being a '4.47% Oncharge'. The invoice totals \$661.04 plus GST (\$727.14). This is almost identical to the amount shown in the spreadsheet as being referable to Ms Hall.
19. Similar invoices were raised by the HSU National Office on the same date to the Tasmanian No 1 Branch (HSUNO.011.0046), the Victoria No 1 Branch (HSUNO.011.0057), the Victoria No 2 Branch (HSUNO.011.0058), the Victoria No 4 Branch (HSUNO.011.0060), the NSW Branch (HSUNO.011.0062), the Tasmanian No 2 Branch (HSUNO.011.0064) and the WA Branch (HSUNO.011.0065). Each of these invoices is for an amount which (with the exception of GST) is almost identical to the amount shown in the spreadsheet as being referable to Ms Hall.
20. A further copy of the invoices issued to the Victoria No 3 Branch (HSUNO.011.0059) and the Tasmanian No 1 Branch (HSUNO.011.0063) bears the handwritten annotation 'C/note issued' next to the line entry for payroll tax.

October - December 2006

21. Similar invoices in the same amounts were issued by the HSU National Office to each Branch on 19 September 2006 for the salary and other costs relating to Ms Hall for the months of October, November and December 2006. (HSUNO.011.0053 (NSW Branch)), (HSUNO.011.0044 (Vic No 3 Branch)), (HSUNO.011.0047 (Tasmanian No 1 Branch)), (HSUNO.011.0048 (Victoria No 1 Branch)), (HSUNO.011.0049 (Victoria No 2 Branch)), (HSUNO.011.0051 (Victoria No 4 Branch)), (HSUNO.011.0062 (Victoria No 5 Branch)), (HSUNO.011.0055 (Tasmanian No 2 Branch)), (HSUNO.011.0056 (WA Branch)).
22. Again, a further copy of the invoice from the HSU National Office to the Victoria No 3 Branch (HSUNO.011.0050) and the Tasmanian No 1 Branch (HSUNO.011.0054) contains the annotation 'C/note issued' next to the itemisation of payroll tax.
23. On 9 October 2006 credit notes were issued by the HSU National Office to the Victoria No 3 Branch (HSUNO.011.0042) and the Tasmanian No 1 Branch (HSUNO.011.0045) describing an overpayment of payroll tax in relation to Katie Hall on each of the two invoices to the Victorian No 3 Branch referred to above at paragraphs 20 and 22 of this chapter.

January - March 2007

24. On 1 January 2007 the HSU National Office raised an invoice to the NSW Branch (HSUNO.011.0130). The invoice was stated to be for '2006/2007 3rd Quarter Capitation and Affiliation Fees. Due 1411107 plus Campaign co-ordinators positions' and was for \$189,403.83 plus GST (\$208,344.21 in total).
25. On the same date the HSU National Office also raised an invoice to the Tasmanian No 2 Branch (HSUNO.011.0131). This invoice had the same narration as the invoice to the NSW Branch, and was for the sum of \$256.89 (\$282.58 including GST). However, unlike the invoice to the NSW Branch, the invoice to the Tasmanian No 2 Branch contains the following annotations underneath the narration:

Affidavit fees	234.66	213.33
		21.33
Katie Hall - Salary	9.27	8.42
		.84
Marginal Seat Campaign Seat	38.65	35.15
		3.51

26. Also on the same date the HSU National Office also raised an invoice to the Victoria No 1 Branch (HSUNO.011.0132). This invoice had the same narration as the invoice to the NSW Branch, and was for the sum of \$79,947.10 (\$87,941.81 including GST). However, unlike the invoice to the NSW Branch, the invoice to the Victoria No 1 Branch contains the following annotations underneath the narration:

Capitation/Affiliation	\$72,593.27
Katie Hall Salary	\$2,789.77
Marginal seat Campaign Fund	\$4,564.06
	79,947.10

27. The HSU National Office also holds a copy of this invoice without the handwritten annotations (HSUNO.011.0133). It is not clear whether the copy bearing handwritten annotations was provided to the Victoria No 1 Branch. Without the handwritten annotations, the only indication of the purpose of the invoice was the narration '2006/07 3rd Quarter capitation and Affiliation Fees plus Campaign Co-ordinators Position.'
28. Invoices were also issued by the HSU National Office on 1 January 2007 for 2006/07 3rd Quarter capitation and Affiliation Fees plus Campaign Co-ordinators Position to the following branches in the following sums:

Branch	Reference	Amount (excluding GST)
Vic No 2 Branch	HSUNO.011.0134	\$30,697.21
Vic No 3 Branch	HSUNO.011.0135	\$17,205.55

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Branch	Reference	Amount (excluding GST)
Vic No 4 Branch	HSUNO.011.0136	\$11,289.87
Vic No 5 Branch	HSUNO.011.0137	\$3,882.11
WA Branch	HSUNO.011.0138	\$23,289.83
Tas No 1 Branch	HSUNO.011.0139	\$37,966.66

29. On 4 January 2007 Shelly Willmott at the Tasmanian No 1 Branch emailed Ms Ord (HSUNO.011.0140), as follows:

Hi Belinda

We are in receipt of your invoice for 3rd Quarter Capitation plus Campaign Co-ordinators position.

Could you please provide us with a break down of costs for this invoice on your return from annual leave so we can make payment.

Regards

Shelley Willmott

ADMIN MANAGER

Health and Community Services Union (HACSU)

30. On 17 January 2007 Ms Ord replied to Ms Willmott as follows (HSUNO.011.0140):

Hi Shelley

Invoice break up:

Capitation and affiliation fees: \$34474.35

Wages - Katie Hall: \$1458.7

Marginal seats campaign fund: \$2033.61

TOTAL \$37966.66

GST 3796.66

GRAND TOTAL: \$41763.33

Cheers and kind regards

Belinda Ord

National Finance Officer

31. In each case, that total amount invoiced to each Branch for the January to March 2007 period appears to have included the Branch's pro-rata share of the total quarterly costs to the National Office of Katie Hall's salary.

April to June 2007

32. On 1 April 2007 the HSU National Office raised an invoice to the NSW Branch (HSUNO.011.0028) for \$8,637.09 (excluding GST) (\$9,540.40 including GST). The description contained in the invoice was as follows:

Katie Hall - 48.76% oncharge for Quarter 1/4/07 - 30/6/07

Salary \$50,000/4	\$6,095.45
Superannuation @ 9%	\$548.59
Leave Loading	\$102.57
Payroll Tax @ 5.25%	\$354.20
Workcover @ 1.62887	\$109.89

Vehicle:

48.76% of Lease @749.79 per month by 4 months - March, April, May and June	\$1,462.39
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33. Invoices were also issued by the HSU National Office on 1 April 2007 with the same description to the following branches in the following sums:

Branch	Reference	Amount (including GST)
Vic No 1 Branch	HSUNO.011.0034	\$3,694.48
Vic No 2 Branch	HSUNO.011.0035	\$1,560.57
Vic No 3 Branch	HSUNO.011.0036	\$874.61
Vic No 4 Branch	HSUNO.011.0037	\$573.82
Vic No 5 Branch	HSUNO.011.0039	\$195.53
WA Branch	HSUNO.011.0040	\$1,183.86
Tas No 1 Branch	HSUNO.011.0030	\$1,929.86
Tas No 2 Branch	HSUNO.011.0032	\$11.25

34. The invoice to the WA Branch contains a range of hand written annotations which appear to indicate that the sums in the invoice were revised downward on the basis that the WA Branch contribution should have been 5.74%, and not 6.05% as indicated on the face of the invoice. On this basis the annotations suggest that the sum payable by the invoice was recalculated at \$1,122.22.

July - September 2007

35. On 1 July 2007 the HSU National Office raised an invoice to the WA Branch (HSUNO.011.0017) for \$976.98 excluding GST (\$1,074.90 including GST). The invoices describes the charge as being for:

Katie Hall - 5.74% oncharge for Quarter 1/1/07 - 3113107

Salary \$50,000/4	\$717.59
Superannuation @ 9%	\$64.58
Leave Loading	\$12.07
Payroll Tax @ 5.15%	\$40.90
Workcover @ 1.6288%	\$12.94

Vehicle:

5.74 of Lease@ \$749.70 per month x 3 months	\$129.10
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36. Invoices were also issued by the HSU National Office on 1 July 2007 with the same description to the following branches in the following sums:

Branch	Reference	Amount (including GST)
NSW Branch	HSUNO.011.0026	\$9,010.38
Vic No 1 Branch	HSUNO.011.0022	\$3,604.47
Vic No 2 Branch	HSUNO.011.0021	\$1,436.15
Vic No 3 Branch	HSUNO.011.0025	\$917.51
Vic No 5 Branch	HSUNO.011.0020	\$187.282
WA Branch	HSUNO.011.0018	\$1,100.56
Tas No 1 Branch	HSUNO.011.0024	\$1,808.80
Tas No 2 Branch	HSUNO.011.0023	\$9.36
SA Branch	HSUNO.011.0019	\$154.18

October to December 2007

37. On 1 October 2007 the HSU National Office raised an invoice to the Victoria No 3 Branch (HSUNO.011.0008) for the sum of \$751.43 excluding GST (\$826.57 including GST). The invoice describes the charge as being for:

Katie Hall - 4.9% oncharge for Quarter 1/10/07 - 31/12/07

Salary \$50,000/4	\$612.55
Superannuation @ 9%	\$55.13
Leave Loading	\$10.31
Payroll Tax @ 5.05%	\$34.91
Workcover @ 1.6288%	\$11.04

Vehicle:

4.9% of Lease @ \$749.70 per month x 3 months	\$27.54
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38. Invoices were also issued by the HSU National Office on 1 October 2007 with the same description to the following branches in the following sums:

Branch	Reference	Amount (including GST)
NSW Branch	HSUNO.011.0016	\$9,026.20
Vic No 1 Branch	HSUNO.011.002213	\$3,604.47
Vic No 2 Branch	HSUNO.011.0012	\$1,436.15
Vic No 4 Branch	HSUNO.011.0009	\$549.64
Vic No 5 Branch	HSUNO.011.0010	\$187.28
WA Branch	HSUNO.011.0011	\$1,100.56
Tas No 1 Branch	HSUNO.011.0015	\$1,808.80
Tas No 2 Branch	HSUNO.011.0014	\$9.36

Conclusion

39. There is no evidence before me regarding reimbursement by the Branches of the costs of employing Ms Hall which indicates that any contraventions of the Rules or the RAO Schedule have occurred.

The costs of employing Ms Stevens and Mr Burke

Apparent reimbursement by the Branches of the costs of employing Ms Stevens and Mr Burke

40. A spreadsheet provided by the HSU (HSUNO.011.0333) shows a calculation of the salary and other costs of employing each of Ms Hall, Ms Stevens and Mr Burke per quarter. (These amounts shown as being \$14,773.21, \$13,827.72 and \$10,341.24 respectively). The same spreadsheet also lists the number of members of each branch of the HSU as at 30 June 2006, expressed in raw numbers, and as a percentage of total HSU membership. The Spreadsheet then apportions the quarterly cost of each of Ms Hall, Ms Stevens and Mr Burke to each Branch, on a pro-rata basis in proportion with each branch's percentage of the total of the HSU's members.
41. For example, the spreadsheet shows that:
 - a. the NSW Branch had 48.76% of the total HSU membership at 30 June 2006, and their share of employment costs was \$7,203.95 (Ms Hall), \$6,742.89 (Ms Stevens), and \$5,042.76 (Mr Burke). These figures are 48.76% of the total quarterly costs to the HSU of those persons' employment as set out in the same spreadsheet;
 - b. The Vic No 1 Branch had 18.88% of the total HSU membership at 30 June 2006, and their share of employment costs was \$2,789.77 (Ms Hall), \$2,611.22 (Ms Stevens), and \$1,952.84 (Mr Burke). These figures are 18.88% of the total quarterly costs to the HSU of those persons employment as set out in the same spreadsheet.
 - c. The Vic No 3 Branch had 4.47% of the total HSU membership at 30 June 2006, and their share of employment costs was \$660.43 (Ms Hall), \$618.18 (Ms Stevens), and \$462.30 (Mr Burke). These figures are 4.47% of the total quarterly costs to the HSU of those persons employment as set out in the same spreadsheet.
42. On 1 January 2007 the HSU National Office raised an invoice to the NSW Branch (HSUNO.011.0130). The invoice was stated to be for '2006/2007 3rd Quarter Capitation and Affiliation Fees. Due 1411107 plus Campaign co-ordinators positions' and was for \$189,403.83 plus GST (\$208,344.21 in total).

43. On the same date the HSU National Office also raised an invoice to the Tasmanian No 2 Branch (HSUNO.011.0131). This invoice had the same narration as the invoice to the NSW Branch, and was for the sum of \$256.89 (\$282.58 including GST). However, unlike the invoice to the NSW Branch, the invoice to the Tasmanian No 2 Branch contains the following annotations underneath the narration:

Affidavit fees	234.66	213.33
		21.33
Katie Hall - Salary	9.27	8.42
		.84
Marginal Seat Campaign Seat	38.65	35.15
		3.51

44. Also on the same date the HSU National Office also raised an invoice to the Victoria No 1 Branch (HSUNO.011.0132). This invoice had the same narration as the invoice to the NSW Branch, and was for the sum of \$79,947.10 (\$87,941.81 including GST). However, unlike the invoice to the NSW Branch, the invoice to the Victoria No 1 Branch contains the following annotations underneath the narration:

Capitation/Affiliation	\$72,593.27
Katie Hall Salary	\$2,789.77
Marginal seat Campaign Fund	\$4,564.06
	79,947.10

45. The sum of \$4,564.06 described as being for 'marginal seat campaign fund' in the invoice to the Victoria No 1 Branch is the sum of the amounts recorded in the spreadsheet (HSUNO.011.0333) as the proportion of the quarterly employment costs of Ms Stevens (\$2,611.22) and Mr Burke (\$1,952.84). The overwhelming inference is that the HSU National Office invoiced the Victoria No 1 Branch and the Tasmanian No 2 Branch on 1 January 2007 for their share of the quarterly costs of employing Ms Stevens and Mr Burke.
46. The HSU National Office also holds a copy of this invoice without the handwritten annotations (HSUNO.011.0133). It is not clear whether the copy bearing handwritten annotations was provided to the Victoria No 1 Branch. Without the handwritten annotations, the only indication of the purpose of the invoice was the narration '2006/07 3rd Quarter capitation and Affiliation Fees plus Campaign Co-ordinators Position.'

47. Invoices were also issued by the HSU National Office on 1 January 2007 for 2006/07 3rd Quarter capitation and Affiliation Fees plus Campaign Co-ordinators Position to the following branches in the following sums:

Branch	Reference	Amount (excluding GST)
Vic No 2 Branch	HSUNO.011.0134	\$30,697.21
Vic No 3 Branch	HSUNO.011.0135	\$17,205.55
Vic No 4 Branch	HSUNO.011.0136	\$11,289.87
Vic No 5 Branch	HSUNO.011.0137	\$3,882.11
WA Branch	HSUNO.011.0138	\$23,289.83
Tas No 1 Branch	HSUNO.011.0139	\$37,966.66

48. On 4 January 2007 Shelly Willmott at the Tasmanian No 1 Branch emailed Ms Ord (HSUNO.011.0140), as follows:

Hi Belinda

We are in receipt of your invoice for 3rd Quarter Capitation plus Campaign Co-ordinators position.

Could you please provide us with a break down of costs for this invoice on your return from annual leave so we can make payment.

Regards

Shelley Willmott

ADMIN MANAGER

Health and Community Services Union (HACSU)

49. On 17 January 2007 Ms Ord replied to Ms Willmott as follows (HSUNO.011.0140):

Hi Shelley

Invoice break up:

Capitation and affiliation fees: \$34474.35

Wages - Katie Hall: \$1458.7

Marginal seats campaign fund: \$2033.61

TOTAL \$37966.66

GST 3796.66

GRAND TOTAL: \$41763.33

Cheers and kind regards

Belinda Ord

National Finance Officer

50. In each case, that total amount invoiced to each Branch for the January to March 2007 period was equal to the amount identified in the spreadsheet (HSUNO.011.0333) as the Branch's pro-rata share of the total quarterly costs to the National Office of 'Capitation Affiliation's Fees', Katie Hall's salary and the employment costs of Ms Stevens and Mr Burke.

51. Not only did the invoices submitted by the National Office to each of its Branches fail to disclose to the Branches that they were being charged a pro-rata share of the employment costs of Ms Stevens and Mr Burke, but it appears possible that someone went to some lengths to conceal this fact from the Branches.
52. When asked in interview about a resolution that was passed at National Executive on 7 December 2006 (HSUNO.018.0192) under the heading 'National Day of Action report', Mr Brown replied that, in addition to the ACTU levy, "there was another fairly small sum of money which the branches contributed to the national office for the cost of an internal HSU campaign as authorising two things, one of which was that the Branches contributed to the costs of running 'an internal HSU campaign'" (Brown PN 136). However the evidence does not permit a finding that the failure to disclose to the Branches that the employment costs of Ms Stevens and Mr Burke for the January to March 2007 quarter were being passed to the Branches was intentional. Nor does it permit a finding on the balance of probabilities as to who caused this to occur.
53. Mr Williamson told FWA he could not recall any discussion in National Executive about the remuneration and terms and conditions of Ms Stevens and Mr Burke (Williamson PN 334-337):
- MR NASSIOS: All right. In terms of their remuneration and terms and conditions, that is, Ms Stevens and Mr Burke, can you recall any discussion in national executive about that?
- MR WILLIAMSON: None.
- MR NASSIOS: Given we spoke about rules 21 and 27 in terms of fixing and appointing officials et cetera, how do you reconcile - - -
- MR WILLIAMSON: I'm saying that I can't recall. I'm not saying it didn't happen.
54. It was then put to Mr Williamson that invoices for the third quarter of 2006/2007 which had been submitted by the National Office to the Branches appeared to show that the costs of salaries for Mr Burke and Ms Stevens had been charged to Branches, but described as a 'marginal seat campaign fund' (Williamson PN 338):
- MR NASSIOS: What I'm going to do now - it's a little bit long-winded - but I just really would like to put something to you and see what your view is. It does appear that the national office may have invoiced the branches for reimbursement to Ms Stevens' and Mr Burke's salaries. Now, I say that because the invoices for the third quarter of the 2006 and 2007 year from the national office for the branches state that they included costs for campaign coordinator positions, yet the invoice to the Victoria No 1 branch shows a handwritten breakdown of the costs included in the invoice and those figures were for affiliation fees, Katie Hall's salary, and marginal seat campaign fund, and that last fund was a figure of \$4564. I'm going to show you another table that was provided to us by the HSU and this shows that the cost per quarter for the national office of employing Ms Stevens and Mr Burke was the same amount as was described in the invoice to the Victoria No 1 branch as marginal seat campaign fund; that is, the four and a half thousand dollars. I would like to ask you why it seems to indicate

that the term as a 'marginal seat campaign fund', it doesn't use the names of Burke and Stevens as was done for Katie Hall's salary

MR WILLIAMSON: I have no idea. You would have to - it's addressed to the No 1 branch so I don't know.

MR NASSIOS: And to the - an invoice that was sent to your own branch - - -

MR WILLIAMSON: Yes.

MR NASSIOS: - were you aware as general secretary New South Wales branch that the national office was apparently charging you for the cost of employing Stevens and Burke?

MR WILLIAMSON: Well, you're making an assumption that's what it is.

MR NASSIOS: True.

MR WILLIAMSON: And I don't know if this invoice that's addressed to the New South Wales branch is exactly the same as addressed to the Western Australian branch and to the Victorian branch. I don't know. I have no idea.

MR RAWSON: To your knowledge, Mr Williamson, did the New South Wales branch pay for a portion of the cost of salaries for Ms Stevens and Mr Burke?

MR WILLIAMSON: I can't recall, Craig. I can't recall. Because it also goes in this; one for the Tasmania No 1 branch as well.

MS CARRUTHERS: Each of those invoices has that same description of campaign coordinator positions.

MR WILLIAMSON: And Vic No 2. Sorry?

MS CARRUTHERS: Each of those -

MR WILLIAMSON: It's the same invoice.

MS CARRUTHERS: Yes, and they're all saying campaign coordinator positions are included in that total figure.

MR WILLIAMSON: I don't know if - well, I don't know, but looking at - I don't know if that's just a typo that has got that there. I don't know. I don't - but I don't know in terms of the 56406, no.

55. Mr Williamson said there had been no consideration given to his Branch (the NSW Branch) paying the salaries of Ms Stevens and Mr Burke (Williamson PN 378).
56. Mr Williamson was asked by FWA whether he agreed with the conclusion in the BDO Kendalls report that the wages of Ms Stevens and Mr Burke should be disclosed as campaign expenditure. Mr Williamson replied that 'I think it would have been to the Your Rights at Work campaign, not necessarily Dobell campaign'. (Williamson PN 370).

57. When Mr Thomson was asked by FWA how funding by the Branches of the 'marginal seat campaign' worked Mr Thomson said (Thomson PN 854):

I'm not exactly recalling what the marginal seat campaign fund was for, whether it was - I'm not sure whether that's directly to the ACTU or whether we did get some extra money from them for marginal seat campaigning. I can't be sure of that.

58. It was put to Mr Thomson that the amount (\$4,564.06) identified as being for the 'marginal seat campaign fund' in an invoice from the National Office to the Victorian No 1 Branch for the third quarter in 2006 - 2007 was 'pretty well the cost of employing Ms Stevens and Mr Burke' (Thomson PN 845-864). The following exchange then occurred (Thomson PN 865):

MR THOMSON: Yes. I'm not sure, I'm not trying to be unhelpful here I just don't recall.

MR NASSIOS: Is it possible to say the national office was invoicing the branches for the reimbursement of the two salaries?

MR THOMSON: We weren't directly, we - if - I mean - I'll speculate which is dangerous to do. If we had argued and got more money for marginal seat campaigning then we would have had that approved to use on the Your Rights at Work campaign. If I was doing it just for those two people I would have said that particularly if we had done - is that one that is from my time there, is it - have we done that calculation?

MS CARRUTHERS: Certainly that table was within paperwork that was co-located with the 06/07 invoices. Look - - -

MR THOMSON: Yes.

MS CARRUTHERS: So the way it was filed suggests that it was produced at the same period of time.

MR THOMSON: Yes.

MS CARRUTHERS: But I can't obviously guarantee that to you.

MR THOMSON: Yes. I don't remember being that clever or that - we would have broken it down further, there's no reason not to, if we were charging them extra money. So I'm just not sure how I can particularly help. I am just trying to look at the difference between the - so it's the same amount - yes, I don't recall. The Victoria number 1 branch was always our problem payer as well too. So there was always catch-up issues and things like that but I'm really - I'm not sure as to how - if that's how it happened or not.

MR NASSIOS: Do you recall whether there was any similar correspondence from anyone else, for example New South Wales branch which definitely received one of those invoices?

MR THOMSON: Not that I know of, no.

MR NASSIOS: All right.

MR THOMSON: None of this was controversial at the time, this has all become controversial after the event which means that your recollection isn't as strong. There wasn't an argument that had to be made otherwise where there is I remember the arguments that we had to have.

Chapter 18 - Campaign Expenditure

Were National Executive members aware of the costs to the National Office of employing Ms Stevens and Mr Burke?

- MR NASSIOS: Now, in terms of the union's rules, I mean whatever the expense is there a basis that you think this expense could have been handed over to the state?
- MR THOMSON: The basis on - - -
- MR NASSIOS: I'm trying to work out this partial seat campaign fund.
- MR THOMSON: Yes.
- MR NASSIOS: Whatever it was.
- MR THOMSON: Yes.
- MR NASSIOS: In terms of the rules I mean is there anything that particularly sticks into your mind that says, 'Yes, look, it would have been as a result of rule X, Y, Z that' - - -
- MR THOMSON: Well, knowing the detail that some of the branch secretaries wanted about paying for issues, we would have had to make a case with a budget for additional expenditure. I mean that was the position always and any changes to that I couldn't - I had one vote and we couldn't go along and say we're creating this fund for X amount and I'm going to spend it on what I like, it didn't work that way. So there would have been explanations and budgets and approval and presumably the branches then also sought approval from their BCOMs to be paying that money but that's a very general statement but that's how the union operated.

59. If it was a deliberate decision to pass the costs of employing Ms Stevens and Mr Burke for the January to March 2007 quarter onto the Branches it is not clear whose decision this was. The two most obvious persons who might have made such a decision were Mr Thomson and Ms Ord. However the evidence does not permit a finding on the balance of probabilities that either of them made this decision.
60. Indeed, on the basis of the documents provided by the HSU National Office, it appears that it was only the costs of Ms Stevens and Mr Burke for one quarter (January to March 2007) which were passed on to the Branches by the National Office. The fact that this did not happen in other quarters must at least raise the possibility that this was an administrative error, either by Ms Ord or someone else, rather than a deliberate and calculated course of action.
61. On balance, while it is clearly inappropriate that the National Office passed the costs of employing Ms Stevens and Mr Burke between January and March 2007 onto the Branches without disclosing the nature of those costs to the Branches, the limited evidence available about how this occurred does not permit any conclusions to be drawn on the balance of probabilities about whether this was done deliberately, and if so, by whom.

Were National Executive members aware of the costs to the National Office of employing Ms Stevens and Mr Burke?

62. Dr Kelly said (Kelly PN 385) that at on 3 December 2007 she sent an email to Ms Ord which she copied to Mr Thomson in which she queried the salaries budget when she received documentation for the forthcoming Finance Committee meeting in December 2007 because she thought that it couldn't be correct because certain people had left. The meeting was cancelled and her queries were not responded to.
63. This is consistent with correspondence between Ms Ord and Ms Kelly on 3 December 2007.
64. On 3 December 2007 Ms Ord emailed members of the Finance Committee advising that she had tentatively arranged a teleconference for 5 December 2007 at 3.00pm. That same day Dr Kelly replied to Ms Ord, copied to Mr Thomson (HSUNO.018.0098), advising that she was unavailable at that time due to another meeting, and stating:
- I did have a couple more questions re the financial reports, in particular note 11 salary and wages which seems to indicate that the National Secretary's salary increased. Can you advise when the salary was increased and by how much?
- Also the staff salaries seem very high considering that Karene Walton went to the ACTU and Mark Robinson went to EMC.
- Can you please give me a breakdown of the salaries by persons employed, that would be useful.
65. About one hour later Ms Ord again emailed the members of the Finance Committee (HSUNO.020.0149) stating that the teleconference planned for that Wednesday had been cancelled due to busy schedules etc. Ms Ord continued:
- We had a finance meeting 15 August, that went over financials for year end 30 June 2007, so there is probably no need to reschedule at this time. Please let me know if you have any queries.
66. The events described immediately above in paragraphs 62 to 65 provide some evidence that someone took steps to conceal the National Office's employment of Ms Stevens and Mr Burke from the National Executive, by cancelling the December 2007 Finance Committee meeting in circumstances where it was apparent that a member of that Committee was seeking further information about why the National Office was spending so much money on salaries, which was likely to lead to the disclosure of Ms Stevens' and Mr Burke's employment by the National Office.
67. However, on balance this evidence is not so strong as to lead to a finding that it is more probable than not that this occurred. In particular:
- a. the evidence discloses that at least one member of the Finance Committee (Dr Kelly) was not available to meet at the time proposed;
 - b. the evidence does not disclose whether other members of the Finance Committee were, or were not, available to meet at the time proposed;

- c. given the fact that these events occurred just over a week after the federal election, and that by this time Mr Thomson would have known he had been elected as the member for Dobell, and was accordingly likely to resign as National Secretary any day, it is plausible that Mr Thomson at least had many competing demands on his time during this period.
68. Accordingly in my view there is insufficient evidence, on the balance of probabilities, to find that the December 2007 meeting of the Finance committee was cancelled in order to conceal the National Office's employment of Ms Stevens and Mr Burke from the National Executive.

Employment of Ms Stevens without National Executive approval

69. In Schedule 1 (FWA.018.0004) to my letter of 14 December 2011 (FWA.018.0001) I put the following alleged contravention of subsection 285(1) of the RAO Schedule to Mr Thomson:
- You failed to discharge your duties as National President with the degree of care and diligence that a reasonable person would exercise if they were National President in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to the employment of Criselee Stevens in that you failed to take any steps to raise with National Executive the fact that Ms Stevens had been employed by the National Office without any authorisation by National Council or National Executive, when, to your knowledge:
- Mr Thomson had employed Ms Stevens on behalf of the National Office,
 - Ms Stevens was working in the electorate of Dobell;
 - you were otherwise unaware what, if any, role Ms Stevens had on behalf of the National Office; and
 - you knew, or ought to have known, that Ms Stevens' employment had not been authorised by (or even reported to) either National Executive or National Conference
 - as National President you were obliged by Rule 30 to see that the Rules are rigidly adhered to.
70. Detailed information regarding the evidence that is relevant to this matter is set out at paragraphs 16 to 30 of chapter 11. In chapter 11 I concluded that Mr Williamson had failed to discharge his obligations under Rule 30 to see that the Rules are rigidly adhered to, in relation to employment of Ms Stevens by the National Office.
71. Having subsequently reviewed the alleged contravention of subsection 285(1) of the RAO Schedule that was put to Mr Williamson, I consider that it did not identify the particular manner in which Mr Williamson failed to act with the expected degree of care and diligence (as distinct from a failure to comply with his obligations under Rule 30). I have therefore determined that no finding should be made that Mr Williamson has contravened subsection 285(1) of the RAO Schedule in relation to this matter.

Chapter 19 - Failure of Ms Jackson to attend meetings of National Executive

Ms Jackson's role as a member of the National Executive, as Senior National Assistant Secretary and later as National Secretary

1. Ms Jackson was a member of the National Executive throughout the period in which Mr Thomson was the National Secretary (16 August 2002 to 14 December 2007).
2. Ms Jackson's election as the Senior National Assistant Secretary of the National Office was recorded in the minutes of the National Executive meeting held on 22 April 2004 ([HSUNO.018.0358](#)).
3. Rule 33³⁰¹ requires the Senior National Assistant Secretary to assist the National Secretary at all times in the execution of his/her duties, to be subject to the direction of the National Secretary and to act in his/her stead whenever appointed to do so by the National Executive.

Composition of National Executive - Rule 26

4. Rule 26³⁰² provides that the National Executive shall consist of the Officers of the HSU and the Branch Secretary of each Branch.
5. Sub-rule 48(a) provided for the following Branches when Mr Thomson became National Secretary in August 2002:
 - a. Victoria No.1
 - b. Victoria No.2
 - c. Victoria No.3
 - d. Victoria No.4
 - e. Victoria No.5
 - f. Tasmania No.1
 - g. Tasmania No.2
 - h. New South Wales
 - i. South Australia
 - j. Queensland
 - k. Western Australia

³⁰¹ This rule was numbered Rule 34 between 30 March 2006 and 8 June 2007.

³⁰² This rule was numbered Rule 27 between 30 March 2006 and 8 June 2006.

Powers of National Executive - Rule 27

6. The powers of the National Executive are conferred by Rule 27³⁰³, which provides:
- (a) The National Executive shall, subject to these Rules and to the decisions of National Council and to the control of members as hereinafter mentioned, have power (in addition to powers conferred on it elsewhere in these Rules) to conduct and manage the affairs of the Union including the power to set the wages and conditions of the National Office Staff and between meetings of the National Council may exercise all the powers of National Council except the power to grant life membership and the power to make, add to, amend, rescind and/or otherwise alter these Rules. Provided that none of the powers of the National Executive shall enable the National Executive to alter an Entrenched Rule as defined herein.
 - (b) Where, at a meeting of the National Executive, delegates representing not less than four branches so request, a decision of that meeting shall be forthwith referred to the Committees of the branches for consideration and should the Committees of not less than five branches request the National Secretary in writing or by telegram within fourteen days of such National Executive meeting that the decision of the National Executive not be implemented, then no action shall be taken on that decision until and unless ratified by the National Council either at a meeting of the National Council or pursuant to Rule 25 of these Rules as if the National Executive had determined that the matter required a decision of the National Council.
 - (c) The National Council may review any act or decision of the National Executive.

Meetings of National Executive - Rule 28

7. Rule 28 deals with meetings of the National Executive. Paragraph (v) of Sub-rule 28(a) provides that there shall be at least three meetings of the National Executive each calendar year. Sub-rules 28(b) and (c) also permit matters to be determined by a postal vote of members of the National Executive, or by a meeting conducted by telephone. Where this occurs, the decision of the majority of the members of the National Executive in a process shall have the like force as a decision made in meeting assembled.
8. In interview (Jackson (2) PN 285 - 287) Ms Jackson said that before 2007 she did not attend many meetings of National Council and National Executive. When asked why this was so she replied: "A lot had to do with our personal differences. With Mr Thomson."
9. Ms Jackson's statement is borne out by a review of the minutes of National Executive meetings. The table below sets out those meetings of National Executive at which Ms Jackson was in attendance and those meetings which she did not attend during the period in which Mr Thomson was National Secretary:

³⁰³ This rule was numbered Rule 28 between 30 March 2006 and 8 June 2006.

National Executive meetings attended by Ms Jackson

National Executive meetings attended by Ms Jackson	National Executive meetings not attended by Ms Jackson
19 September 2002 (HSUNO.018.0461)	
	25 & 26 February 2003 (HSUNO.024.0055)
5 May 2003 (HSUNO.018.0404)	
	Teleconference 30 June 2003 (HSUNO.024.0063)
	31 July & 1 August 2003 (HSUNO.018.0385)
21 November 2003 (HSUNO.018.0382)	
17 December 2003 (HSUNO.018.0377)	
	17 February 2004 (HSUNO.018.0370)
22 April 2004 (HSUNO.018.0358)	
14 & 15 July 2004 (HSUNO.018.0348)	
Teleconference 14 October 2004 (HSUNO.018.0345)	
	28 February & 1 March 2005 (HSUNO.018.0335)
	Special Meeting 7 April 2005 (HSUNO.018.0322)
	6 September 2005 (HSUNO.018.0286)
13 October 2005 (HSUNO.018.0281)	
	7 & 8 November 2005 (HSUNO.018.0272)
15 & 16 February 2006 (HSUNO.018.0259)	
15 & 16 May 2006 (WIT.KEL.003.0139)	
Special Teleconference 30 May 2006 (HSUNO.018.0239)	
7 & 8 August 2006 (HSUNO.018.0220)	
	Special Meeting 23 October 2006 (HSUNO.018.0200)
	7 December 2006 (HSUNO.018.0192)

National Executive meetings attended by Ms Jackson	National Executive meetings not attended by Ms Jackson
Teleconference 16 December 2006 (HSUNO.018.0191)	
	2 February 2007 (HSUNO.018.0170)
	28 & 29 March 2007 (HSUNO.018.0151)
6 December 2007 (HSUNO.024.0014)	
Teleconference 14 December 2007 (HSUNO.025.0012)	

10. The available minutes of National Executive meetings confirms that Ms Jackson's attendance at National Executive meetings was sporadic at best. This is true of the entire period during which Mr Thomson was National Secretary but, in particular, it appears that Ms Jackson did not attend a single face-to-face meeting of the National Executive between 7 and 8 August 2006 and the first meeting after the 2007 Federal Election on 6 December 2007. By the time of that meeting it would have been apparent that Mr Thomson was likely to have been elected to Federal Parliament, and that he would therefore be shortly resigning his position as National Secretary. Between 8 August 2006 and 6 December 2007, Ms Jackson's only participation in meetings of the National Executive appears to have been her involvement in the teleconference held on 16 December 2006.
11. During this period Ms Jackson was the Senior National Assistant Secretary of the HSU, and was a full time employee of the HSU, by virtue of her position as the Secretary of the Victoria No 3 Branch. For at least the later part of this period, Ms Jackson would have been aware that Mr Thomson was a candidate for the federal seat of Dobell in a federal election which was likely to be held towards the end of 2007. Further, Ms Jackson was required by Rule 33 of the Rules to assist the National Secretary at all times in the execution of his/her duties.
12. It can be accepted that, from time to time, there will be particular reasons why a member of National Executive, including the Senior Assistant National Secretary, is unable to attend a particular meeting of the National Executive. However, Ms Jackson's absences appear to have become the norm, and not the exception, by late 2006. In any event, by her own admission, Ms Jackson's almost continual absence from National Executive meetings during this period was not because of any particular reason which prevented her attendance, but instead was (at least in part) because of what she described as being personal differences with Mr Thomson.
13. By reason of section 285 of the RAO Schedule, an officer of an organisation must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if that reasonable person was an officer of the organisation in the circumstances of that organisation and, in holding such office, had the same responsibilities within the organisation as the officer.

Alleged Contravention that was put to Ms Jackson

14. The following alleged contravention was put to Ms Jackson in Schedule 1 (FWA.015.0004) to my letter of 14 December 2011 (FWA.015.0001):

Ms Jackson failed to exercise her powers and discharge her duties as the Senior National Assistant Secretary and as a member of the National Executive with the degree of care and diligence that a reasonable person would exercise if that reasonable person was a member of the National Executive and the Senior National Assistant Secretary in that:

- she did not attend any of the four face-to-face meetings of the National Executive which were held between August 2006 and December 2007 in dereliction of her duty as Senior National Assistant Secretary and as Secretary of Victoria No 3 Branch;
- her reason for failing to attend any of those meetings was that she had personal difficulties with the National Secretary;
- a reasonable person holding the position of Senior National Assistant Secretary would not have failed to attend a single face-to-face meeting during this period for the reason that he or she had personal difficulties with the National Secretary;
- a reasonable person in her position as a Senior National Assistant Secretary between August 2006 and December 2007 would have attended and participated in meetings of the National Executive; and
- a reasonable person in her position, whose relationship with the National Secretary truly made their attendance at meetings untenable, would have resigned his or her position as Senior National Assistant Secretary and as Secretary of the Victoria No 3 Branch (given that Ms Jackson was a member of National Executive under Rule 26 by virtue of being a Branch Secretary). This would have enabled not only the members of the Victoria No 3 Branch to elect a Branch Secretary who represented their interests at meetings of the National Executive but it would also have enabled the National Executive to elect someone else to discharge the functions of Senior National Assistant Secretary.

Ms Jackson's submissions

15. In her submissions of 3 February 2012 (FWA.022.0489) Ms Jackson made a number of submissions regarding this alleged contravention which I will deal with separately.

No obligation to attend every meeting of the National Executive

16. Ms Jackson states that members of National Executive are not obliged to attend every meeting of the National Executive, and that a 'mere' non attendance at a particular meeting cannot constitute a breach of subsection 285(1) of the RAO Schedule.
17. This assertion is correct, as far as it goes. However the alleged contravention does not suggest that Ms Jackson contravened subsection 285(1) merely because of her non-attendance at one National Executive meeting. Rather, the alleged contravention is that Ms Jackson contravened subsection 285(1) by failing to attend

four consecutive face-to-face meetings, in circumstances in which her failure to do so was because of personal difficulties with the National Secretary.

Subsection 285(1) limited by section 283 of the RAO Schedule

18. Ms Jackson contends that:
 - a. the operation of subsection 285(1) of the RAO Schedule is limited by section 283 such that it only applies in relation to officers and employees of an organisation or branch '*to the extent that it relates to the exercise of powers or duties of those officers and employees related to the financial management of the organisation or branch*';
 - b. none of the four meetings in issue "*dealt with matters*" 'related to the financial management of the organisation' *in any material way*"; and
 - c. she therefore cannot have contravened subsection 285(1) as alleged.
19. It is correct that the operation of subsection 285(1) is limited by section 283 as contended by Ms Jackson. However, I do not accept the balance of this submission for two reasons which are set out below.

Reason 1 for rejecting Ms Jackson's submission that subsection 285(1) is limited by section 283

20. Firstly, it is clear on an inspection of the minutes of the four meetings in issue that those meetings at a minimum canvassed matters relating to the financial management of the organisation.

Goulter report

21. The Goulter report was discussed at the National Executive meetings held on 23 October 2006 (HSUNO.018.0200, at 0200-0201) and 28 and 29 March 2007 (HSUNO.018.0151 at 0158). The comments below are based on the minutes of those meetings.
22. At the 23 October 2006 meeting it was agreed that Branches would consult with members before the next executive meeting at which Branches would come with their considered view on which items should be referred to working parties, which items should be accepted in principle and which items were not worth sending to working parties. It was also agreed that a National Executive meeting would be held on 8 December 2006 (later changed to 7 December) to "*essentially deal with the Goulter report*".
23. At the 28 and 29 March 2007 meeting the National Secretary distributed and spoke to a paper regarding "*his views of achieving an outcome consistent with the Goulter report and assisting in moving the union forward.*" and there was discussion around that issue. The minutes record the following action:

Branches to consider the structure and outline of a budget to operate that structure and make comments back to the National Secretary.

Risk management strategies

24. At the National Executive meeting held on 7 December 2007 (HSUNO.018.0192 at 0193 and 0196) there was "Extensive discussion" around the proposed risk management policy for the union. A resolution was passed that "*The HSU adopt in total the proposed risk management strategy as set out in Attachment A of these minutes*". The National Secretary indicated that he would write to Branch Secretaries seeking information on the implementation of the risk management strategy. The National President indicated that he would pursue with the insurers options to protect the union through insurance and report back to the Executive.
25. The Risk management policy was discussed again at the National Executive meeting held on 2 February 2007 (HSUNO.018.0170 at 0172 and 0176), and again at the National Executive meeting held on 28 and 29 March 2007 (HSUNO.018.0151 at 0153 and 0158).

Election campaigning and political donations

26. At the National Executive meeting held on 7 December 2007 (HSUNO.018.0192 at 0197-0198):

Executive agreed that over the next twelve months there is nothing more important to our members and working families than removing the Howard government and that this union is prepared to commit whatever resources it has to see it removed.

It was the feeling of the meeting that in the next twelve months most attention should be spent on winning the marginal seats **and that is where resources should go**.
(emphasis added).
27. Also:

The National President raised issues of concern regarding the change to laws re political donations and there (sic) disclosures.

The National President undertook to seek legal advise (sic) on this issue and bring it back to National Executive.
28. At the National Executive meeting held on 2 February 2007 (HSUNO.018.0170 at 0172, 0177 and 0179):
 - a. In the course of a discussion about the Dental Campaign there was discussion about whether the ANF and LHMU would be involved and "*it was agreed that if those unions where not (sic) prepared to make some financial contribution to the campaign then the HSU would run it alone*".
 - b. Under the heading "Election resources and funding, the minutes state:

The National Secretary spoke about the need to raise resources for the dental campaign and associated federal election issues dealing with production of common material. He outlined that the union needed to look at raising \$200,000 to properly run the campaigns.

It was agreed this money needed to be looked at and that this matter would be discussed further on the 7th February 2007.

c. A related "Action Arising" appears in the same minutes as follows:

The union to look at ways of raising \$200,000 for the federal election fund with money to be spent primarily on the dental health campaign.

29. The Dental campaign was also discussed at the National Executive meeting held on 28 and 29 March 2007 (HSUNO.018.0151 at 0161-0162), where the National Secretary reported on the research that was planned and "the costs related to that". A motion was passed that "*The cost of the research for the dental scheme be billed to branches on a per capita basis*".

Finance report and capitation fees

30. The National Executive meeting held on 2 February 2007 (HSUNO.018.0170 at 0176) considered a report from the National Secretary "*on the state of the Union's finances and the recent finance committee meeting*". The National Secretary also reported on the Goulter Report recommendation that capitation fees be increased, and records a statement by the National Secretary that "*if the Goulter recommendations are not acted upon or acted upon shortly then consideration would have to be given to a small CPI increase in capitation fees.*" The National Executive meeting of 28 and 29 March 2007 (HSUNO.018.0151 at 0153) raised as an action arising that "*from April 2007 capitation fees be increased to \$19 per member per year (before GST)*".

Queensland issues

31. The National Executive meeting held on 2 February 2007 (HSUNO.018.0170 at 0181) received a report from the National Secretary on:

... serious matters that had occurred in relation to the Queensland branch and the Cairns football federation. It was agreed that further urgent discussions with the branch need to take place and that the Executive needs to consider carefully its response in regards to both the Branch and the responsible officer involved.

32. This issue received further consideration at the National Executive meeting of 28 and 29 March 2007 (HSUNO.018.0170 at 0159) where the National Secretary gave a report about discussions that had occurred between the (Queensland) branch, the National Office and the NSW "office" on the future of the Queensland branch. The National Secretary stated that the branch and the National Office considered that the NSW branch could take over administrative and support issues for the Queensland branch including management of the membership system, accounts, the employment of Mr O'Shannessy and provision of a call centre.

Arrangement between the National Office the ACTU and Karene Walton

33. The National Executive meeting on 28 and 29 March 2007 (HSUNO.018.0151 at 0157) discussed a proposal in a letter from the ACTU that the ACTU employs Karene Walton (at that time a National Office employee seconded to the ACTU) with training to the value of \$25,000.00 per year being provided by the ACTU to the National Office. There was discussion about whether the arrangement should be formalised by an enforceable contract, and discussion about the length of time that the arrangement should continue for. The National Executive passed a motion approving the arrangement, authorising the National Secretary to take steps to

"legally implement" such a scheme and that "the released resources be used to employ an additional research officer".

New Matilda

34. The National Executive meeting on 28 and 29 March 2007 (HSUNO.018.0151 at 0164) passed a resolution:

That the HSU become a stakeholder in New Matilda as requested by making an annual contribution of \$10,000 to that organisation.

Reason 2 for rejecting Ms Jackson's submission that subsection 285(1) is limited by section 283

35. Second (and more importantly) Ms Jackson's submission ignores the role which is committed to the National Executive by Rule 27. That role is to (subject only to the rules and any decision of National Council) to *"conduct and manage the affairs of the Union including the power to set the wages and conditions of the National Office Staff"*. In between National Council meetings National Executive *"may exercise all the powers of National Council [save for a few exceptions]"*. It is clear that the power conferred on the National Executive is a very broad one, which extends to (and indeed is critically concerned with) the financial management of the Union.
36. In this context, the submission that a failure to attend meetings of National Council was not a failure of duty which related to financial management of the Union unless the National Executive in fact considered issues of financial management at those meetings is misconceived. In substance it amounts to a statement that Ms Jackson did not fail in her duty as a member of National Executive to take part in the financial management of the Union by failing to attend National Executive meetings, because the National Executive as a whole collectively failed to take part in the financial management of the Union.

Apology

37. Ms Jackson states that she sent an apology in respect of each of the four meetings that she failed to attend, and that the fact that this apology was accepted in each case was *"powerful evidence that my non-attendance was not a breach of any duty of the kind that you allege..."*.
38. While Ms Jackson's apology for her non-attendance at each meeting may have been accepted by the National Executive, I attach little weight to that matter.

Meeting of 22 August 2007

39. Ms Jackson states that she was present at a National Executive meeting which occurred on 22 August 2007.
40. The evidence about whether there was such a meeting is very unclear:
- a. On the one hand, FWA has obtained an agenda for such a meeting and Ms Jackson's submission clearly contends that it did take place;

- b. On the other hand, FWA has not been able to obtain any minutes, or indeed any record at all, of such a meeting. Ms Jackson herself has not produced any such record, despite being served with a Notice requiring her to produce any such records. No such meeting is referred to in the minutes of any subsequent executive meeting. Mr Dan Hill, Secretary of the Western Australian Branch, has told FWA that, although such a meeting was scheduled, no formally constituted meeting in fact took place. Mr Hill does, however, believe that National Executive members were gathered in Melbourne at this time and were engaged in 'intense caucusing over who should replace Mr Thomson in the event that he was elected'.
41. It seems unlikely, on balance, that a formal meeting of National Executive took place on 22 August 2007. While Ms Jackson may have been one of the members of National Executive who was gathered in Melbourne, it seems most likely that any such gathering was informal.

Context of Ms Jackson's statement

42. Ms Jackson submits that the context in which she said at interview that her failure to attend National Executive meetings had a lot to do with personal differences with Mr Thomson was significant. In substance Ms Jackson submits that a fair interpretation of those remarks suggests that they were an off the cuff response to a question which was asked as an aside, and in circumstances in which she did not appreciate the question was addressing a possible alleged failure of duty on her part (because Ms Jackson believed that FWA was investigating (only) Mr Thomson). Moreover, Ms Jackson relies upon the fact that I did not express any dissatisfaction with her answer during, or after, the interview. Ms Jackson states that it was not a considered answer, made after she had had an opportunity to consult her diary or other contemporary records. Nor was she asked to give reasons in relation to each failure to attend a particular meeting.
43. None of these matters are determinative. However it is appropriate for me to give weight to the matters advanced by Ms Jackson in this regard when weighing the answer given by Ms Jackson to me in interview on 11 April 2011 against the alternative answers that she now provides.

Ms Jackson is entitled to the benefit of her full answer at interview

44. Ms Jackson contends that my letter of 14 December 2011 failed to give her the benefit of her full answer at interview.
45. First, Ms Jackson states that she referred to "our personal differences" (meaning personal differences between herself and Mr Thomson) and not "her personal difficulties" with Mr Thomson. I accept that this is correct. Ms Jackson's actual answer suggests a mutuality to the issues affecting her non attendance which was lacking in the way in which the allegation was put to her. However, given the nature of the allegation it is not clear that this is a distinction of much, if any, significance, and Ms Jackson's submission does not develop this any further.

46. Second, Ms Jackson states that her answer did not state that such personal differences were the sole reason for her failure to attend meetings. On the contrary she states that her answer implicitly put me on notice that there were "other" additional reasons in each instance.
47. It is true that Ms Jackson's answer "*A lot had to do with our personal differences. With Mr Thomson*" implicitly suggests that other reasons may have been present.
48. However, in my view, her answer nevertheless suggests that while other reasons may have been present, her absence still had "a lot to do with" her personal differences" with Mr Thomson.
49. Nevertheless, insofar as Ms Jackson invites me to prefer the reasons she now advances for her failure to attend the meetings in issue over the reason she gave on 11 April 2007, I accept that her answer on 11 April 2007 did implicitly acknowledge the possible existence of other (then unstated) reasons.

The basis of Ms Jackson's personal differences with Mr Thomson

50. Ms Jackson's submission provides further detail that confirms that personal differences existed between her and Mr Thomson. These submissions corroborate the answer which Ms Jackson gave in interview on 11 April 2011.

Other general reasons for Ms Jackson's failure to attend the four National Executive meetings

51. Ms Jackson sets out a number of general factors that she says were additional reasons for her failure to attend the four National Executive meetings. These include:
 - a. family responsibilities, which Ms Jackson describes as the most common determinative reason. In this regard I note that the minutes do record that Mr Jackson, as Secretary of the Victoria No.1 Branch and therefore also a member of National Executive, was present at the first three of the four meetings in issue.
 - b. the fact that the Rules provide for autonomous branches, and that the National Executive "*is a relatively weak body that, generally speaking, does not have the authority to interfere in the decision-making within the branches*" and "*was responsible for the expenditure of very little of the members' money*". Ms Jackson says that the Finance Committee, and not the National Executive, had primary responsibility for detailed consideration of the Union's financial affairs and periodic accounts. In my view, this submission comes close to a statement that meetings of National Executive were unimportant. Further, Ms Jackson's statement that the Finance Committee and not the National Executive has "primary responsibility" for such matters does not reflect the contents of Rules 27 and 46.
 - c. Ms Jackson would check in advance whether any contentious matters would be dealt with at National Executive meetings, since these would be decided privately between members of the Executive before meetings occurred.

Ms Jackson invariably participated actively in such discussions whenever a contentious matter arose and would usually attend any Executive meeting when such matters were being considered. Ms Jackson would invariably obtain an account of any meeting she had missed from another member of the Executive (usually her husband, Jeff Jackson) and review minutes when they were circulated. In this regard Ms Jackson states:

If National Executive meetings were truly a venue where matters were proposed for the first time and debated then I would certainly regard is (sic) as part of my duty of due care and diligence to ensure a high level of attendance at National Executive meetings. But, in reality, that is not what occurred ...

- d. Ms Jackson states that she had other commitments arising out of her position on the Board of HESTA, the Physiotherapists Registration Board of Victoria and her position as the full time employed Secretary of the Victoria No 3 Branch. She states that sometimes her duties in these roles would conflict with her duties as a member of the National Executive.
- e. Ms Jackson states that occasionally she missed a National Executive meeting because she was on leave.

Factual matters relevant to non-attendance at particular meetings

- 52. Ms Jackson advances particular reasons for her non-attendance at each of the four National Executive meetings in issue.

National Executive meeting of 23 October 2006 in Melbourne

- 53. Ms Jackson submits that her failure to attend the National Executive meeting on 23 October 2006 was because she was attending an urgent and important issue for a particular Victoria No 3 Branch member who was facing a disciplinary hearing before the Podiatry Board on 25 October 2006, in which he was liable to have his registration cancelled. Ms Jackson has provided what she says are relevant diary notes that support this claim to her submission (although I am not able to read the copies that have been provided). She states that:

My assessment that the particular member's urgent, livelihood-threatening problem deserved greater priority than the National Executive meeting on 23 October 2006 in all the circumstances, was an assessment that was well within the range of assessments that were reasonably open to a reasonable person in my circumstances.

- 54. I accept that Ms Jackson's failure to attend the National Executive meeting on 23 October 2006 was for the reason stated in her submission and that it was an appropriate decision in the circumstances.
- 55. I do note, however, that I have also considered the fact that (according to the minutes of this National Executive meeting - HSUNO.018.0200) this meeting commenced at 4.38pm and took just 67 minutes, and was held at 106 Victoria Street Carlton South (which is also where Ms Jackson worked).
- 56. While this reduces the weight that I am prepared to give to this submission, I have nevertheless determined that, on balance, I do not believe that her failure to attend

the National Executive meeting in Melbourne on 23 October 2006 constituted a breach of subsection 285(1) of the RAO Schedule

57. It is not possible to determine whether the diary notes provided by Ms Jackson shed any light on her whereabouts during this period.
58. Ms Jackson contends, and I accept, that the matters referred to in subsection 285(2) of the RAO Schedule are relevant to my consideration of whether this was an appropriate decision.

National Executive meeting of 7 December 2006 in Sydney

59. Ms Jackson submits that her failure to attend the National Executive meeting on 7 December 2006 was because she had board meetings of HESTA and the Physiotherapists Registration Board (presumably both in Melbourne) on the same day. Ms Jackson states that the relevant page of her diary is attached, and that this verifies her claim. (I cannot determine, however, from the copies provided to me whether this is correct).
60. I accept Ms Jackson's claim that she had board meetings in Melbourne for these two bodies on 7 December 2006. On this basis, I do not believe that her failure to attend the National Executive meeting in Sydney on the same day constituted a breach of subsection 285(1) of the RAO Schedule.
61. Ms Jackson contends, and I accept, that the matters referred to in subsection 285(2) of the RAO Schedule are relevant to my consideration of whether this was an appropriate decision.

National Executive meeting of 2 February 2007

62. Ms Jackson submits that to the best of her recollection her failure to attend the National Executive meeting in Canberra on 2 February 2007 was because of family responsibilities. Ms Jackson states that her then husband (Mr Jeff Jackson) did attend that meeting (and this is verified by the minutes of that meeting - see HSUNO.018.0170).
63. I accept Ms Jackson's submission and, on this basis, I do not believe that her failure to attend the National Executive meeting in Canberra on 2 February 2007 constituted a breach of subsection 285(1) of the RAO Schedule.
64. Ms Jackson contends that the matters referred to in subsection 285(2) and section 292 of the RAO Schedule are relevant to my consideration of this matter. However it is not obvious that the requirements of either provision are met in respect of Ms Jackson's stated reason for not attending this particular meeting. For example:
 - a. it is not apparent how Ms Jackson could have rationally believed her non attendance was in the best interest of the Union (paragraph 285(2)(d));
 - b. nor is it apparent what information or professional advice Ms Jackson says she relied on in deciding that her family responsibilities prevented her attendance.

National Executive meeting of 28 and 29 March 2007

65. Ms Jackson states that she was overseas on approved leave on this date with her family. She has attached a photocopy of what appears to be her passport, showing a stamp which appears to show that she departed Australia on 26 March 2007. She says she did not return from leave until 22 April 2007 (although she does not state what day she returned to Australia).
66. I accept this submission and, in the absence of any evidence that Ms Jackson was not on approved leave at this time, on this basis I do not believe that her failure to attend the National Executive meeting in Sydney on the same day constituted a breach of subsection 285(1) of the RAO Schedule.

Other submissions put by Ms Jackson

67. Even though I have accepted that, in light of Ms Jackson's submissions, her failure to attend each of the four National Executive meetings discussed above did not constitute a breach of subsection 285(1) of the RAO Schedule, for the sake of completeness I have nevertheless set out below further submissions that were made by Ms Jackson regarding this alleged contravention.

Claim that Mr Thomson did not want Ms Jackson's assistance as Senior National Assistant Secretary after 2005

68. Ms Jackson submits that from 2005 Mr Thomson did not want her assistance on any matter of significance. Ms Jackson states that "*The short and obvious point is that my presence or absence from meetings of the National Executive ... did not make the slightest difference to [her willingness and ability to assist Mr Thomson]*".
69. I note that, while the alleged contravention does refer to her position as Senior Assistant National Secretary, the allegation does not state that Ms Jackson's failure to attend these meetings impeded her willingness or ability to provide assistance to Mr Thomson.

The 'resignation contention'

70. Ms Jackson's response addresses what she terms the 'resignation contention'. The particulars to the alleged contravention include a statement that a reasonable person in Ms Jackson's position whose relationship with the National Secretary made their attendance at meetings untenable, would have resigned his or her position as Senior National Assistant Secretary and Secretary of the Victoria No 3 Branch.
71. In response to these particulars Ms Jackson repeats many of the points already made in her submission, including that this statement was:
- a. based upon a single casual answer to a question which was an inconsequential aside;
 - b. predicated on accepting that her "personal difficulties" with Mr Thomson were the sole reason why she did not attend National Executive meetings, and that in fact these difficulties made it untenable for her to attend such meetings;

- c. ignores the existence of the other reasons identified by Ms Jackson for her non-attendance at each of the four meetings in issue
72. Ms Jackson also submits that this statement ignores her attendance at other meetings during the period, including earlier meetings, and telephone meetings.
73. Ms Jackson also submits that this statement fails to consider the likely consequences of her resignation.
74. Finally, Ms Jackson submits that I have not identified, in the particulars to the alleged contravention, any particular consequence for the Victoria No 3 Branch that has occurred because of her non-attendance at National Executive meetings. I accept that this submission is correct and that the allegation against Ms Jackson was framed solely on the basis that an inability to participate in National Executive meetings was antithetical to her role as a member of National Executive, and not on the basis that such a failure had caused actual, identified, consequences for the Victoria No 3 Branch.

Conclusions

75. For the reasons set out above at paragraphs 53 to 66, I do not consider that Ms Jackson has contravened subsection 285(1) of the RAO Schedule in the manner of the alleged contravention that is set out at paragraph 14 of this chapter.

PART 5

**LIST OF CONTRAVENTIONS AND
OBSERVATIONS BY THE DELEGATE TO THE
GENERAL MANAGER**

Chapter 20 - List of Contraventions

Contraventions by Mr Thomson

Chapter 4 - Employment of staff of the National Office

Findings 1 and 2 - Employment of Criselee Stevens

1. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing Criselee Stevens on behalf of the National Office without seeking the authorisation of either the National Council or National Executive to do so, when Ms Stevens was not employed as part of the business of the Union.

2. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by employing Criselee Stevens on behalf of the National Office in circumstances where:
 - the authority to do so was conferred on National Council and National Executive by Sub-rules 21(e) and 27(a)
 - he failed to obtain the approval of the National Council or National Executive to do so;
 - in employing Ms Stevens, Mr Thomson was not conducting the "business of the Union" within the meaning of Sub-rule 32(n); and
 - he failed to take any steps to report to the National Executive the fact that he had employed Ms Stevens on behalf of the National Office.

Findings 3 to 5 - Employment of Matthew Burke

3. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing Mr Burke on behalf of the National Office without seeking the authorisation of either the National Council or National Executive to do so, when Mr Burke was not employed as part of the business of the Union.

4. Mr Thomson has contravened Sub-rule 32(n) by employing Mr Burke on behalf of the National Office in order to ensure that he was available for subsequent employment by Senator Hutchins, rather than for any purpose relating to controlling and conducting the business of the Union.

5. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by employing Mr Burke on behalf of the National Office in

circumstances where:

- The purpose of Mr Burke's employment by the National Office was to assist Senator Hutchins to be able to employ Mr Burke at a later date to work in Dobell, rather than for the business of the National Office;
- The authority to employ Mr Burke was conferred on National Council and National Executive by Sub-rules 21(e) and 27(a);
- Mr Thomson was required by Sub rule 32(n) to 'control and conduct the business of the Union';
- In employing Mr Burke, Mr Thomson was not conducting the "business of the Union" within the meaning of Sub-rule 32(n); and
- Mr Thomson failed to obtain the approval of the National Council or National Executive to do so.

Mr Thomson failed to take any steps to report to the National Executive the fact that he had employed Mr Burke on behalf of the National Office.

Finding 6 - Payment of \$25,000 per annum to Karene Walton while she was employed by the ACTU

6. Mr Thomson has contravened Sub-rule 32(b) by failing to ensure that correct minutes were kept of the terms of the National Executive's agreement to the ACTU's proposal to employ Ms Walton, in particular by failing to record that, as part of that arrangement, the National Office would make a payment of \$25,000 per year to Ms Walton.

Findings 7 to 9 - Employment of Struan Robertson, Nicole Rodger, Karinda Flavell, Mark McLeay and Katie Hall

7. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing and setting the wages and conditions of each of Nicole Rodger and Karinda Flavell on behalf of the National Office without reporting to National Executive that he had done so.
8. Mr Thomson has contravened Sub-rule 27(a) by setting the wages and conditions of each of Struan Robertson and Mark McLeay on behalf of the National Office without reporting to National Executive that he had done so.
9. Mr Thomson has contravened Sub-rules 21(e) and 27(a) by employing and setting the wages and conditions of Katie Hall on behalf of the National Office without seeking the authorisation of either National Council or National Executive to do so when Katie Hall was not employed as part of the business of the Union.

Findings 10 and 11 - Employment of Belinda Ord

10. Mr Thomson has contravened Sub-rule 27(a) by setting the wages and conditions of Belinda Ord on behalf of the National Office without reporting to National Executive that he had done so.

11. Mr Thomson has contravened Sub-rule 27(a) by increasing the salary of Belinda Ord on behalf of the National Office without reporting to National Executive that he had done so.

Chapter 5 - Financial Management of the National Office

The absence of policies dealing with various financial issues

Finding 12 - Failure to prepare, and to seek approval of, policies regarding the establishment of credit cards

12. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures in relation to the establishment of credit cards and by failing to submit such policies and procedures to the National Council and the National Executive for approval.

Findings 13 and 14 - Failure to prepare policies regarding the use of credit cards

13. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures in relation to the use of credit cards and to submit those policies and procedures to the National Council and the National Executive for approval.
14. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to prepare financial governance policies and procedures in relation to the use of credit cards and to submit those policies and procedures to the National Council or National Executive for approval.

Findings 15 and 16 - Failing to prepare policies regarding cash withdrawals

15. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare financial governance policies and procedures regarding the use of credit cards by staff of the National Office to make cash withdrawals and by failing to obtain the approval of the National Council and the National Executive in relation to such policies.
16. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to prepare financial governance policies and procedures regarding the use of credit cards by staff of the National Office to make cash withdrawals and obtain the approval of the National Council or the National Executive in relation to such matters.

Findings 17 to 22 - Failure to prepare policies regarding travel related expenses

- 17.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare appropriate policies and procedures in place regarding the circumstances in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business and submit them to the National Council and National Executive for approval.
- 18.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to ensure that the National Office had appropriate policies and procedures in place regarding the circumstances in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when travelling away from home on HSU business, and by failing to ensure that such policies were submitted to either the National Council or National Executive for their approval.
- 19.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare appropriate policies in place regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located and submit them to the National Council and National Executive for approval.
- 20.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to ensure that the National Office had appropriate policies in place regarding the circumstances in which employees of the National Office could seek reimbursement of accommodation and meals expenses, when staying in the city in which their primary place of work is located, and by failing to ensure that such policies were submitted to either the National Council or National Executive for their approval.
- 21.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare appropriate policies in place regarding the circumstances (if any) in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business and submit them to the National Council and National Executive for approval.
- 22.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to ensure that the National Office had appropriate policies in place regarding the circumstances (if any) in which employees of the National Office could seek reimbursement of travel related expenses, including accommodation and meals expenses, when staying in the same general vicinity as their home on HSU business,

and by failing to ensure that such policies were submitted to either the National Council or National Executive for their approval.

Findings 23 and 24 - Failure to prepare policies regarding spousal travel

- 23.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by failing to prepare a policy regarding the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff and to submit them to the National Council and National Executive for approval.
- 24.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to take steps to cause the National Office to have a policy regarding the use of National Office funds to pay for travel and travel related expenses for partners of National Office officials and staff and have any such policy approved by either National Council or National Executive.

Expending the funds of the HSU

Finding 25 - Not supervising or authorising payments of expenditure from National Office funds on a daily basis

- 25.** Mr Thomson contravened Sub-rule 32(n) by failing to conduct and control the business of the HSU between meetings of National Executive by failing to supervise or approve payment of expenditure from National Office funds on a daily basis.

The administration of credit cards

Findings 26 to 28 - Use of credit cards to withdraw cash

- 26.** Mr Thomson breached Sub-rule 36(b) by using his CBA Mastercard to make cash withdrawals in circumstances where neither National Council nor National Executive had authorised any policies or procedures in relation to the use of credit cards to make cash withdrawals, and had not otherwise authorised Mr Thomson to use his CBA Mastercard to make cash withdrawals.
- 27.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to obtain the authority of National Council or National Executive to withdraw cash from a National Office account prior to doing so.
- 28.** Mr Thomson contravened section 286(1) of the RAO Schedule by failing to exercise

his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by withdrawing cash from a National Office account without obtaining the authority of National Council or National Executive to do so.

Findings 29 to 32 - expenditure incurred on Mr Thomson's credit cards for his benefit after the resignation date

29. Mr Thomson contravened Sub-rule 36(b) by incurring expenditure on his credit card account of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation without the authority of either National Council or National Executive to do so.
30. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure on his credit card account of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation without the authority of either National Council or National Executive to do so.
31. Mr Thomson has contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose when he incurred expenditure on his credit card account of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation without the authority of either National Council or National Executive to do so.
32. Mr Thomson has contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself, namely to use his HSU credit card to incur expenditure of \$330 prior to his resignation in relation to hotel accommodation for the day after his resignation.

Findings 33 to 38 - Authorisation of expenditure incurred by National Office staff members on their credit cards

33. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by purporting to authorise payment of sums owing on credit card accounts transacted by National Office staff without informing himself regarding whether the expenditure was on the general administration of the HSU or for purposes reasonably incidental to the general administration. Where such expenditure was not on the general administration of the Union or for a purpose reasonably incidental thereto, Mr Thomson purported to authorise payment of credit card charges which were not authorised by the National Council or the National Executive.

- 34.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise payment of sums owing on credit card accounts transacted by National Office staff without informing himself regarding whether the expenditure was on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. Where such expenditure was not on the general administration of the Union or for a purpose reasonably incidental thereto, Mr Thomson purported to authorise payment of credit card charges without the approval of either National Council or National Executive to do so.
- 35.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by purporting to authorise payment of sums owing on credit card accounts transacted by National Office staff without informing himself regarding whether the expenditure was on the general administration of the HSU or for the purposes reasonably incidental to the general administration of the HSU. Where such expenditure was not on the general administration of the Union or for a purpose reasonably incidental thereto, Mr Thomson purported to authorise payment of credit card charges without the approval of either National Council or National Executive to do so.
- 36.** Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by authorising Ms Ord to pay sums owing on credit card accounts transacted by National Office staff that were not approved by the National Council or the National Executive when he had not informed himself regarding whether such unpaid amounts included expenditure which was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
- 37.** Mr Thomson contravened Sub-rule 36(b) by authorising Ms Ord to pay sums owing on credit card accounts transacted by National Office staff that were not approved by the National Council or the National Executive when he had not informed himself regarding whether such unpaid amounts included expenditure which was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
- 38.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by authorising Ms Ord to pay sums owing on credit card accounts transacted by National Office staff that were not approved by the National Council or the National Executive when he had not informed himself regarding whether such unpaid amounts included expenditure which was on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

Findings 39 to 42 - Expenditure incurred on Mr Thomson's credit cards for incidental goods and purported authorisation of expenditure for incidental goods incurred by staff members of the National Office on their credit cards

39. Mr Thomson contravened Sub-rule 36(b) by incurring expenditure on the purchase of incidental goods such as chocolates and cigarettes on credit cards and by purporting to authorise such expenditure by others without the authority of either National Council or National Executive to do so when such expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
40. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his power and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure on purchase of incidental goods such as chocolates and cigarettes on credit cards and purporting to authorise such expenditure by others without the authority of either National Council or National Executive to do so.
41. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose when he incurred expenditure on purchase of incidental goods such as chocolates and cigarettes on credit cards and purporting to authorise such expenditure by others without the authority of either National Council or National Executive to do so when such expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
42. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage for himself or someone else (namely, the purchase of incidental goods such as chocolates and cigarettes).

Findings 43 to 47 - Providing Mr Thomson's CBA Mastercard to another person

43. Mr Thomson contravened Sub-rule 32(j) by failing to be responsible for the monies of the HSU by providing his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowing that person to make cash withdrawals using that card.
44. Mr Thomson contravened Sub-rule 36(b) by providing his CBA Mastercard to another person on at least three occasions when he was travelling interstate, thereby allowing that person to expend the funds of the HSU without their being authorised by either National Council or National Executive to do so, and without such expenditure being expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.

45. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he provided his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowed that person to make cash withdrawals using that card without their being authorised by either National Council or National Executive to do so, and without such expenditure being expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
46. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose when he provided his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowed that person to make cash withdrawals using that card.
47. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage to someone else by providing his CBA Mastercard to another person on at least three occasions when he was travelling interstate and allowing that person to make cash withdrawals using that card.

Specific payments which are contrary to the Rules

Finding 48 - Authorisation of invoice from Marriott Hotel to be paid by the National Office

48. Mr Thomson has contravened Rule 24 by authorising a payment of \$56,688 to the Marriott Hotel on 7 September 2006 which related to fares and expenses of Branch delegates to a National Council meeting.

Findings 49 and 50 - Authorisation of invoice from University House to be paid by the National Office

49. Mr Thomson has contravened Rule 24 by authorising a payment of accommodation expenses of five National Council delegates from the Western Australian Branch amounting to \$4,922 which was related to a National Council/Conference meeting to University House in May 2007.
50. Mr Thomson has contravened Sub-rule 36(b) by purporting to authorise payment by the National Office of \$4,922 to ANU for accommodation related to the National Council that was held in May 2007 in Canberra that included accommodation expenses of \$356 for Ms Karene Walton, who was not an employee of the National Office, without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.

Finding 51 - Authorisation of invoice from Hyatt Catering to be paid by the National Office

51. Mr Thomson has contravened Rule 24 by authorising payment of an invoice from Hyatt Catering that included expenses for food and beverages of Branch Delegates to National Council.

Payments outside the general administration of the Union

Findings 52 and 53 - Authorisation of payment to the Julie Williamson Fundraising Appeal by the National Office

52. Mr Thomson has contravened Sub-rule 36(b) by purporting to authorise payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
53. Mr Thomson has contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary:
- by failing to ensure that the payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 was approved by National Executive or National Council;
 - by failing to formally disclose to National Executive or National Council that the recipient of the payment was a charity connected to the wife of the National President; and
 - by failing to ensure that these matters were recorded in the minutes of National Executive or National Council.

Finding 54 - Authorisation of expenditure relating to Ms Angela Humphries to be paid by the National Office

54. Mr Thomson has contravened Sub-rule 36(b) by authorising the expenditure of funds of the National Office on a motor vehicle lease for Ms Humphries that was not authorised by the National Executive or National Council and was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Findings 55 and 56 - Travelling overseas and incurring expenditure while Mr Thomson was on approved annual leave

- 55.** Mr Thomson contravened Sub-rules 32(j) and 32(n) by:
- failing to be responsible for the monies of the HSU; and
 - failing to be responsible between meetings of the National Executive for the control and conduct of the business of the HSU
- by travelling overseas for an extended period of time, adjacent to a period in which he took annual leave, to attend conferences, at the expense of the HSU, without informing the National Council or the National Executive of his absence and failing to arrange for another person to act in the position of National Secretary during his absence in those periods adjacent to the period in which he took annual leave.
- 56.** Mr Thomson contravened Sub-rule 36(b) by:
- incurring expenditure relating to flights, accommodation and meals incurred prior to taking annual leave in respect of his overseas travel; and
 - making cash withdrawals using his CBA Mastercard while overseas
- which was not expenditure that is on, or for a purpose reasonably incidental to, the general administration of the HSU and which had not been authorised by either National Council or National Executive.

Findings 57 to 60 - Incursion or purported authorisation of expenditure charged to Mr Thomson's credit card on travel for Ms Alison Soutar

- 57.** Mr Thomson contravened Sub-rule 36(b) by incurring, or by purporting to authorise, expenditure on travel for Alison Soutar without the authority of either National Council or National Executive to do so, when that expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 58.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he incurred, or purported to authorise, expenditure on travel for Alison Soutar without the authority of either National Council or National Executive to do so, when that expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 59.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his power and discharge his duties in good faith and in the best interests of the HSU and for a proper purpose when he incurred, or purported to authorise, expenditure on travel for Alison Soutar without the authority of either National Council or National Executive to do so, when that expenditure was not on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.

60. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage for someone else (Alison Soutar) when he incurred expenditure (or purported to authorise such expenditure) on travel for Alison Soutar without the authority of either National Council or National Executive to do so.

Findings 61 and 62 - Payments to Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca

61. Mr Thomson contravened Sub-rule 36(b) by incurring expenditure with Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca which was not expenditure on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union and which was not authorised by National Council or National Executive.
62. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure with Emerald Tourist Railway Board, Sydney Wedding Music, Cairns District Soccer Association, Internat Immobiliare , Hawkesfords International and Comme Ci Comme Ca which was not expenditure on the general administration of the Union or for purposes reasonably incidental to the general administration of the Union and which was not authorised by National Council or National Executive.

Mr Thomson's decision to move to live in NSW and to open an office in Sydney

Finding 63 - Moving to NSW and opening a National Office in Sydney without seeking the approval of the National Executive or National Council

63. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he decided to move to NSW and open a National Office in Sydney without seeking the approval of the National Executive or National Council to do so.

Expenditure on accommodation in Melbourne during 2006 and 2007

Findings 64 to 66 - Incursion of expenditure on Mr Thomson's credit cards on accommodation and travel related expenses in Melbourne during 2006 and 2007

64. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending amounts of National Office funds on accommodation and travel related meals in relation to each of the 26 trips to Melbourne which are set out

set out in the table at Annexure C as trips 2, 4, 6, 11-13, 15-16, 18, 20, 22-23, 25, 28-29, 33 and 35 which were excessive in all the circumstances.

65. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith and for a proper purpose by spending amounts of National Office funds on accommodation and travel related meals in relation to each of the 26 trips to Melbourne which are set out set out in the table at Annexure C as trips 2, 4, 6, 11-13, 15-16, 18, 20, 22-23, 25, 28-29, 33 and 35 which was excessive in all the circumstances when he could not have believed that such expenditure was in the best interests of the National Office.
66. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position to gain an advantage for himself by spending, and benefitting from, amounts of National Office funds on accommodation and travel related meals in relation to each of the 26 trips to Melbourne which are set out set out in the table at Annexure C as trips 2, 4, 6, 11-13, 15-16, 18, 20, 22-23, 25, 28-29, 33 and 35 which was excessive in all the circumstances.

Reporting to National Executive and/or National Council

Finding 67 - failing to present the full report to the National Council meeting on 19 October 2004

- 67 Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he failed to present (or cause to be presented) the full report (including a dated auditor's report) to the meeting of National Council on 19 October 2004.

Finding 68 - Signing the committee of management statement for year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed

68. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he signed the committee of management statement for the financial year ended 30 June 2005 knowing that the resolution set out in that statement had not been passed by either the National Executive or National Council on or prior to 5 September 2005.

Finding 69 - Failing to present financial reports for year ended 30 June 2006 to the committee of management meeting on 13 September 2006

69. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by failing to present (or cause to be presented) to the committee of management meeting on 13 September 2006 copies of a signed and dated committee of management

statement and a signed and dated auditor's report for the year ended 30 June 2006.

Findings 70 and 71 - Failing to prepare financial documents for year ended 30 June 2007 and to present them to a meeting of National Council or National Executive before 14 December 2007

70. Mr Thomson contravened Sub-rule 32(e) by failing to keep the records required to be kept pursuant to the provisions of the WR Act when he failed to prepare (or cause to be prepared) an operating report and committee of management statement before 14 December 2007.
71. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were National Secretary when he failed to prepare an operating report or a committee of management statement and failed to present the full report (including a signed and dated auditor's report) to a meeting of National Council or National Executive in the 5½ months following the end of the 2006/2007 financial year.

Chapter 6 - Expenditure of National Office funds for Mr Thomson's personal benefit

Escort Services

Findings 72 to 75 - Purported authorisation of expenditure incurred on Mr Thomson's credit cards for escort services

72. Mr Thomson breached Sub-rule 36(b) which required that the National Council or National Executive control the funds of the HSU by purporting to authorise payment by the National Office of the amounts set out in paragraphs 39, 68 to 69, 83, 99, 112, 122 and 126.a of chapter 6 totalling \$6,008.72 when that expenditure was not authorised by National Council or National Executive and those funds were not expended on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU.
73. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by:
- making the payments totalling \$5,793 referred to in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of chapter 6 and the payment of \$212 referred to in paragraph 126.a of chapter 6; and
 - purporting to authorise those payments.

74. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose, by:
- making the payments totalling \$5,793 referred to in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of chapter 6 and the payment of \$212 referred to in paragraph 126.a of chapter 6; and
 - purporting to authorise those payments.
75. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself or another person by:
- making the payments totalling \$5,793 referred to in paragraphs 39, 68 to 69, 83, 99, 112 and 122 of chapter 6 and the payment of \$212 referred to in paragraph 126.a of chapter 6; and
 - purporting to authorise those payments.

Mr Thomson 's claim to have taken annual leave in 2007

Findings 76 to 78 - Mr Thomson did not take annual leave during October and November 2007

76. Mr Thomson breached Rule 32 by failing to exercise his powers and discharge his duties as National Secretary during the six week period prior to the 2007 Federal Election and by failing to take any steps to ensure that:
- the National Executive was notified of, and had approved the taking of, annual leave by him during this period;
 - he was officially recorded in records of the National Office as being on leave during this period; and
 - appropriate arrangements were put in place to ensure that the Senior National Assistant Secretary was acting in his stead during this period.
77. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing during October and November 2007 to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she were the National Secretary in the same circumstances.
78. Mr Thomson breached subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the HSU, and for a proper purpose during October and November 2007.

Expenditure on accommodation in Sydney after Mr Thomson moved to the Central Coast of NSW

Findings 79 to 82 - Expenditure on accommodation in Sydney after Mr Thomson moved to the Central Coast of NSW

- 79.** Mr Thomson breached Sub-rule 36(b) by purporting to authorise the expenditure on accommodation for himself in Sydney set out in Annexure E in circumstances where:
- neither National Council nor National Executive had authorised such expenditure; and
 - such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 80.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring all of the expenditure set out in Annexure E on accommodation for himself in Sydney in circumstances where:
- neither National Council nor National Executive had authorised such expenditure; and
 - such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 81.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose by incurring all of the expenditure set out in Annexure E on accommodation for himself in Sydney in circumstances where:
- neither National Council nor National Executive had authorised such expenditure; and
 - such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 82.** Mr Thomson contravened subsection 287(1) of the RAO Schedule in that he used his position as National Secretary to gain an advantage for himself or someone else (accommodation) by incurring all of the expenditure set out in Annexure E.

Alternative findings relating to Mr Thomson's expenditure on accommodation in Sydney - expenses were excessive

Findings 83 to 85 - Alternative findings relating to Mr Thomson's expenditure on accommodation in Sydney - expenses were excessive

83. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring expenditure in relation to each of those stays which was unreasonable in all the circumstances by incurring expenditure of HSU funds totalling \$10,626.60 on accommodation for himself in Sydney in the course of undertaking trips 2 to 15 inclusive, and 18 to 20 inclusive as set out in paragraphs 389 to 439 and paragraphs 444 to 452 in chapter 6.
84. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the National Office and for a proper purpose, by incurring expenditure of HSU funds totalling \$10,626.60 on accommodation for himself in Sydney in the course of undertaking trips 2 to 15 inclusive, and 18 to 20 inclusive as set out in paragraphs 389 to 439 and paragraphs 444 to 452 of chapter 6, when he could not have believed that such expenditure was in the best interests of the National Office.
85. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely by enjoying the benefits of expenditure of HSU funds totalling \$10,626.60 on accommodation for himself in Sydney in relation to each of the trips which are numbered trips 2 to 15 inclusive, and 18 to 20 inclusive as set out in paragraphs 389 to 439 and paragraphs 444 to 452 of chapter 6, which were excessive in all the circumstances.

Expenditure on accommodation on the Central Coast during 2006 and 2007

Findings 86 to 88 - Expenditure on accommodation on the Central Coast during 2006 and 2007

86. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary by incurring expenditure which totalled \$760 for his personal accommodation on the NSW Central Coast on four occasions during 2006 and 2007 when such costs were not reasonably incurred, given that Mr Thomson lived on the NSW Central Coast.
87. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the National Office and for a proper purpose, when he incurred expenditure which totalled \$760 for his accommodation on the NSW Central Coast on four occasions when he could not have believed that such expenditure was in the best interests of the National Office.

88. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely by using funds of the National Office to enjoy the benefits of resort accommodation on the Central Coast during 2006 and 2007.

Hotel and accommodation expenses incurred by Mr Thomson during September and October 2005

Findings 89 to 92 - Travel between Sydney and Melbourne during September 2005

89. Mr Thomson contravened Sub-rule 36(b) by spending the amounts set out in the tables at paragraphs 503 and 504 of chapter 6 from the funds of the National Office on accommodation without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
90. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers or discharge his duties as National Secretary with the degree and care and diligence that a reasonable person would exercise if they were National Secretary by spending the amounts set out in the tables at paragraphs 503 and 504 of chapter 6 on travel and accommodation expenses without the approval of either National Council or National Executive to do so.
91. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by spending the amounts set out in the tables at paragraphs 503 and 504 of chapter 6 on travel and accommodation.
92. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself and/or Mrs Thomson, namely the enjoyment of accommodation and other travel related expenditure, by spending the amounts set out in the tables at paragraphs 503 and 504 of chapter 6.

Findings 93 to 100 - Accommodation expenses incurred by Mr Thomson during October 2005

93. Mr Thomson contravened Sub-rule 36(b) by spending the monies set out in the table at paragraph 528 of chapter 6 from the funds of the National Office on accommodation and travel without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU.
94. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers or discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending the monies set out in the table paragraph 528 of chapter 6 on accommodation and travel.

95. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by spending the monies set out in the table at paragraph 528 of chapter 6 on accommodation and travel.
96. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself and/or Mrs Christa Thomson, namely the enjoyment of accommodation and other travel related expenditure, by spending the monies set out in the table at paragraph 528 of chapter 6.
97. Mr Thomson contravened Sub-rule 36(b) by expending monies from the funds of the National Office on accommodation without the approval of either National Council or National Executive to do so, for a purpose which was not on the general administration of the HSU or a purpose reasonably incidental to the general administration of the HSU, by incurring at least some part of the expenditure on accommodation set out in the table at paragraph 532 of chapter 6.
98. Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers or discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by spending at least some part of the expenditure set out in the table at paragraph 532 of chapter 6 without the approval of either National Council or National Executive to do so.
99. Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by spending at least some part of the expenditure set out in the table at paragraph 532 of chapter 6 on accommodation.
100. Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself and/or Mrs Thomson, namely the enjoyment of accommodation and other travel related expenditure, by spending at least some part of the expenditure set out in the table at paragraph 532 of chapter 6.

Expenditure by Mr Thomson on travel by his wife, Mrs Christa Thomson

Findings 101 to 104 - Expenditure by Mr Thomson on travel for his wife, Mrs Christa Thomson

101. Mr Thomson breached Sub-rule 36(b) by incurring the expenditure of National Office funds referred to in paragraph 541 of chapter 6 on travel for his wife, Mrs Christa Thomson, without the authority of either National Council or National Executive to do so.

- 102.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by using HSU funds to pay for the travel by his wife, Mrs Christa Thomson, referred to in paragraph 541 of chapter 6 when such expenditure:
- had not been authorised by either National Council or National Executive;
 - was not in accordance with any policy approved by either National Council or National Executive; and
- was not an entitlement of his employment as National Secretary.
- 103.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the organisation and for a proper purpose by using HSU funds to pay for the travel of his wife, Mrs Christa Thomson, referred to in paragraph 541 of chapter 6 when such expenditure:
- had not been authorised by either National Council or National Executive;
 - was not in accordance with any policy approved by either National Council or National Executive; and
- was not an entitlement of his employment as National Secretary.
- 104.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for another (namely his wife) by using National Office funds to pay for the travel referred to in paragraph 541 of chapter 6.

Dining and entertainment

Findings 105 to 112 - Expenditure on dining and entertainment when Mr Thomson was not travelling

- 105.** Mr Thomson contravened Sub-rule 36(b) by incurring the expenditure on dining and entertainment expenses referred to at paragraphs 611 and 612 of chapter 6:
- in Melbourne while he was living in Melbourne; or
 - in Sydney or on the Central Coast while he was living on the Central Coast,
- without the authority of either National Council or National Executive to do so.
- 106.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary by incurring all of the expenditure identified in paragraphs 611 and 612 of chapter 6 (except the expenditure discussed at paragraphs 617 to 618) on dining and entertainment in circumstances where such expenditure was not authorised by National Council or the National Executive and was not expenditure on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU..

- 107.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers or discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose by incurring all of the expenditure identified in paragraphs 611 and 612 of chapter 6 (except the expenditure discussed at paragraphs 617 to 618) on dining and entertainment in circumstances where such expenditure was not authorised by National Council or the National Executive and was not expenditure on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU.
- 108.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself or someone else by incurring all of the expenditure identified in paragraphs 611 and 612 of chapter 6 (except the expenditure discussed at paragraphs 617 to 618 of chapter 6) on dining and entertainment expenses for either or both of his own benefit or the benefit of others.
- 109.** Mr Thomson breached Sub-rule 36(b) of the Rules by purporting to authorise the expenditure of National Office funds on each of the 14 large transactions on dining and entertainment which could not have been expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration.
- 110.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would have exercised if they were National Secretary in the HSU's circumstances by making payments for each of the 14 large transactions (except for the transactions discussed at paragraphs 617 and 618 of chapter 6) on dining and entertainment.
- 111.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the HSU and for a proper purpose by making payments for each of the 14 large transactions (except for the transactions discussed at paragraphs 617 and 618 of chapter 6) on dining and entertainment without having been authorised by either National Council or National Executive to do so.
- 112.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself, or someone else by making, and purporting to authorise, payments for each of the 14 large transactions (except for the transaction discussed at paragraphs 617 and 618 of chapter 6), namely the benefit of highly priced hospitality at the expense of the HSU.

Findings 113 to 116 - Expenditure using Mr Thomson's credit cards on dining and entertainment while he was travelling interstate

- 113.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise expenditure:
- of \$1,500 at Beppis Restaurant on 6 September 2005;
 - totalling \$1,800 at the Hotel Lincoln and the Meat and Wine Co (Melb) on 15 February 2007; and
 - on each of the five remaining travel transactions referred to at paragraph 647 of chapter 6

which could not have been expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration, without the authority of National Council or National Executive to do so.

- 114.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would have exercised if they were National Secretary in the HSU's circumstances by making payments for each of the eight large travel transactions discussed at paragraph 640 of chapter 6.

- 115.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith in what he believed to be the best interests of the HSU and for a proper purpose by making payments for each of the eight large travel transactions discussed at paragraph 640 of chapter 6 without having been authorised by either National Council or National Executive to do so.

- 116.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by using his position as National Secretary to gain an advantage for himself, or someone else to make, and purport to authorise, each of these payments for each of the eight large travel transactions discussed at paragraph 640 of chapter 6, namely the benefit of highly priced hospitality at the expense of the HSU.

Chapter 7 - Expenditure of National Office funds for the purpose of assisting Mr Thomson's election to Parliament for the seat of Dobell

The Dobell Campaign

Findings 117 to 124 - Expenditure of National Office funds on Mr Thomson's Dobell Campaign

Expenditure of National Office funds on the establishment of the Long Jetty Campaign Office

- 117.** Mr Thomson breached Rule 36(b) by incurring expenditure of \$4,826.99 on purchases relating to the establishment of the Long Jetty Campaign Office which was not expenditure on the general administration of the HSU, or on a purpose reasonably incidental thereto, without that expenditure being authorised by either National Council or National Executive.

Other expenses directly related to the Dobell Campaign

- 118.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by failing to declare his personal interest in the expenditure of funds and the commitment of National Office resources in Dobell, and by failing to take steps to ensure that the National Office met its obligations under the RAO Schedule in respect of that issue.
- 119.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU and for a proper purpose, by using resources and funds of the National Office in his campaign for Dobell, without taking steps to declare to the National Executive his personal interest in the expenditure of such funds and the commitment of National Office resources, in circumstances where the National Executive had authorised a significant commitment of National Office resources to the La Trobe campaign, and had not authorised the expenditure of any funds or resources of the National Office in the campaign for Dobell.
- 120.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself by directing funds and resources of the National Office to the campaign for Dobell, without taking any steps to inform the National Executive or National Council, or seek the authority of the National Executive or National Council for him to do so.
- 121.** Mr Thomson contravened Sub-rule 32(n) and Sub-rule 36(b) by incurring and purporting to authorise each item of expenditure of National Office funds listed in the table at paragraph 197 of chapter 7 totalling \$71,300.23 for a purpose which was not the business of the HSU in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to

the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.

- 122.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as Mr Thomson by incurring and purporting to authorise each item of expenditure of National Office funds totalling \$71,300.23 listed in the table at paragraph 197 of chapter 7 in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.
- 123.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose, by incurring and purporting to authorise each item of expenditure of National Office funds (totalling \$71,300.23) listed in the table at paragraph 197 of chapter 7 in circumstances where neither National Executive nor National Council had authorised the spending of any monies in support of the campaign for Dobell (apart, possibly, from monies which were specifically referable to the Dental Campaign) and none of this expenditure was for, or for a purpose incidental to, the general administration of the HSU.
- 124.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself (namely, to advance his prospects of becoming elected to Parliament) by incurring and purporting to authorise each item of expenditure of National Office funds totalling \$71,300.23) listed in the table at paragraph 197 of chapter 7.

Criselee Stevens

Findings 125 to 128 - Employment of, and authorising expenditure incurred by, Ms Stevens

- 125.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise, on behalf of the National Office, the expenditure by, or relating to, Ms Stevens of National Office funds referred to in paragraphs 241 to 339 of chapter 7 totalling \$154,713.96 which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.
- 126.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary in the same circumstances as Mr Thomson by employing Ms Stevens and purporting to

authorise, expenditure of National Office funds referred to in paragraphs 241 to 339 of chapter 7 totalling \$154,713.96 by, or relating to, Ms Stevens which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.

- 127.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the organisation, and for a proper purpose by employing Ms Stevens and by purporting to authorise expenditure of National Office funds referred to in paragraphs 241 to 339 of chapter 7 totalling \$154,713.96 by, or relating to, Ms Stevens which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.
- 128.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage (namely, to advance his prospects of becoming elected to Parliament) for himself by employing Ms Stevens and by purporting to authorise, expenditure of, National Office funds referred to in paragraphs 241 to 339 of chapter 7 totalling \$154,713.96 by, or relating to, Ms Stevens which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which that expenditure had not been authorised by either National Council or National Executive.

Coastal Voice

Findings 129 to 133 - Authorising expenditure of National Office funds on activities of Coastal Voice

- 129.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice when that expenditure was not authorised by National Council or National Executive and those funds were not expended on the general administration of the HSU or on a purpose reasonably incidental to the general administration of the HSU.
- 130.** Mr Thomson contravened Sub-rule 32(n) by failing to control and conduct the business of the HSU between meetings of National Executive by directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice.
- 131.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of

the HSU in the same circumstances as Mr Thomson by:

- purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice which were not for, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive, and
- directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice

without the knowledge or authorisation of the National Executive.

132. Mr Thomson contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose by:

- purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive; and
- directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice

without the knowledge or authorisation of the National Executive.

133. Mr Thomson contravened section 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage (namely, to build his own profile in the electorate of Dobell and thereby advance his prospects of becoming elected to Parliament) for himself by:

- purporting to authorise the expenditure of funds of the National Office on the activities of Coastal Voice which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU; and
- directing or allowing Ms Stevens to spend her time as an employee of the National Office on activities of Coastal Voice without the knowledge or authorisation of the National Executive.

Matthew Burke

Findings 134 to 137 - Employment of, and authorising expenditure incurred by, Matthew Burke

134. Mr Thomson contravened Sub-rule 36(b) by purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive.

- 135.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as himself by employing Mr Burke and purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive.
- 136.** Mr Thomson contravened section 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith for what he believed to be the best interests of the HSU, and for a proper purpose, by employing Mr Burke, and by purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke, including after Mr Burke's resignation from the HSU, which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU in circumstances in which such expenditure had not been approved by National Council or National Executive.
- 137.** Mr Thomson contravened section 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage (namely, to advance his prospects of becoming elected to Parliament) for himself by employing Mr Burke, and by purporting to authorise expenditure of National Office funds totalling \$41,707.46 by, or in relation to, Mr Burke, including after Mr Burke's resignation from the HSU, which was not expenditure on, or for a purpose reasonably incidental to, the general administration of the HSU.

Central Coast Rugby League

Findings 138 and 139 - Authorising payment to the Central Coast Rugby League by the National Office

- 138.** Mr Thomson contravened Sub-rules 32(n) and 36(b) by failing to conduct the business of the HSU, and by purporting to authorise payments of monies of the HSU without authority of either National Council or National Executive to do so, by:
- entering into the Sponsorship Agreement on behalf of the National Office without seeking the approval of the National Executive or National Council to do so;
 - causing the National Office to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2006 and 2007 rugby seasons without seeking the approval of the National Executive or National Council to do so in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU; and
 - causing the National Office to be liable, under the terms of the Sponsorship Agreement, to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2008 rugby season.

- 139.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by:
- entering into the Sponsorship Agreement on behalf of the National Office without seeking the approval of the National Executive or National Council to do so;
 - causing the National Office to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2006 and 2007 rugby seasons without seeking the approval of the National Executive or National Council to do so in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU; and
 - causing the National Office to be liable, under the terms of the Sponsorship Agreement, to make payments to Central Coast Rugby League Inc in respect of its commitments under the Sponsorship Agreement to sponsor the 2008 rugby season.

Dads in Education Fathers' Day Breakfast

Findings 140 to 143 - Authorising payment of Dads in Education Fathers' Day Breakfast by the National Office

- 140** Mr Thomson contravened the requirements of Sub-rule 36(b) by purporting to authorise payments to Dads in Education, totalling \$10,000, without those payments having first been approved by the National Executive or National Council in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 141.** Mr Thomson contravened the requirements of subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by failing to ensure that payments by the National Office to Dads in Education totalling \$10,000 between August and December 2007 were approved by National Executive or National Council and recorded in the minutes of National Executive in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 142.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose by purporting to authorise payments made by the National Office to Dads in Education totalling \$10,000 between August and December 2007 in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 143.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely, by

advancing his campaign to become elected as the member for Dobell, by purporting to authorise payments made by the National Office to Dads in Education totalling \$10,000 between August and December 2007.

Golden Years Collectables

Findings 144 to 147 - Authorising payment to Golden Years Collectables by the National Office

- 144.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise payment by the National Office of \$2,050 to Golden Years Collectables for memorabilia without the prior approval of either National Executive or National Council to do so in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 145.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by failing to ensure that the payment of \$2,050 by the National Office to Golden Years Collectables was approved by National Executive and recorded in the minutes of National Executive in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 146.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose by purporting to authorise the payment of \$2,050 by the National Office to Golden Years Collectables in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 147.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely, by advancing his campaign to become preselected as the ALP candidate for the seat of Dobell by purporting to authorise the payment by the National Office of \$2,050 to Golden Years Collectables.

Central Coast Convoy for Kids

Findings 148 to 151 - Authorising payment to the Central Coast Convoy for Kids by the National Office

- 148.** Mr Thomson contravened Sub-rule 36(b) by purporting to authorise payment of \$5,000 by the National Office to the Central Coast Convoy for Kids without the prior approval of either National Executive or National Council in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for

a purpose reasonably incidental to the general administration of the HSU.

- 149.** Mr Thomson contravened the requirement of subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary by purporting to authorise the payment of \$5,000 by the National Office to Central Coast Convoy to Kids in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU and by failing to ensure that the payment of \$5,000 by the National Office to Central Coast Convoy to Kids was approved by National Executive and recorded in the minutes of National Executive.
- 150.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties in good faith in what he believed to be the best interests of the HSU, and for a proper purpose by purporting to authorise the payment by the National Office of \$5,000 to the Central Coast Convoy for Kids in circumstances in which such expenditure was not expenditure on the general administration of the HSU or for a purpose reasonably incidental to the general administration of the HSU.
- 151.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely, by advancing his campaign to become preselected as the ALP candidate for the seat of Dobell by purporting to authorise the payment by the National Office of \$5,000 to Central Coast Convoy for Kids.

Requirements of section 237 of the RAO Schedule in relation to donations

Findings 152 and 153 - Subsection 237(1) of the RAO Schedule in relation to donations

- 152.** Mr Thomson contravened the requirement in Sub-rule 32(f) that he lodge with the Industrial Registrar all documents that are required to be lodged under the RAO Schedule in that he failed to lodge a statement of loans, grants and donations for the year ended 30 June 2007 within 90 days of the end of that financial years which disclosed the donations:
- to Central Coast Convoy for Kids for \$5,000 on 12 September 2006; and
 - of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006.
- 153.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if he or she was the National Secretary of the HSU in the same circumstances as Mr Thomson by failing to:
- seek, as required by the Rules, the approval of National Council or National

Executive before each of the following donations:

- to Central Coast Convoy for Kids for \$5,000 on 12 September 2006;
 - of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006; and
 - to Dads in Education totalling \$10,000 in August and December 2007; were made; and
- lodge, or caused to be lodged, the statement of particulars that is required by subsection 237(1) of the RAO Schedule to be lodged with the Australian Industrial Registry, within 90 days of the end of the financial year ended 30 June 2007 in which each of the following donations:
- to Central Coast Convoy for Kids for \$5,000 on 12 September 2006; and
 - of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006;
- was made.

Chapter 8 - Mr Thomson's management of the finances of the National Office

Findings 154 to 156 - Expenditure of HSU funds on Mr Thomson's campaign for Dobell in priority to other activities of the National Office

- 154.** Mr Thomson contravened subsection 285(1) of the RAO Schedule by failing to discharge his duty as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were the National Secretary in the National Office's circumstances by:
- expending funds of the HSU on his own campaign in Dobell without the authority of National Council or National Executive;
 - expending such funds on his campaign in priority to expending funds on carrying out the objects of the HSU; and
 - failing to draw the deteriorating state of the National Office's financial position to the attention of National Council or National Executive.
- 155.** Mr Thomson contravened subsection 286(1) of the RAO Schedule by failing to exercise his powers and discharge his duties as National Secretary in good faith and for the best interests of the HSU by:
- expending funds of the HSU on his own campaign in Dobell without the authority of National Council or National Executive;
 - expending such funds on his campaign in priority to expending funds on carrying out the objects of the HSU; and
 - failing to draw the deteriorating state of the National Office's financial position to the attention of National Council or National Executive.

- 156.** Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National Secretary to gain an advantage for himself, namely to enhance his prospects of becoming elected to the Federal seat of Dobell, by:
- expending funds of the HSU on his own campaign in Dobell without the authority of National Council or National Executive; and
 - expending such funds on his campaign in priority to expending funds on carrying out the objects of the HSU.

Chapter 9 - Contraventions by the National Office reporting unit

Meetings of National Council

Finding 157 - Failure to hold meetings of National Council

- 157.** The National Office contravened Rule 22 by failing to hold properly constituted meetings of National Council:
- in October 2004;
 - between September and November 2006; and
 - between September and November 2007.

Failure to approve employment

Failure to approve employment of Mr Robertson, Ms Ord, Ms Rodgers, Ms Flavell, Ms Hall and Mr McLeay

Findings 158 to 161 - Failure to approve terms and conditions of employment of Mr Robertson, Ms Ord, Ms Rodgers, Ms Flavell, Ms Hall and Mr McLeay

- 158.** The National Office has contravened Sub-rules 21(e) and 27(a) by employing and setting wages and conditions of each of Nicole Rodger and Karinda Flavell in circumstances where the National Secretary had not reported to National Executive that the National Office had done so.
- 159.** The National Office has contravened Sub-rule 27(a) by setting wages and conditions for each of Struan Robertson, Mark McLeay and Belinda Ord in circumstances where the National Secretary had not reported to National Executive that the National Office had done so.
- 160.** The National Office has contravened Sub-rule 27(a) by increasing Belinda Ord's salary with effect from 6 March 2006 in circumstances where the National Secretary had not reported to National Executive that the National Office had done so.

- 161.** The National Office has contravened Sub-rule 21(e) by employing Katie Hall when neither National Council nor National Executive had authorised her employment, and her employment was not part of the business of the Union.

Failure to approve employment of Mr Burke and Ms Stevens

Finding 162 - Failure to approve employment of Mr Burke and Ms Stevens

- 162.** The National Office has contravened Sub-rules 21(e) and 27(a) by employing, and determining wages and conditions, of Mr Burke or Ms Stevens when neither National Council nor National Executive had authorised their employment or had made a determination of their wages and conditions, and their employment was not part of the business of the Union.

Failure to appoint auditor

Finding 163 - Failure to appoint auditor

- 163.** The National Office contravened Rule 35 by failing, in respect of each financial year ending 30 June 2003 to 30 June 2008 inclusive, to appoint a National Auditor annually.

Making donations using National Office funds without authorisation of National Council or National Executive

Finding 164 - Making donations using National Office funds without authorisation of National Council or National Executive

- 164.** The National Office contravened Sub-rule 36(g) by:
- making a donation of \$5,000 to the Central Coast Convoy for Kids on 12 December 2006;
 - making donations totalling \$10,000 to Dads in Education on 22 and 23 August 2007 and 3 December 2007; and
 - making a donation of memorabilia to the value of \$2,050 to the Australian Labor Party
- that were not authorised by National Council or National Executive.

Failing to keep financial records in relation to expenditure by Mr Thomson

Finding 165 - Failing to keep financial records in relation to expenditure by Mr Thomson

- 165.** The National Office has contravened subsection 252(1) of the RAO Schedule by failing to:
- keep such financial records as correctly record and explain the transactions and financial position of the National Office, including such records as are prescribed by the Reporting Guidelines,
 - keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253, and
 - keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited
- in relation to expenditure by Mr Thomson on what appears to have been dining and entertainment expenses.

Failing to keep financial records

Findings 166 to 168 - Failing to keep financial records

- 166.** The National Office has contravened subsection 252(1) of the RAO Schedule by failing to keep such financial records as correctly record and explain cash withdrawal transactions made by Mr Thomson.
- 167.** The National Office contravened the requirements in subsection 252(1) of the RAO Schedule by failing to keep such financial records as correctly record and explain transactions by failing to keep records which correctly record and explain cash withdrawals by Mr Thomson using his CBA Mastercard while overseas.
- 168.** The National Office contravened the requirements in subsection 252(1) of the RAO Schedule by failing to keep such financial records as correctly record and explain the transactions set out at paragraphs 141 to 158 of chapter 9.

Failing to prepare an operating report and committee of management statement for the year ended 30 June 2007

Findings 169 and 170 - Failing to prepare an operating report and committee of management statement for the year ended 30 June 2007

- 169.** The National Office has contravened subsection 254(1) of the RAO Schedule by failing to either prepare an operating report, or to have required Mr Thomson to

prepare an operating report, by the date of Mr Thomson's resignation as National Secretary on 14 December 2007.

- 170.** The National Office has contravened subsection 253(1) of the RAO Schedule by failing to cause to be prepared a committee of management statement as required by paragraphs 24 to 26 of the second Reporting Guidelines for the year ended 30 June 2007 by the date of Mr Thomson's resignation as National Secretary on 14 December 2007.

Failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended 30 June 2007

Finding 171 - failure to lodge a statement of loans, grants and donations under subsection 237(1) of the RAO Schedule for the year ended 30 June 2007

- 171.** The National Office has contravened subsection 237(1) of the RAO Schedule by failing to lodge a statement showing the relevant particulars in relation to the following donations made by the organisation during the financial year ended 30 June 2007 with the AIR or with FWA:
- a donation of \$5,000 to Central Coast Convoy for Kids on 12 September 2006; and
 - a donation of goods purchased from Golden Years Collectables to the value of \$2,050 in November 2006.

Chapter 10 - Contraventions by Ms Jackson

Ms Jackson's failure to produce a GPFR and an operating report for the 2007 financial year as soon as practicable

Finding 172 - Ms Jackson failed to produce a GPFR and an operating report for the 2007 financial year as soon as practicable

- 172.** Ms Jackson failed to exercise her powers and discharge her duties as National Secretary with the degree of care and diligence that a reasonable person would exercise if they were National Secretary in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to the lodgement of the operating report and general purpose financial report for the National Office for the year ending 30 June 2007 in that a reasonable person who was occupying the position of National Secretary between August 2010 and April 2011 would have taken steps to prepare an operating report and a committee of management statement, to have had the general purpose financial report audited and to have lodged financial documents with FWA.

Chapter 11 - Contraventions by Mr Williamson

Employment of Ms Stevens without National Executive approval

Finding 173 - Employment of Ms Stevens without National Executive approval

- 173.** Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in relation to the employment of Ms Criselee Stevens by the National Office in that he failed to take any steps to raise with National Executive the fact that Ms Stevens had been employed by the National Office without any authorisation by National Council or National Executive, when, to his knowledge:
- Mr Thomson had employed Ms Stevens on behalf of the National Office;
 - Ms Stevens was working in the electorate of Dobell;
 - he was otherwise unaware what, if any, role Ms Stevens had on behalf of the National Office; and
 - he knew, or ought to have known, that Ms Stevens' employment had not been authorised by (or even reported to) either National Executive or National Conference.

Authorisation of establishment of credit card accounts for staff of the National Office

Finding 174 - Authorisation of establishment of credit card accounts for staff of the National Office

- 174** Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in that he failed to ensure that Mr Thomson acted within the limits of his powers under the Rules by obtaining the authorisation of National Council or National Executive for establishment of credit card accounts and the issuance of credit cards to staff of the National Office.

Authorisation of expenditure incurred by Mr Thomson and National Office staff on their credit cards

Findings 175 and 176 - Authorisation of expenditure incurred by Mr Thomson and staff members of the National Office on their credit cards

- 175.** Mr Williamson failed to discharge his obligation under Rule 30 to see that the Rules are rigidly adhered to in that he failed to ensure that Mr Thomson carried out his obligations under Sub-rule 32(j) to be responsible for the monies of the HSU and he failed to ensure that Mr Thomson prepared and obtained the approval of National Council or National Executive of financial governance policies and procedures in relation to credit cards.

- 176.** Mr Williamson failed to discharge his duties as National President with the degree of care and diligence that a reasonable person would exercise if they were National President in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to preparation and approval of financial governance policies and procedures in relation to credit cards in that:
- he failed to take steps to ensure that Mr Thomson carried out his obligations under Sub-rule 32(j) to be responsible for the monies of the HSU and he failed to ensure that Mr Thomson prepared and obtained the approval of National Council or National Executive of financial governance policies and procedures in relation to credit cards
 - as National President he was obliged by Rule 30 to see that the Rules are rigidly adhered to.

Payment to the Julie Williamson Fundraising Appeal by the National Office

Finding 177 - Payment to the Julie Williamson Fundraising Appeal by the National Office

- 177.** Mr Williamson failed to discharge his duties as National President with the degree of care and diligence that a reasonable person would exercise if they were National President in the circumstances of the National Office as required by subsection 285(1) of the RAO Schedule, in relation to the payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 to purchase a table to raise funds for multiple sclerosis in that:
- the National Office made a payment of \$2,400 to the Julie Williamson Fundraising Appeal on 8 August 2006 to purchase a table to raise funds for multiple sclerosis;
 - he was aware of this payment;
 - the payment was made to a charity which was connected to his wife;
 - he took no steps to ensure that this payment was approved by National Executive;
 - he did not formally disclose to National Executive that the recipient of the payment was a charity connected to his own wife;
 - he did not ensure that the fact that the recipient of this payment was a charity connected to his wife was recorded in the minutes of National Executive.

Chapter 12 - Contraventions by Mr Iaan Dick, auditor of the National Office

False or misleading statements

Finding 178 - Mr Dick made false or misleading statements by signing auditors reports in 2004, 2005, 2006 and 2007

- 178.** Mr Dick contravened subsection 257(10) of the RAO Schedule in that, by signing auditor's reports for each of the years ended 30 June 2004, 30 June 2005, 30 June 2006 and 30 June 2007 in which he gave the opinion that:
- (a) The organisation kept satisfactory accounting records detailing the sources and nature of the income of the organisation and the nature and purposes of expenditure; and
 - (b) The accompanying accounts and statements were properly drawn up so as to fairly present:
 - The state of affairs of the organisation as at the end of financial year; and
 - The income and expenditure, and any surplus, for the financial year;
 - (c) The accounts have been prepared in accordance with applicable Australian Accounting Standards.

he made statements that he knew were false or misleading, or he was reckless as to whether such statements were false or misleading

Failing to date Auditor's reports

Findings 179 to 181 - Failing to date audit reports in accordance with requirements of the RAO Schedule

- 179.** Mr Dick failed to date his auditor's report for the year ended 30 June 2004 thereby contravening:
- the requirement in subsection 257(9) of the RAO Schedule that "The auditor's report must be dated as at the date that the auditor signs the report"; and
 - the requirement in subsection 257(8) of the RAO Schedule, which requires the form and content of the auditor's report to be in accordance with Australian Auditing Standards. Paragraph 35 of the Australian Auditing Standard AUS 702 requires an auditor to date his audit report 'as of the date the auditor signs that report'.
- 180.** Mr Dick signed his auditor's report on 29 August 2005 for the financial year ending on 30 June 2005, seven days before Mr Thomson signed the committee of management statement stating that it had passed the resolutions required by paragraph 25 of the second Reporting Guidelines thereby contravening the requirement in subsection 257(8) of the RAO Schedule that the form and content of the auditor's report must be in accordance with the Australian Auditing Standards, by failing to meet the requirements of paragraphs 35 of AUS 702.

- 181.** Mr Dick failed to date his auditor's report for the year ended 30 June 2007 thereby contravening:
- the requirement in subsection 257(9) of the RAO Schedule that "The auditor's report must be dated as at the date that the auditor signs the report"; and
 - the requirement in subsection 257(8) of the RAO Schedule which requires the form and content of the auditor's report to be in accordance with Australian Auditing Standards. Paragraph 35 of Australian Auditing Standard AUS 702 *The Audit Report on a GPFR* requires an auditor to date his audit report 'as of the date the auditor signs that report'.

Chapter 21 - Observations by the Delegate to the General Manager

Observations to the General Manager

1. Even though the power to act under subsection 336(2) of the RO Act resides with the General Manager (and not the Delegate), I am mindful that, having conducted the Investigation, I have intimate knowledge of circumstances surrounding the contraventions that are outlined in this report. Given this knowledge, I make a number of observations which you may wish to consider in relation to taking any action under subsection 336(2) of the RO Act.

Notice to the reporting unit requiring rectification

2. Paragraph 336(2)(a) of the RO Act allows the General Manager to issue a notice to the reporting unit requesting that the reporting unit take specified action, within a specified period, to rectify contraventions that have occurred. With the lodgement in August 2011 of the financial reports for the National Office for the years ending 30 June 2007, 2008, and 2009, the only specific action which is required to rectify the contraventions by the National Office that have occurred relates to the failure to lodge a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year ended 30 June 2007 - such a statement is required to be lodged.

Contravention of civil penalty provisions

3. Paragraph 336(2)(b) of the RO Act allows the General Manager to apply to the Federal Court of Australia for an order under Part 2 of Chapter 10 regarding contravention of civil penalty provisions.
4. I have found a total of 181 contraventions of the Rules and various provisions of the RAO Schedule, many of which are civil penalty provisions by the reporting unit, two current officials, one former official and the former auditor. In terms of civil penalty provisions alone, I have found a total of 105 contraventions of civil penalty provisions.
5. Given the large number of civil penalty contraventions, questions of the public interest in prosecuting the contraventions will arise. Determining the public interest is a matter for your consideration as General Manager. However, I make a number of observations about matters which may be relevant to your assessment of the public interest.

Observations regarding the (former) National Secretary - Mr Craig Thomson

6. I have found 156 contraventions of the Rules and various provisions of the RAO Schedule by the former National Secretary – Mr Craig Thomson. Ninety eight of these contraventions are civil penalty provisions.
7. When Mr Thomson became National Secretary on 16 August 2002, the HSU had a total of 11 branches and 61,279 members.³⁰⁴ At the time of his resignation,

³⁰⁴ See paragraph 10 of chapter 1.

- membership had increased to 76,387³⁰⁵ - an increase which Mr Thomson says was because of the improved profile of the HSU. For the first time, HSU awards were used in national wage case decisions and the HSU became active members in the aged care alliance and participated in Senate inquiries.³⁰⁶
8. During his term of office, Mr Thomson established the finance committee in an endeavour to improve the financial governance of the HSU.³⁰⁷ Recognising the HSU was in effect a ‘federation’, Mr Thomson took steps to increase the role of the National Council/Conference by increasing the number of delegates as well as increasing the frequency of meetings of National Council/Conference to annual meetings.³⁰⁸
 9. When Mr Thomson became National Secretary in 2002, the HSU National Office finances were described as being ‘woeful’³⁰⁹ and ‘not in good shape’.³¹⁰ Branches owed \$277,597 in unpaid capitation and affiliation fees. The Victoria No.1 Branch had an outstanding loan from the National Office of \$430,751 and the HSU did not pay any affiliation fees to the ACTU in that year. Income in that year totalled 688,380 with the result that the National Office made an operating loss for the year ended 30 June 2002 of \$54,982.³¹¹
 10. The financial position of the National Office improved between 2002 and 2006 with total income rising threefold to just over \$2 million for the financial year ending in June 2006.³¹² Liabilities to trade creditors had fallen from \$503,182 to \$383,281,³¹³ the liability to the ACTU for arrears in affiliation fees had been reduced to \$56,466.17³¹⁴ and the loan to the Victoria No 1 Branch had fallen to \$98,601.³¹⁵
 11. This improvement occurred despite marked increases in expenditure in some categories. The salary of the National Secretary increased by only \$30,000 but total salaries paid to other National Office staff rose from \$98,982 to \$353,258.³¹⁶ There were similarly large increases in amounts spent on printing, stationery and postal and on travelling and accommodation over the same period.³¹⁷ The HSU also paid substantial sums to the ACTU Industrial Campaign Fund.³¹⁸
 12. Between 2006 and late 2007, however, the financial position of the National Office declined until it had reached a point in March 2008 where National Executive, in a situation reminiscent of 2002, was once again threatened with legal action by unpaid creditors.³¹⁹ The total amount owed to unpaid creditors as at 17 March 2008 was

³⁰⁵ See paragraph 11 of chapter 1.

³⁰⁶ See Mr Thomson’s submissions at paragraph 4 of chapter 3.

³⁰⁷ See Mr Thomson’s submission at paragraph 4.b in chapter 3.

³⁰⁸ From 30 March 2006 Sub-rule 22(a) was altered to require that National Council to meet ‘annually in the month of September, October or November’ - previously it had met only every two years.

³⁰⁹ Thomson PN 227.

³¹⁰ Kelly PN 120.

³¹¹ See paragraph 14 of chapter 8.

³¹² See the table at paragraph 67 of chapter 8.

³¹³ See paragraph 71 of chapter 8.

³¹⁴ See paragraphs 73 to 77 of chapter 8.

³¹⁵ See paragraph 70 of chapter 8.

³¹⁶ See paragraph 80 of chapter 8.

³¹⁷ See paragraph 79 of chapter 8.

³¹⁸ See paragraphs 108 to 111 of chapter 8.

³¹⁹ See paragraph 183 of chapter 8

- \$656,638.62 and the financial report for the year ended 30 June 2008 indicates that the National office had a liability to unpaid trade creditors of \$1,009,019.³²⁰
13. During the final year of Mr Thomson's office (2007), the National Office was paying some liabilities regularly as and when they fell due, others were paid off in full by the time of Mr Thomson's resignation while others were paid only in part or not at all.³²¹
 14. The evidence suggests that the juggling of payments of liabilities was so that Mr Thomson was able to use the funds of the National Office to meet expenditure on his own election campaign in preference to discharging other financial liabilities of the National Office.³²²
 15. Despite the inability of the National Office to meet its liabilities, Mr Thomson did not draw the deteriorating state of the finances of the National Office to the attention of National Council or National Executive or seek their intervention or guidance.
 16. There is no doubt that, on taking office on 16 August 2002, Mr Thomson sought to improve the deficiencies of the National Office that he and others saw. Mr Thomson saw a need for the Union to function as a national organisation and, despite the HSU being a federation of State based unions who controlled the vast majority of finances, he introduced an increased level of financial governance to the National Office.
 17. But it was not enough that improvements in the financial governance of the National Office seemingly ended with the establishment of a finance committee.
 18. Mr Thomson himself says the HSU has a history of factional rivalry with a number of officials who did not support him as National Secretary. Perhaps for this reason alone, Mr Thomson needed to do more and should have instituted financial governance policies in the areas of travel, dining and entertainment.
 19. Perhaps if Mr Thomson was the owner of a private sector firm with a turnover of \$2 million per annum who was expending his own funds, none of the expenditure on accommodation, dining or entertainment would be seen to be excessive.
 20. But Mr Thomson was National Secretary of a union whose members are recognised as generally lower paid employees in the health sector.
 21. By the end of 2005, having spent three years in Melbourne, Mr Thomson moved back to NSW.
 22. By this time, the Howard Government's Work Choices legislation had been passed by Parliament and would commence on 26 March 2006. A federal election was due some time in 2007 and there was no doubt the legislation would be the key to the outcome of that election.
 23. While recognising that the NSW Branch of the HSU is the largest of the branches, the evidence suggests that it is at least possible that Mr Thomson's move back to NSW at this time was motivated by his desire to win pre-selection for the seat of Dobell on the NSW Central Coast.³²³

³²⁰ See paragraphs 178 to 184 of chapter 8.

³²¹ See paragraphs 158 to 177 of chapter 8.

³²² See paragraphs 158 to 177 of chapter 8.

³²³ See paragraphs 646 to 649 of chapter 5.

24. With the ACTU Work Choices campaign in full swing, it was inevitable that a person seeking pre-selection and then election to Parliament as a member of the Australian Labor Party would engage in a campaign which bore a strong resemblance to that of the ACTU campaign. Given the desire of the HSU to elect a Labor Government, perhaps as Ms Jackson said at interview, "I know that if he had come to us wanting approval for X, Y and Z in relation to the Dobell campaign or the Rights at Work campaign he would have got approval".³²⁴ Instead, Mr Thomson expended over \$250,000 of National Office funds without authorisation.³²⁵

Observations regarding the National Office

25. I have found fifteen contraventions of Rules and various provisions of the RAO Schedule by the National Office of the HSU. Three of these contraventions are civil penalty provisions.
26. It is trite to say that the National Office (while a reporting entity in its own right) could only meet its obligations through the actions of its officials. In relation to many of its contraventions, the National Office has not advanced any submissions regarding the matters that are the subject of the findings but has done so without making any concessions. In the case of one of the civil penalty contraventions, the National Office adopted this approach although in the case of the remaining two, it denies the contravention.
27. Presumably, it has adopted this approach on the basis that the obligations required to be met were the responsibility of the National Secretary. It is fair to say that many of the contraventions by the National Office involve acts or omissions which are also elements of separate contraventions by the National Secretary.
28. However, the officials of the National Office comprise more than the National Secretary. During the course of my Investigation, I interviewed a number of the officials of the National Office. I am conscious that the HSU has, in effect, the characteristics of a federation in which the Unions' affairs and finances are predominantly undertaken at the Branch level. Nevertheless, the National Council and National Executive have the power to conduct and manage the affairs of the Union.
29. As collective bodies, I do not consider the National Council and National Executive undertook their obligations as rigorously as they ought to have done. In the case of the National Council, it is not clear that any properly constituted meetings of National Council took place in 2004, 2006 and 2007. In the case of the National Executive, no meeting of the National Executive took place between the meetings which were held on 28 and 29 March 2007 and 6 December 2007.
30. Furthermore, I take particular note of Ms Jackson's response to my allegation that she had failed to attend in person at four National Executive meetings (which I have subsequently not found constituted a contravention), that:
- (2) The Rules of the Health Services Union provide for autonomous branches ... The National Executive is a relatively weak body that, generally speaking, does not have the authority to interfere in the decision-making within the branches...

³²⁴ Jackson (1) PN 176

³²⁵ This figure is determined by aggregating figures set out in paragraphs 57, 58 and 59 below of this chapter.

(3) The National Executive was responsible for the expenditure of very little of the members' money.³²⁶

Ms Jackson goes on to say:

If National Executive meetings were truly a venue where matters were proposed for the first time and debated then I would certainly regard it (sic) part of my duty of due care and diligence to ensure a high level of attendance at National Executive meetings. But, in reality, that is not what occurred...³²⁷

31. I have remarked that this comes close to a statement that National Executive meetings were unimportant.
32. In terms of the National Executive reviewing the finances of the National Office, the minutes of National Executive meetings typically disclosed little, if indeed any, specific consideration of the finances. Any consideration was seemingly limited to information of a broad and general nature which was difficult to interpret or make any judgements.
33. The failure to hold meetings of both the National Council and National Executive together with the lack of any meaningful review of the finances of the National Office suggests that National Executive meetings were indeed treated as unimportant.

Observations regarding the (current) National Secretary - Ms Kathy Jackson

34. I have found one contravention of the RAO Schedule by the National Secretary, Ms Kathy Jackson - the contravention is of a civil penalty provision.
35. In Ms Jackson's submission which was provided to me on 3 February 2102, responding to my letter dated 14 December 2011 which set out proposed findings of contraventions by her, Ms Jackson made a number of introductory comments. Some of these comments are dealt with in the body of this report. It is appropriate at this time that I deal with some of the remaining comments.
36. I do acknowledge that Ms Jackson has generally assisted and co-operated with the conduct of my Investigation.
37. I am not able to comment on whether "since the end of 2007", Ms Jackson has been engaged "virtually on my own as a sole whistle blower and without the assistance of any other Union officer" or whether she has "been threatened and intimidated by persons in powerful positions attempting to coerce me to give up my efforts".³²⁸
38. Ms Jackson goes on to comment that "it is my belief that Fair Work Australia has targeted me unfairly."³²⁹ Ms Jackson continued:

There has been public criticism of Fair Work Australia's conduct of the investigation into Mr Thomson's conduct. It has been alleged that there has been political interference in that investigation to prevent or delay the exposure of Mr Thomson's conduct to public scrutiny. Whether it is intended or not, any proceedings against me in the circumstances of this case will be seen as an attempt to coerce me from further acting in the interests of the Union and its members to have Mr Thomson's conduct subjected to public scrutiny.

³²⁶ FWA.022.0489 at 0506.

³²⁷ FWA.022.0489 at 0507.

³²⁸ FWA.022.0489 - see paragraph 4.

³²⁹ FWA.022.0489 at 0490 - see paragraph 5.

Any such proceedings in the circumstances of this case will be seen as a warning to other possible whistle blowers seeking the public scrutiny of unlawful conduct contrary to the interests of those who hold powerful positions.³³⁰

39. I reject as baseless Ms Jackson's belief that I have targeted her unfairly. I also reject as baseless the allegation that there has been political interference in the Investigation to prevent or delay the exposure of Mr Thomson's conduct to public scrutiny.
40. It is not for me to determine whether any proceedings against Ms Jackson will be seen as an attempt to coerce her from further acting in the interests of the Union and its members to have Mr Thomson's conduct subjected to public scrutiny. Nor is it for me to determine whether any proceedings against Ms Jackson will be seen as a warning to other possible whistle blowers seeking the public scrutiny of unlawful conduct contrary to the interests of those who hold powerful positions.
41. I acknowledge that since her appointment as National Secretary, Ms Jackson has had many commitments which have required her attention and which have affected "the nature and discharge of any duties" that subsection 285(1) of the RAO Schedule imposed upon her³³¹ but I remain of the view that Ms Jackson has contravened subsection 285(1) of the RAO Schedule (albeit only in respect of part of the conduct which I initially proposed amounted to a failure to comply with subsection 285(1)).

Observations regarding the National President

42. I have found five contraventions of various provisions of the RAO Schedule by the National President. Two of those contraventions are civil penalty provisions.
43. In the letter from Mr Williamson's solicitors dated 3 February 2012, Mr Williamson rightly makes much of the role and responsibilities of the National President. In his submission, Mr Williamson notes that:

The position of National President is an honorary position.

As National President, Mr Williamson has no involvement in the day to day administration of the National Office of the HSU. That is the responsibility of the full time officers such as the National Secretary and National Assistant Secretaries.

Mr Williamson was rarely present in the National Office and played no role in its functioning. Apart from presiding at meetings of National Council and National Executive, Mr Williamson signed the minutes of those meetings. He was not privy to the day to day financial transactions of the union and was not a member of the Finance Committee.³³²

44. However, Mr Williamson received an honorarium of between \$10,000 and \$20,000 per annum except for the year ended 30 June 2007.³³³ When asked in interview to explain why he was paid an honorarium, he replied:

That reflects the work that I do for chairing the meetings of the National Executive and the National Council and it is when I also attend some other branches' activities. In the old days I attended number 1 and number 3 branch activities as the National President

³³⁰ FWA.022.0489 at 0491 to 0492 - see paragraph 13.

³³¹ FWA.022.0489 at 0490 - see paragraph 8.

³³² FWA.022.0556 at 0557

³³³ See paragraph 80 of chapter 8.

and I have attended meetings in Queensland in terms of that branch as well, and in Western Australia as well. So it's a range of - brings in all - scopes in all that.³³⁴

45. I am prepared to accept that Mr Williamson did undertake some work in other Branches' activities but apart (in his own submission) from presiding at meetings of National Council and National Executive and signing the minutes of those meetings, Mr Williamson saw no role for himself and therefore failed in ensuring the Rules were rigidly adhered to.

Observations regarding the National Auditor

46. I have found four contraventions of various provisions of the RAO Schedule by the National Auditor, Mr Iain Dick. One of these four contraventions is a civil penalty provision.
47. In the conduct of his audits, Mr Dick did no more than aggregate and reconcile figures. In effect, Mr Dick did little that could be considered to be an 'audit' of the National Office. Rather, Mr Dick ensured that the numbers that were taken from MYOB and placed by the financial controller into a financial report each year added up.
48. I am conscious that Mr Dick's total audit fees for each year were only \$2,500. Mr Dick has stated that he would spend four or five hours with the bookkeeper fixing up incorrect allocations and doing reconciliations. In addition, Mr Dick took the MYOB data away to go through it at his leisure and perform all 'the normal checks that an accountant does when he gets a set of financial statements prepared by bookkeepers', such as checking BAS statements and fringe benefits tax returns. By the time he had undertaken these preliminary tasks, I acknowledge it is hard to imagine that Mr Dick's stipend would have allowed him more time in which to conduct a thorough audit.
49. Despite the inadequate fee, Mr Dick had a professional obligation to conduct a proper audit. Whether many of the practices the subject of this Investigation has canvassed would have occurred if Mr Dick conducted a proper audit is a moot point. His failure to do so has led to a contravention by him of subsection 257(10) of the RAO Schedule.

Referral to the Director of Public Prosecutions

50. My Investigation has canvassed a significant number of wide ranging issues. I understand that it is not part of the powers and functions of the General Manager under Part 4 of Chapter 11 of the RO Act to examine whether any body or person has committed a criminal offence. However, subparagraph 336(2)(c) of the RO Act permits you to refer a matter arising out of my Investigation to the Commonwealth Director of Public Prosecutions. Given the breadth of the Investigation, and the obvious significance of many of the matters discussed in my report, I recommend that my entire report be provided to the Commonwealth Director of Public Prosecutions for his consideration. Some examples which are illustrative of the breadth of issues which the DPP may wish to consider are noted below.

³³⁴ Williamson PN 23

The use of Mr Thomson's credit cards to procure escort services.

51. Allegations that Mr Thomson used credit cards to procure escort services have received ongoing publicity in the media since at least April 2009. At interview, Mr Thomson specifically denied to me that he had ever used his HSU credit cards to procure escort services and told me that his credit cards were, or could have been, used by another officer (identified by Mr Thomson as being Mr Jackson) of the HSU to procure escort services without his knowledge or approval.³³⁵
52. I am aware of three occasions in which Mr Thomson appears to have given a credit card of his to someone else³³⁶ (none of these occasions relate to escort services although, as a matter of interest, Mr Thomson denies giving his credit card to anyone on these three occasions). Therefore, while implausible, it was conceivable that someone other than Mr Thomson used his credit card to procure these escort services.
53. However, after the settlement of the defamation action brought by Mr Thomson against Fairfax, on 6 June 2011, I was provided by Fairfax with a range of new evidence which was relevant to these allegations. This evidence was not previously available to me given the terms of section 335 of the RO Act and is discussed in chapter 6 of this report. When this evidence is added to the evidence which had already been obtained by FWA, the preponderance of evidence is such that I can only conclude that it was indeed Mr Thomson who used his credit card to spend the amount of \$5,793 for the procurement of escort services.³³⁷
54. Mr Thomson has, himself, acknowledged that such expenditure could not in any circumstances be considered legitimate expenditure of the HSU. Consequently, I have found that Mr Thomson has expended HSU funds for the procurement of escort services for no legitimate HSU purposes.
55. I also consider that, by denying to me at interview that he ever used his HSU credit cards to procure escort services, Mr Thomson has provided me with information that is false or misleading insofar as the expenditure of HSU funds on escort services is concerned.

Dobell Campaign

56. From the end of 2005, Mr Thomson actively set out to gain pre-selection for the seat of Dobell on the NSW Central Coast. Having been pre-selected, Mr Thomson campaigned for the seat at the 2007 federal election campaign and was successful.
57. I have found that a cumulative total of \$154,713.96 in HSU funds³³⁸ was incurred in connection with or arising out of the employment of Ms Stevens who was engaged in activities closely connected to, if not entirely directed towards, building Mr Thomson's profile within the electorate of Dobell, and later towards campaigning for his election as the member for Dobell.
58. I have found that a cumulative total of \$41,707.46 in HSU funds³³⁹ was also incurred in connection with or arising out of the employment of Mr Burke who was engaged in

³³⁵ See paragraphs 9 to 33 of chapter 6.

³³⁶ See paragraphs 424 to 446 of chapter 5.

³³⁷ See paragraph 176.a of chapter 6.

³³⁸ See paragraph 347 of chapter 7.

³³⁹ See paragraph 511 of chapter 7.

activities closely connected to, if not entirely directed towards, building Mr Thomson's profile within the electorate of Dobell, and later towards campaigning for his election as the member for Dobell.

59. I have also found that a total of \$71,300.23 was directly expended on Mr Thomson's election campaign.³⁴⁰
60. Mr Thomson, who authorised this expenditure, says that all of the expenditure was for legitimate HSU purposes.
61. I have found this was not expenditure on the general administration of the Union or for a purpose reasonably incidental thereto and that National Executive or National Council did not otherwise authorise this expenditure.

Cash withdrawals by Mr Thomson

62. Mr Thomson made cash withdrawals on his CBA Mastercard totalling \$103,338.70 in the period from 2002 to 2007.³⁴¹
63. Mr Thomson says that these withdrawals were for legitimate HSU purposes, were administratively convenient and were authorised in the same way as for credit card purchases.³⁴²
64. In stating that the same procedures applied to the processing of cash withdrawals as that of credit card expenditure, Mr Thomson says that for the purposes of reconciliation (of financial records), he would give back his receipts and vouchers to Ms Ord (the financial controller). Mr Thomson also specifically said to me in interview that as part of the complete reconciliation, he would return cash with the vouchers and receipts and that this occurred on most occasions. On being specifically being told of Mr Thomson's statement to me of returning cash as part of the complete reconciliation, Ms Ord could not recall any occasion in which cash was returned.³⁴³
65. On the (albeit) limited records available, I have found that not each and every cash withdrawal was for expenditure on the general administration of the Union or for a purpose reasonably incidental thereto and that National Executive or National Council did not otherwise authorise this expenditure.³⁴⁴
66. I also consider that, by stating to me at interview that he would return cash with vouchers and receipts as part of the complete reconciliation of cash withdrawals, Mr Thomson has provided me with information that is false or misleading.

Dining and Entertainment expenditure

67. Mr Thomson incurred a total of \$73,849.88 on credit cards for dining or entertainment in the period 2002 to 2007.³⁴⁵
68. Mr Thomson says this expenditure was for legitimate HSU purposes.³⁴⁶

³⁴⁰ See paragraph 197 of chapter 7.

³⁴¹ See paragraph 172 of chapter 5.

³⁴² See paragraphs 312 to 314 of chapter 5.

³⁴³ See paragraphs 288 to 311 of chapter 5.

³⁴⁴ See paragraphs 315 to 328 of chapter 5.

³⁴⁵ See paragraph 610 of chapter 6.

³⁴⁶ See paragraphs 625 and 649 of chapter 6.

69. On an examination of the records, I have found that not each and every item of dining or entertainment expenditure was expenditure on the general administration of the Union or for a purpose reasonably incidental thereto and that National Executive or National Council did not otherwise authorise this expenditure.³⁴⁷

Expenditure of monies after Mr Thomson's resignation date.

70. In chapter 5 I have found it is probable that Mr Thomson spent a total of \$1,425.62 of National Office funds for his own personal benefit after his resignation date as National Secretary of the HSU.³⁴⁸ There does not appear to have been any legitimate reason for Mr Thomson to have charged the amounts to his Diners Club card after the resignation date. Moreover, because these amounts each appear to have been spent by Mr Thomson after he ceased to be an officer of the HSU, there does not appear to be any provision of the Rules, or of the RAO Schedule, which would relate to the expenditure.

Terry Nassios
Director, Organisations, Research and Advice
Delegate of the General Manager
Fair Work Australia

28 March 2012

³⁴⁷ See paragraphs 650 to 655 of chapter 6.

³⁴⁸ See paragraphs 370 to 372 of chapter 5.