

20 April 2012

Partner

Ian Robertson

Mr Tim Watling
Secretary
Senate Committee on Education, Employment
and Workplace Relations Legislation
PO Box 6100 Parliament House
CANBERRA ACT 2600

Our Ref

ILR:12660002

By e-mail: eewr.sen@aph.gov.au

Private & Confidential

Dear Mr Watling

Fair Work Australia Report concerning the National Office of the Health Services Union

We act on behalf of Mr Craig Thomson MP.

We have been informed by the General Manager of Fair Work Australia that Fair Work Australia intends to provide a copy of Fair Work Australia's report on its investigation into the National Office of the Health Services Union (**Report**) to the Senate Committee on Education, Employment and Workplace Relations Legislation. We have also been advised by the General Manager that she wrote to the Committee on 5 April 2012 to inform them of that intention.

As you will be aware, a copy of the Report has also been provided by Fair Work Australia to the Commonwealth Director of Public Prosecutions. In addition, as we understand it, it is likely that the subject matter of the Report will result in civil penalty proceedings being brought by Fair Work Australia against a number of individuals, including our client, in the Federal Court of Australia.

In these circumstances we respectfully request that the Committee carefully consider the operation of the sub judice convention of the Australian Parliament. In particular, the public release of the Report by the Committee and any debate or discussion of its contents by the Committee is likely to involve a substantial danger of prejudice to proceedings, both criminal and civil, against the persons who are alleged by Fair Work Australia to have behaved in an unlawful manner. In this regard, it is relevant to note that the Report has no legal status and any allegations in it are no more than assertions which are yet to be tested by admissible evidence in any court or tribunal.

As you will be aware, the sub judice convention applies to both the Senate and its Committees. It is also relevant to note that the Senate has previously prevented disclosure of documents under the sub judice convention. For example, on 12 February 1991 President Sibraa refused the disclosure of documents in proceedings of the Senate because of a real and present danger to legal proceedings.

Although proceedings have not yet been commenced in respect of the matters in the Report, it is clear that their commencement is imminent and release of the report and discussion or debate of its contents is likely to prejudice those proceedings, in particular because of the likely impact on witnesses and jurors.

If you require any additional information or wish to discuss this matter please contact Ian Robertson of this firm.

Yours sincerely

HOLDING REDLICH