

FWA report on the HSU and AEC analysis

Introduction

- 2.1 Chapter 7 of the *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* (FWA report) examines expenditure of Health Services Union (HSU) National Office funds for the purpose of assisting Mr Thomson's election to Federal Parliament for the seat of Dobell.
- 2.2 On 16 May 2012 the Australian Electoral Commission (AEC), in response to the request of the Special Minister of State, provided the *Reporting obligations under the Commonwealth Electoral Act 1918 and the Report of the Delegate to the General Manager of Fair Work Australia* (AEC analysis). In its analysis of the FWA report, the AEC considered whether 'there have been any failures to comply with the provisions of the *Commonwealth Electoral Act 1918* (Electoral Act)'.¹
- 2.3 The fundamental question, for the FWA, was the issue of expenditure of HSU National Office funds and whether or not it was authorised by the HSU National Executive (see Chapter 7 of the FWA report). The FWA delegate concluded that the National Executive did authorise a national campaign against the proposed Work Choices legislation. However, there

¹ Letter from the Electoral Commissioner, Mr Ed Killesteyn, to the Special Minister of State, the Hon Gary Gray AO MP, dated 16 May 2012.

was no resolution authorising funding for the ALP federal election campaign or for Mr Thomson's campaign in the seat of Dobell.²

2.4 The FWA report acknowledged that it was not commenting on Electoral Act disclosure requirements :

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.³

2.5 In evidence to the committee the FWA Delegate confirmed that the focus of his investigation was on the HSU's observance of the rules for registered organisations:

My investigation dealt with the Fair Work (Registered Organisations) Act. That act, in dealing with the expenditure by Mr Thomson, largely revolved around whether that expenditure was authorised in accordance with the rules. That was the essence of my investigation, not whether it did or did not comply with any aspect of the Electoral Act.⁴

2.6 The AEC examined the FWA report against the overlay of the reporting and disclosure obligations contained in the Electoral Act. The FWA report concluded that Mr Thomson expended \$71 300.23 of HSU funds on the Dobell election campaign. In its analysis, the AEC advised that it would seek further information about four items of expenditure which total \$17 014.88.⁵

2.7 The AEC subsequently produced an addendum to its analysis, which addressed these four items of expenditure.⁶ The details will be discussed in the following section on the Dobell campaign.

2 Fair Work Australia, *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*, 28 March 2012, p. 631.

3 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 653.

4 Mr Terry Nassios, FWA, *Committee Hansard*, 22 August 2012, Canberra, p. 3.

5 Australian Electoral Commission, *Reporting obligations under the Commonwealth Electoral Act 1918 and the Report of the Delegate to the General Manager of Fair Work Australia*, p. 15.

6 AEC analysis of the FWA report, Annex 3, pp. 62-65.

Scope of the AEC analysis

- 2.8 The AEC analysis raised a number of points important for understanding their consideration of the issues in the FWA report. Firstly, that the AEC document 'does not purport to address matters relating to the conduct of Mr Thomson and others mentioned in the FWA report against relevant industrial laws administered by FWA'.⁷
- 2.9 Secondly, the AEC explained that whether or not 'a payment was authorised under the HSU National Office or under the requirements of the *Fair Work (Registered Organisations) Act 2009* is not of itself relevant to the operation or interoperation of the Electoral Act'.⁸
- 2.10 Thirdly, the Electoral Act defines specific categories and periods of 'electoral expenditure'. The AEC stated that the Electoral Act is not concerned with the 'motives for the expenditure, such as raising a prospective candidate's profile'.⁹
- 2.11 A final key point is that disclosure obligations under the Electoral Act do 'not apply to the pre-selection of new candidates or expenditure that they have incurred before they are actually endorsed by a registered political party'.¹⁰ The AEC noted:
- The schema in the Electoral Act does not recognise that the expenditure of funds to raise the profile of a person in an electorate prior to that person actually being endorsed by a registered political party could be categorised as being for the benefit of the registered political party that subsequently endorsed the person as their candidate.¹¹
- 2.12 In evidence to the committee, the AEC set out the parameters of its analysis of the FWA report:
- The AEC analysis of the Fair Work Australia report was released as quickly as possible due to the continued public interest involved and to give time for members of parliament to digest the complex analysis of the application of the requirements of the Electoral Act to the information contained in the Fair Work Australia report. Indeed, work on the AEC analysis commenced on the evening that the Senate publicly released the Fair Work

7 AEC analysis of the FWA report, p. 1.

8 AEC analysis of the FWA report, p. 2.

9 AEC analysis of the FWA report, p. 16.

10 AEC analysis of the FWA report, p. 3.

11 AEC analysis of the FWA report, p. 3.

Australia report, prior to my receipt of the request from the Special Minister of State contained in his letter to me of 8 May 2012.

What the AEC analysis attempted to do was to examine each item of expenditure described in the Fair Work Australia report as assisting Mr Thomson in his election bid during the 2007 election and to make an assessment on, firstly, whether that item of expenditure was disclosable under the Electoral Act; secondly, who had the disclosure obligation; and thirdly, whether that item of expenditure was actually disclosed in one of the political expenditure or donation returns lodged over the 2006-08 period. The AEC analysis points out that the AEC is not making comment on, nor can it be taken to have made comment on, the question of whether the payments and donations made were or were not properly authorised by the various entities in which Mr Thomson was involved over the period leading up to the 2007 election. That is not the role of the AEC. Nor does the AEC analysis carry any implications for the veracity or otherwise of the findings of the Fair Work Australia report in terms of the charter that Fair Work Australia has to carry out. All the payments identified in the Fair Work Australia report have been taken at face value and simply assessed against the provisions of the Electoral Act in terms of an obligation for disclosure.

Whether or not the payments were properly authorised under either the relevant union rules or under industrial laws is not material to the disclosure obligation arising under the Electoral Act.¹²

2.13 At the public hearing on 16 July 2012, the Delegate was asked to comment on the AEC analysis of the FWA report:

CHAIR: Have you looked at the Electoral Commission's report in relation to this matter we are looking at?

Mr Nassios: I looked at it briefly when I got your correspondence at the beginning of last week.

CHAIR: Are there any comments you want to make in relation to that? It really looks at different areas, I think.

Mr Nassios: The report of the Electoral Commission itself makes it fairly clear. I certainly did not look at my investigation in terms of

12 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 6 July 2012, Canberra, p. 1.

how it may impact on the Electoral Act. To that extent I can only agree with the views expressed in the Electoral Commission's report.¹³

- 2.14 As mentioned in Chapter 1, the FWA report released by the Senate committee did not include Annexures A to M. During the course of the inquiry, the committee heard that in conducting its analysis of the FWA report, the AEC had not received a copy of the *Report on suspected irregularities in the expenditure of the National Office of the Health Services Union 2002-2007*, contained in Annexure J of the FWA report.
- 2.15 At its public hearings the committee discussed whether the AEC's analysis may have been comprised by not being able to also take the contents of Annexure J into consideration. The AEC described its approach in undertaking the analysis:

Mr Killesteyn: We took each of the payments that were identified under the Fair Work Australia report. We applied them against the law and we made a view about whether they had been disclosed or not. That is what we did.

Mrs BRONWYN BISHOP: As you read the FWA report you would have read all the references to the report. If any report was referred to me that was lacking the annexures to that report, which are intrinsic to the value of the report, I would simply write back and say, 'I cannot do it until I receive that report.' But obviously near enough is good enough, is it?

Mr Killesteyn: I acknowledge that. But what we did, as I have said on many occasions, was to analyse the payments identified in the Fair Work Australia report because that is what the public interest was around in relation to whether those payments have been disclosed or not.

Mrs BRONWYN BISHOP: The minister said he asked you to do a review of the report. He did not say, 'Just look at these bits of it.' He asked you to do a proper analysis on whether there had been gaps in the act.

Mr Killesteyn: Indeed, and that is what we have done.¹⁴

13 Mr Terry Nassios, FWA, *Committee Hansard*, 16 July 2012, Canberra, p. 8.

14 *Committee Hansard*, 16 July 2012, Canberra, p. 16.

- 2.16 The AEC acknowledged that when undertaking its analysis there were instances where it did not have sufficient information to draw conclusions:

Mr Pirani: There was the other area where we raised the concern of the issue about the Dads in Education Father's Day donation. We raised an issue on that one that it was not clear what the arrangements were in relation to that donation –

CHAIR: That is page 42.

Mr Pirani: and whether that included a right to appear on television. Again, right at the end we say:

Further without any information concerning whether the payment of the sponsorship included any rights of publicity it is not clear whether this involved any disclosure obligation on the HSU National Office under section 314AEB ...

So there are some areas where we have looked at the Fair Work Australia report, we have applied the prism of the Commonwealth Electoral Act and there was still not sufficient information for us to be able to offer a firm conclusion.¹⁵

The committee subsequently wrote to the AEC asking it to review the BDO Kendalls report, Annexure J to the FWA report, and transcripts of interviews undertaken by the Delegate, and to advise the committee if this material impacts on the analysis. On 13 September 2012 the AEC indicated that these documents did not change the conclusions in its analysis or the content of the 17 possible measures. The AEC's response is available at Appendix F.

- 2.17 Annex 2 of the AEC's submission to the inquiry reproduces a statement provided to Senate Estimates on 23 May 2012, entitled Health Services Union and Craig Thomson – failure/late lodgement of returns under Part XX of the Commonwealth Electoral Act 1918. It outlines action taken by the AEC in dealing with this matter.
- 2.18 The AEC contended that it acted within the powers provided to it under the Electoral Act. For example, at the hearing on 16 July 2012 the committee discussed the matter:

Mrs BRONWYN BISHOP: You still have not addressed the question that is the most serious, so far as I am concerned, and that is the finding that large amounts of money which were

15 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 6 July 2012, Canberra, p. 32.

unauthorised payments by Mr Thomson during the reporting period, which have been either misappropriated, fraud or theft, are given a tick-off by you as having been disclosed by the HSU and therefore there is no problem. To me that is a gaping hole in the act. You still have not addressed the question of how that should be remedied. Giving you more powers is certainly not the answer, because you do not use the ones that you have got. ...

Mr Killesteyn: ... The difficulty I have with this question of whether the payments were authorised or unauthorised is that irrespective if the AEC concluded that there was a payment that was not authorised, we do not have any power to do anything about it. Our power is simply vested in the Electoral Act. At this point it is a finding of Fair Work Australia. The matter is going forward for civil proceedings. That is presumably going to be defended. At this point we have to take the payments as they have been made and make an assessment as to whether they have been disclosed. That is the limit of the act.

... section 318 of the act provides the scope for dealing with payments that an organisation believes are not authorised. The facility was there all the time for the HSU national office to make a statement to the Australian Electoral Commission that they could not provide a complete return because they had concerns about particular payments. That is a facility that already exists.¹⁶

- 2.19 The rest of this chapter examines the issues raised in Chapter 7 of the FWA report and overlays this with the AEC analysis of each matter.

The Dobell campaign

- 2.20 Mr Thomson was preselected as the ALP candidate for the Dobell electorate on 13 April 2007.¹⁷
- 2.21 While the National Executive passed a motion in support of a marginal seats campaign at its 7 December 2006 meeting, neither of the minutes of the two National Executive meetings held in 2007 record a 'direct specific

16 Mr Ed Killesteyn, Electoral Commissioner, AEC, *Committee Hansard*, 16 July 2012, Canberra, pp. 15-16.

17 AEC analysis of the FWA report, p. 8.

resolution' which authorised the expenditure of National Office funds in the electorate of Dobell.¹⁸

2.22 The FWA report outlines charges made to HSU credit cards which related to Mr Thomson's campaign for Dobell totalling \$71 300.23. These included:

- establishment of the campaign office at Long Jetty – \$4 826.99;
- payments to the Dobell Federal Election Committee (FEC) – \$3 500.00;
- campaign bus – \$1 277.96;
- payments to LBH Promotions (letterbox material related to the 'Your Rights at Work' campaign) – \$7 409.93;
- postage expenses – \$9 574.17;
- ALP advertising – \$12 511.40;
- radio advertising – \$18 731.00; and
- printing expenses – \$13 468.78.¹⁹

2.23 In the AEC analysis on the FWA report, the AEC stated that the HSU National Office disclosed the expenditure in relation to the postage, ALP advertising, radio advertising and printing expenses. However, the AEC indicated that it was seeking further information as to whether the NSW Branch of the ALP or HSU National Office had disclosed expenditure on the first four items, as listed above.

2.24 The ALP advised that it had not included these four payments in its disclosure returns, as it was 'not aware of the expenditure'. The AEC found that the HSU had only disclosed some components of these expenses.²⁰

Long Jetty campaign office

2.25 In relation to the establishment of the campaign office at Long Jetty, the AEC noted that the amount was under the disclosure threshold for the expenditure to have been particularised in either a donor return or an annual return. In its analysis, the AEC stated that it was 'currently seeking

18 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 633.

19 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, pp. 650-651.

20 AEC, *Submission 1, Annex 3*, pp. 62.

further advice about whether or not this expenditure has been included in the total amounts that have already been disclosed'.²¹

- 2.26 In the addendum to the AEC analysis, the AEC provided an update on the disclosure of expenses associated with the establishment and operations of the Long Jetty campaign office. Information from the HSU National Office indicated that expenses in relation to the Long Jetty campaign office were 'generally included in three returns lodged by Ms Kathy Jackson in October 2009'.²²
- 2.27 The purchases of workstations (\$1 587) and a printer (\$604.95) were disclosed by the HSU in the 2006-07 return. However, the cost of an air conditioner (\$1 053) was not identified as related to this office, and was not included due to an oversight.²³
- 2.28 Telephone and fax charges (\$860.64) were not disclosed in the 2007-08 return, as it was thought that some of these costs were incidental to Mr Thomson's duties as the HSU National Secretary. The total of \$4 826.99 also included \$721.40 of internet access costs, not mentioned in the AEC analysis addendum.
- 2.29 The ALP advised that the payments queried by the AEC in relation to the Long Jetty campaign office were not included in the ALP disclosure returns, and that the party was not aware of the expenditure.²⁴

Dobell Federal Election Committee

- 2.30 The AEC found that there were two separate payments made to the Dobell FEC totalling \$3 500, which were under the disclosure threshold that applied in the 2006-07 financial year. The AEC also sought 'further advice about whether or not this expenditure has been included in the total amounts that have already been disclosed'.²⁵
- 2.31 In the AEC analysis addendum, information obtained from the HSU National Office indicated that 'these two payments were not disclosed in a donor return for the 2006-07 financial year as they were below the disclosure threshold'.²⁶

21 AEC analysis of the FWA report, p. 9.

22 AEC, *Submission 1*, Annex 3, p. 63.

23 AEC, *Submission 1*, Annex 3, p. 63.

24 AEC, *Submission 1*, Annex 3, p. 62.

25 AEC analysis of the FWA report, p. 9.

26 AEC, *Submission 1*, Annex 3, p. 63.

- 2.32 The ALP advised that payments to the Dobell FEC were not included in its disclosure returns, and that it was not aware of the expenditure.²⁷ The AEC noted that there was no disclosure obligation on the HSU National Office.²⁸

Campaign bus

- 2.33 The FWA report found three separate payments for a campaign bus totalling \$1 277.96.²⁹ Mr Thomson agreed that the bus was used in his campaign for the seat of Dobell and that this was 'an election expense'.³⁰ Again, in its analysis the AEC indicated that it was 'seeking further advice about whether or not this expenditure has been included in the total amounts that have already been disclosed'.³¹
- 2.34 In the AEC analysis addendum, the AEC noted HSU National Office advice that two of the payments made in relation to the campaign bus were 'identified as likely electoral expenditure and included in the return for 2007-08'.³² The third payment 'was described in the HSU records as "motor vehicle expenses" which did not provide any direct link for this payment to be categorised as possible electoral expenditure when the annual returns were being prepared in 2009'.³³
- 2.35 The ALP advised that payments for the campaign bus were not included in its disclosure returns, and that it was not aware of the expenditure.³⁴

Payments to LBH Promotions

- 2.36 The FWA report found that two separate payments totalling \$7 409.93 were made to LBH Promotions for the 'Your Rights at Work' campaign.³⁵ The AEC sought 'further advice about whether or not this expenditure has been included in the total amounts that have already been disclosed'.³⁶
- 2.37 In the AEC's update on the status of these payments, the AEC noted HSU advice that in relation to the first and larger of the payments of \$5 931.53,
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27 AEC, *Submission 1*, Annex 3, p. 62.

28 AEC, *Submission 1*, Annex 3, p. 63.

29 AEC analysis of the FWA report, pp. 641-642.

30 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 642.

31 AEC analysis of the FWA report, p. 9.

32 AEC, *Submission 1*, Annex 3, p. 64.

33 AEC, *Submission 1*, Annex 3, p. 64.

34 AEC, *Submission 1*, Annex 3, p. 62.

35 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 645.

36 AEC analysis of the FWA report, p. 9.

the National Office is 'still unable to identify whether this expenditure was for the 'Your Rights at Work' campaign, the activities of Coastal Voice or some other matter'.³⁷ Consequently the HSU was not able to determine whether it was electoral expenditure and it was not included in the 2006-07 return.

2.38 The second smaller amount of \$1 478.40 was identified as payment for a mail out as part of the March 2007 NSW State election and thus not disclosed in any return under the Electoral Act. The AEC noted this amount was also under the disclosure threshold of \$1 500 in the *NSW Election Funding Act 1981*.³⁸

2.39 The ALP advised that payments to LBH Promotions were not included in its disclosure returns, and that it was not aware of the expenditure.³⁹

Postage expenses

2.40 In relation to the postage expenses totalling \$9 574.17, the FWA report concluded that it seemed 'probable' that this was related to Mr Thomson's Dobell campaign. The assumption was based on the location of the purchases in Long Jetty, the site of his campaign office, as well as an invoice and statement sent from Australia Post addressed to Mr Thomson as the 'ALP candidate' and 'Member for Dobell'.⁴⁰ The AEC analysis questioned this conclusion stating:

The actual evidence to support this conclusion is not apparent as there is no information as to whether this was part of the 'Your Rights at Work' campaign or some other ALP specific advertising.⁴¹

2.41 The AEC also noted that it has:

... previously been advised by the HSU National Office on 10 February 2012 that the expenditure on postage and envelopes from Australia Post for Long Jetty campaign office were included in the Annual Return Relating to Political Expenditure for the 2007-08 financial year.⁴²

37 AEC, *Submission 1*, Annex 3, p. 64.

38 AEC, *Submission 1*, Annex 3, p. 64.

39 AEC, *Submission 1*, Annex 3, p. 62.

40 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 644.

41 AEC analysis of the FWA report, p. 9.

42 AEC analysis of the FWA report, p. 9.

ALP and radio advertising

2.42 The FWA report stated that Mr Thomson agreed that payments made for ALP advertising totalling \$12 511.40 were most likely for 'ALP-related expense that should have been declared'.⁴³ The AEC analysis stated that 'this amount corresponds to the amount disclosed by the HSU National Office Annual Donor Return for the 2007-08 financial year'. The AEC was satisfied this item has been properly reported.⁴⁴

2.43 For expenses incurred on advertising with Central Coast Radio Centre from 25 October 2007, FWA commented that 'it is clear Mr Thomson accepts that these payments were for campaign advertising which he commissioned in relation to his own political campaign'.⁴⁵ The AEC analysis noted that:

The AEC has previously been advised by the HSU National Office on 10 February 2012 that payments to Central Coast Radio Centre and Nova 1069 Pty Ltd corresponding to these amounts were disclosed in the Annual Return Relating to Political Expenditure for the 2007-08 financial year.⁴⁶

Printing expenses

2.44 In relation to the printing expenses from The Entrance Print, which commenced in May 2007, Mr Thomson stated that the payments were made for a 'variety of things'. He explained that it was unlikely earlier charges were for electoral purposes, but conceded that later charges could have been. He added the caveat that although some of the later charges were directly for the Dobell campaign, they may also have been for the 'Your Rights at Work' campaign.⁴⁷ The AEC analysis noted that:

The AEC has previously been advised by the HSU National Office on 10 February 2012 that this expenditure was included in the Annual Return Relating to Political Expenditure for the 2006-07 and 2007-08 financial years.⁴⁸

43 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 646.

44 AEC analysis of the FWA report, p. 10.

45 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 648.

46 AEC analysis of the FWA report, p. 10.

47 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 650.

48 AEC analysis of the FWA report, p. 10.

AEC analysis addendum conclusions

2.45 While there were some items not disclosed, the AEC found that the HSU National Office 'made reasonable attempts to disclose all electoral expenditure that they were able to identify from the incomplete records available to them in 2009'.⁴⁹ In the addendum to its analysis, the AEC concluded:

- (i) there were difficulties with the availability and accuracy of records held by the HSU National Office which led to uncertainties over the characterisation of expenditure that had been incurred on the credit cards issued to its various officers and employees;
- (ii) those difficulties led to some amounts of electoral expenditure that has been identified in the FWA Report not being included in any disclosure return lodged by the HSU National Office, while other amounts were included which probably were not electoral expenditure (e.g. the total salaries of Ms Stevens and Mr Burke);
- (iii) the HSU National Office took reasonable measures in 2009 to attempt to comply with the disclosure obligations contained in the Electoral Act; and
- (iv) the total amount of electoral expenditure that has been identified in the FWA Report and which has not been disclosed is less than the disclosure threshold that was in force at the relevant time.

In these circumstances the AEC has been unable to identify any public interest that could result in action being now initiated against the HSU National Secretary, Ms Kathy Jackson, in relation to the apparent failure to fully disclose three items of expenditure which were not included in the HSU National Office returns for 2006-07 and 2007-08 financial years.⁵⁰

49 AEC, *Submission 1*, p. 64.

50 AEC, *Submission 1*, pp. 64-65.

Ms Criselee Stevens

- 2.46 The FWA report identifies Ms Stevens as commencing work for the HSU National Office in July 2005 as an Organising Works trainee and that Ms Stevens' employment was based on the NSW Central Coast.
- 2.47 The FWA report noted that the purpose of the trainee program was outlined in a Memorandum of Understanding between Trade Union Training Australia Inc and Unions Participating in the Organising Works Traineeship Program. The program's aim was '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"' and that 'to meet the broad objectives of the program, trainees shall primarily be organising non union workers, not servicing existing members'.⁵¹
- 2.48 Ms Stevens described her duties at the HSU as encompassing a range of activities including: running aged care meetings for the public, a local campaign to 'check on your neighbours', 'informing' and 'educating' people about industrial relations issues and predominantly working on industrial relations issues. Ms Stevens was also identified as the primary contact for a sponsorship deal with Central Coast Rugby League which was related to the 'Your Rights at Work' campaign and the organiser of the community group Coastal Voice.⁵²
- 2.49 The FWA report approximated Ms Stevens' employment related costs as \$114 208.83 between 26 September 2005 and 14 December 2007. The report also identified a further \$39 314.24 of expenditure by Ms Stevens between December 2005 and December 2007 and \$1 190.89 after this period totalling an amount of \$154 713.96.
- 2.50 The FWA report concluded that Ms Stevens 'had no involvement in ordinary activities of the HSU that exposed her to engagement with employees in the workplace' and that her duties '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'.⁵³
- 2.51 Chapter 1 of the FWA report noted that the wage of Ms Stevens was disclosed by the HSU National Office in annual returns lodged for the 2006-07 and 2007-08 financial years. This was done on the basis that she

51 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 655.

52 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, pp. 658-659.

53 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 687.

was 'primarily engaged in activities connected with the public expression of views on an issue in a federal election during the relevant period'.⁵⁴

2.52 In correspondence with FWA relating to this matter, the HSU National Office also explained that as there were issues with record keeping, the union had erred on the side of greater 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.⁵⁵

2.53 The FWA report raised two findings in relation to Ms Stevens' employment as having possible disclosure implications:

- At a minimum, a reasonable person in Mr Thomson's position would have:
 - 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.⁵⁶
- 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 ...⁵⁷

2.54 The AEC analysis concluded that given that Ms Stevens' salary was included in the third party political expenditure returns for the relevant years, 'this expenditure has been disclosed by the HSU National Office'.⁵⁸

2.55 The AEC also noted public comments 'that the salary of Ms Stevens should have been disclosed as a donation to the ALP NSW Branch or to Mr Thomson'. The AEC found that Ms Stevens 'was engaged in a range of duties that pre-dated the pre-selection of Mr Thomson as the endorsed ALP candidate for the Division of Dobell' and that her duties 'included a range of matters'.⁵⁹

54 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 47.

55 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 47.

56 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 688.

57 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 689.

58 AEC analysis of the FWA report, p. 11.

59 AEC analysis of the FWA report, pp. 10-11.

- 2.56 The AEC considered that while some of these duties did not give rise to a donor reporting obligation (namely work with Coastal Voice and the Central Coast Rugby League sponsorship), 'the duties that Ms Stevens performed that solely related to the election campaign of Mr Thomson after 13 April 2007 could be argued to have been more appropriately disclosed in another return'.⁶⁰ However, the AEC commented that there is not enough information contained in the FWA report for such a conclusion to be reached.

Coastal Voice

- 2.57 A sum of money was expended by the HSU National Office at the direction of Mr Thomson on an organisation known as 'Coastal Voice', in and around May 2006. An application was received by the NSW Office of Fair Trading on 3 May 2006 for the incorporation of Coastal Voice in which Mr Thomson described its objects as:

Protect rights; especially of the elderly and youth; promote provision of quality aged care services; health care services.⁶¹

- 2.58 Mr Thomson also described the principle activities as:

Volunteer aged care hotline; seek opinions of Central Coast residents on key community issues.⁶²

- 2.59 Coastal Voice was issued a certificate of incorporation on 22 June 2006. Mr Thomson was president until his resignation in March 2007 when he sought pre-selection for the seat of Dobell.

- 2.60 The FWA report considered that:

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 party.⁶³

- 2.61 However, Ms Stevens' evidence also indicated that Coastal Voice was intended to be a vehicle for attracting 'soft votes' for the ALP.⁶⁴

60 AEC analysis of the FWA report, p. 11.

61 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 694.

62 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 694.

63 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 691.

64 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 701.

- 2.62 The launch of Coastal Voice was timed to coincide with an ALP function which was being patronised by the then Federal Opposition Leader, the Hon Kim Beazley MP. It was intended that Mr Beazley would attend the Coastal Voice function after his official duties.
- 2.63 The FWA report concluded 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.⁶⁵
- 2.64 The FWA report also found that Coastal Voice appeared to have been moribund since Mr Thomson's resignation in March 2007.
- 2.65 The FWA report raised two findings in relation to Coastal Voice as having possible disclosure implications:
- At a minimum, a reasonable person in Mr Thomson's position would have:
 - 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.⁶⁶
 - 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 ...⁶⁷
- 2.66 Mr Thomson, in his submission included in the FWA report, quoted an AEC finding into whether Coastal Voice was an associated entity:
- In the absence of full and specific details of all 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 portion 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.

65 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 701.

66 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 702.

67 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 703.

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.⁶⁸

2.67 Section 287(1) of the Electoral Act defines ‘associated entity’ as:

- (a) *an entity that is controlled by one or more registered political parties; or*
- (b) *an entity that operates wholly, or to a significant extent, for the benefit of one or more registered political parties; or*
- (c) *an entity that is a financial member of a registered political party; or*
- (d) *an entity on whose behalf another person is a financial member of a registered political party; or*
- (e) *an entity that has voting rights in a registered political party; or*
- (f) *an entity on whose behalf another person has voting rights in a registered political party.*

2.68 The AEC analysis concluded that the FWA report supported its previous findings that Coastal Voice was not an associated entity.⁶⁹

2.69 The AEC also maintained that there were no reporting requirements contained within the Electoral Act for candidates or their parties, prior to their official pre-selection. The report concluded:

As Coastal Voice has found to have been moribund since 18 March 2007 (being a date before Mr Thomson was endorsed as the ALP candidate for Dobell), it could not have been operating ‘for the benefit of’ a registered political party ... as Mr Thomson only became the endorsed ALP candidate for the Division of Dobell on 13 April 2007.⁷⁰

Mr Matthew Burke

2.70 Mr Matthew Burke commenced employment with the National Office of the HSU in July 2006 as a result of being approached by Mr Thomson. Mr Burke ceased employment with the HSU close to March 2007.⁷¹

68 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 701.

69 AEC analysis of the FWA report, pp. 11-12.

70 AEC analysis of the FWA report, pp. 11-12.

71 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 176.

- 2.71 Between March and November 2007 Mr Burke was employed by Senator Stephen Hutchins. Mr Burke also performed unpaid work for the HSU National Office and the HSU incurred any costs associated with this work.⁷²
- 2.72 The FWA report found that the estimated employment costs and other expenditure made by Mr Burke totalled \$41 707.46, with Mr Burke's salary costs totalling \$29 400.
- 2.73 The FWA report concluded that while 'there is some evidence that Mr Burke did at least perform some ordinary administrative duties for the National Office ... this evidence does not seem to suggest that this was a significant part of Mr Burke's duties'.⁷³
- 2.74 The FWA report further concluded:
- It appears that the majority of Mr Burke's time was spent on activities on the Central Coast ... 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.⁷⁴
- 2.75 Chapter 1 of the FWA report notes that the wage of Mr Burke was disclosed by the HSU National Office in annual returns related to political expenditure lodged for the 2006-07 and 2007-08 financial years. This was done on the basis that he was 'primarily engaged in activities connected with the public expression of views on an issue in a federal election during the relevant period'.⁷⁵
- 2.76 The FWA report raised two issues in relation to Mr Burke's employment as having possible disclosure implications:
- At a minimum, a reasonable person in Mr Thomson's position would have:
 - e. 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.⁷⁶
 - Mr Thomson contravened subsection 287(1) of the RAO Schedule by improperly using his position as National

72 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 177.

73 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 720.

74 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 720.

75 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 47.

76 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 722.

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.⁷⁷

2.77 The AEC made the following observations regarding the FWA report findings into Mr Burke's employment:

- Mr Burke was engaged in a range of duties that pre-dated the pre-selection of Mr Thomson as the endorsed ALP candidate for the Division of Dobell;
- The duties of Mr Burke appear to have included a range of matters including the "Your Rights at Work" campaign and included "some ordinary duties" for the HSU National Office;
- That Mr Burke ceased his employment with the HSU National Office in March 2007 prior to the pre-selection of Mr Thomson as the endorsed ALP candidate for the Division of Dobell;
- Given the statement at paragraph 119 of Chapter 1 of the FWA Report (that Mr Burke's salary was included in the third party political expenditure returns for 2006-07 and 2007-08), this expenditure has been disclosed by the HSU National Office.⁷⁸

Central Coast Rugby League

2.78 In 2006 Mr Thomson, in his position as National Secretary for the HSU, signed a sponsorship contract with the Central Coast Division of Rugby League. The agreement was in force for the 2006, 2007 and 2008 seasons for \$30 000 per annum plus a CPI increase each year for the 2007 and 2008 seasons. The total estimated cost is \$103 393.32.⁷⁹

2.79 The contract required the HSU logo to be placed on the team jerseys and alongside the 'Your Rights at Work' logo on the weekly completion programs for the 2006 season. The logos were also placed on letterhead, advertising and promotional signage at the grounds. The HSU was provided with advertising space in the competition programs.⁸⁰

77 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 723.

78 AEC analysis of the FWA report, p. 12.

79 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 738.

80 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 724.

2.80 The FWA report considered that ‘the payment of those monies was not authorised by either the National Council or National Executive’.⁸¹ However, the FWA report also found that ‘any personal advantage [to Mr Thomson] is remote’⁸² and concluded that :

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.⁸³

2.81 The AEC analysis considered that:

Given that there is no connection between this expenditure with the election campaign of Mr Thomson during the ‘election period’ this would not have been required to be included in a candidate election return.⁸⁴

2.82 The ‘election period’ is defined under section 287(1) of the Electoral Act as:

... the period commencing on the day of issue of the writ for the election and ending at the latest time on polling day at which an elector in Australia could enter a polling booth for the purpose of casting a vote in the election.

2.83 The AEC further noted that a payment made for the 2008 season occurred well after the November 2007 election.

Dads in Education Fathers’ Day Breakfast

2.84 The HSU National Office was invoiced for \$5 000 for ‘Support of Fathers’ Day Breakfast’ on 25 June 2007. The payments were made in two payments of \$2 500 on 22 and 23 August 2007.⁸⁵

2.85 The event was described by Mr Thomson as originating on the Central Coast, but occurring in schools in Sydney and the ACT as well. It was held at the end of literacy week and encouraged fathers to come into schools to read to their children.⁸⁶

81 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 738.

82 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 737.

83 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, pp. 736-737.

84 AEC analysis of the FWA report, p. 13.

85 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 740.

86 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 742.

2.86 Mr Thomson appeared, but apparently did not speak, at a nationally televised media event on *Sunrise* in order to promote the event.⁸⁷

2.87 The FWA report raised the following findings as having possible disclosure implications:

The benefit of sponsorship of the Fathers' 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 Fathers' Day is in 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. ...

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.⁸⁸

2.88 In relation to this matter the AEC analysis noted that:

As the individual amounts of payment involved in this matter were below the applicable \$10,500 disclosure threshold that applied in the 2007/08 financial year this payment would not have been required to have been particularised in either a donor return or an annual return under the Electoral Act.⁸⁹

2.89 The AEC also questioned whether a reporting obligation would have existed had the payments been above the threshold. The AEC indicated that to make a conclusion of personal gain to Mr Thomson's candidacy in Dobell, further evidence would be required regarding the contents of the television program, such as whether his candidacy in Dobell was mentioned or as to whether the payments entitled Mr Thomson to rights of publicity.⁹⁰

87 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 743.

88 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 744.

89 AEC analysis of the FWA report, p. 13.

90 AEC analysis of the FWA report, p. 13.

Golden Years Collectables

- 2.90 In November of 2006 a payment of \$2 050 was made to Golden Years Collectables to purchase memorabilia to donate to the ALP for fundraising raffles.
- 2.91 In Mr Thomson's submission to the FWA, he stated that 'the HSU supported the ALP and this donation was disclosed in accordance with the political donation laws'.⁹¹
- 2.92 The FWA report concluded that the expenditure for this item was not approved by the National Executive. Further, the report finds that Mr Thomson was 'motivated by a desire to increase his profile within the ALP by promoting the memorabilia to the ALP'.⁹²
- 2.93 The AEC noted that while it was apparent that this donation 'could be reasonably regarded as a donation to the ALP', there was no 'potential donor disclosure obligation as the amount is below the \$10 300 disclosure threshold that applied in the 2006-07 financial year'.⁹³

Central Coast Convoy for Kids

- 2.94 On 12 September 2006, the National Office made a payment of \$5 000 to the 'Central Coast Convoy for Kids'. The event was described as a longstanding Central Coast community event that fundraises for a local children's hospital. The event was not connected with the HSU or the ALP. In Mr Thomson's submission to FWA he noted that 'the HSU had a history of donating to the Central Coast Convoy for Kids'.⁹⁴
- 2.95 The FWA report concluded in relation to this matter that in making the donation, Mr Thomson was motivated by a desire to increase his public profile within the seat of Dobell explaining:

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

91 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 746.

92 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 747.

93 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 13.

94 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, pp. 748-749.

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.⁹⁵

- 2.96 In its analysis, the AEC found that as the payment was made well before Mr Thomson was pre-selected as the endorsed ALP candidate for Dobell, there was no requirement for this payment to be disclosed.⁹⁶

HSU National Office and the category of associated entity

- 2.97 There was discussion at the committee's hearings as to whether the HSU National Office should be classified as an 'associated entity', as provided in 287(1) of the Electoral Act.
- 2.98 At the committee's request, the AEC provided copies of correspondence on this issue. A brief summary of relevant exchanges are outlined in Table 2.1.

Table 2.1 List of correspondence on whether the HSU National office is an associated entity

Date	Key details
10 March 2009	Letter: ALP National Secretariat to AEC Providing a list of the ALP's associated entities, which included the HSU National Office.
12 May 2009	Letter: AEC to HSU National Office Advising that the HSU National Office had been identified by the ALP as an associated entity and seeking lodgement of their associated entity annual return for 2007-2008. The return was due on 20 October 2008.
18 May 2009	Letter: AEC to political parties Asking for a list of all associated entities of federally registered political parties for the 2008-2009 financial year.
20 May 2009	Email: AEC to HSU National Office Seeking to ensure that the HSU complies with their obligation to lodge an associated entity return for 2007-2008.
26 May 2009	Letter: HSU National Office to AEC Noting that the HSU National Office had not yet lodged a return and that an independent audit of HSU National Office was underway due to issues arising out of the exit audit after the change of leadership at the National Office.

95 FWA, *Report of the Delegate to the General Manager of Fair Work Australia*, p. 750.

96 AEC analysis of the FWA report, p. 14.

27 May 2009	<p>Letter: ALP National Secretariat to AEC</p> <p>The ALP updated its advice to the AEC as to which associated entities were affiliated to it: The ALP stated: <i>all unions and some other entities are affiliated at state level only, there is no process of national union affiliation and unions do not have voting rights at the national level.</i></p> <p>The ALP indicated that there had been some confusion due to prior legislative changes as to which organisations fell under the definition of an associated entity for each party.</p>
<hr/>	
13 October 2009	<p>Letter: HSU National Office to AEC</p> <p>Responding to an earlier letter from the AEC in relation to HSU reporting obligations as an associated entity.</p> <p>The HSU National Officer asserted that it was not an associated entity.</p>

Source Correspondence provided by the AEC, see Submission 1.3.

2.99 Prior to 2009, the AEC believed that the HSU National Office was an associated entity and expected it to lodge an associated entity annual return. The HSU National Office, in a letter to the AEC, set out the following claims as to why it should not be classified as an associated entity:

By virtue of s27 of the Fair Work (Registered Organisations) Act 2009 (Act), the Health Services Union is an incorporated entity. As you know, the Union is divided into a number of separate branches, each of which, pursuant to the rules of the Union and the operation of the Act, operate autonomously, including with respect to their financial affairs and reporting with respect to those affairs. This is particularly governed by s242 of the Act. A number of the branches of the Union, specifically the NSW Branch, the Tasmanian Branch, the West Australian Branch and several of the Victorian Branches are Associated Entities of the Australian Labor Party. In each case, they are affiliated to the Australian Labor Party in their respective states and they provide delegates to the conferences of those branches of the ALP.

Pursuant to s242(5) of the Act, the National Office of the Union is regarded by the Act as a separate branch for the purpose of reporting. However, unlike the state branches of the Union described above, the HSU National Office, is not affiliated with the ALP and does not provide delegates to any forum of the ALP. It seems to us, in those circumstances, that the National Officer of the

HSU cannot be an Associated Entity having regard for the definition within the Australian Electoral Commission Act.⁹⁷

- 2.100 The AEC advised that it accepted the arguments as to why the HSU National Office was not an associated entity:

... the authorised officer made the decision on 16 October 2009 in relation to the status of the HSU National Office and part of that was a letter to me from Kathy Jackson dated 13 October 2009 where they went through provisions of the Fair Work (Registered Organisations) Act to deal with the status of the HSU National Office.⁹⁸

- 2.101 Further, the AEC explained how it came to this conclusion:

CHAIR: In plain English can you tell us what was the key factor in your mind in then conceding that they were not an associated entity?

Mr Pirani: Two key factors: firstly, that the HSU national office did not have voting rights in the ALP separate from other branches of the HSU and, secondly, that under the Fair Work (Registered Organisations) Act – in particular section 245 – their national office is deemed to be separate from the other parts of the party. When we put those two factors together we accepted that they were not an associated entity.

CHAIR: Is there anything that has come to your attention since that would change your mind or are you still of that view?

Mr Pirani: Based on the information we have there has been no change.⁹⁹

- 2.102 Some members of the committee disagreed with the AEC's finding and maintained that the HSU National Office should be classified as an associated entity. The AEC was examined on this issue at the public hearings:

Mr Pirani: It has a separate registration process under our act. In relation to the union structure – and it is included in our background here – we had advice from the union itself and from the lawyers of the union pointing to a provision in the Fair Work (Registered Organisations) Act saying that the Health Services

97 Letter from National Secretary, HSU National Office, to Chief Legal Officer, AEC, dated 13 October 2009. Copy reproduced in *Submission 1.3*.

98 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 16.

99 Mr Paul Pirani, Chief Legal Officer, AEC, *Committee Hansard*, 16 July 2012, Canberra, p. 18.

Union national office was legally separate from each other branch that had separate legal status because of the Fair Work (Registered Organisations) Act.

That is the basis on which we were dealing with this matter.

Mrs BRONWYN BISHOP: So that was your sole source of legal advice as to whether or not the national office was an associated entity?

Mr Pirani: The separate registration under the Fair Work (Registered Organisations) Act, yes.

Mrs BRONWYN BISHOP: No other legal opinion?

Mr Pirani: No other legal opinion.

CHAIR: There is no other opinion asserting the contrary, is there?

Mrs BRONWYN BISHOP: So you simply got it from the union?

Mr Pirani: No, we also looked at the Fair Work Australia website, which has a list of the separate registration of all the various bodies that made up the Health Services Union at that time. Then we had a discussion with both Ms Kathy Jackson and the lawyers for the Health Services Union national office, and they directed us to a particular provision in the Fair Work Act which deemed the national office to be separate from the other bodies that made up the Health Services Union. I will just try to find where that is referred to.

CHAIR: Could I also ask you: in your understanding, is it not common within the union movement to have the national office separate from the state offices, similarly to the political parties? The national secretariat of the ALP is separate from the New South Wales office.

Mr Pirani: If I could just refer you to page 56 of our submission. I refer to the contact –

Mrs BRONWYN BISHOP: Which submission?

Mr Pirani: The submission to JSCEM. It refers to contact that I had and a letter that I had from the senior lawyer for the law firm Slater and Gordon. When we were originally dealing with this matter, we initially had formed a view that the national office of the Health Services Union may well have been an associated entity. We were directed to several provisions that were in the Fair Work Act under which they were able to argue – and I agreed with the view – that the national office, because of these provisions

in the Fair Work (Registered Organisations) Act, was legally separate and therefore was separately registered for the purposes of the Fair Work (Registered Organisations) Act. Therefore it was a separate body corporate and legal entity from each of the other branches.

Mrs BRONWYN BISHOP: What was the position in 2007, before the Fair Work Act was passed?

Mr Pirani: Our understanding is it was the same, but I would have to take that on notice because I did not look at the transitional provisions.¹⁰⁰

- 2.103 In response to committee questioning on whether there are any national branches of trade unions that the AEC has identified as being an associated entity, the AEC stated:

The AEC searched our records and, for the last period for annual returns, there were no national branches of trade unions (within the scope of section 242(5) of the *Fair Work (Registered Organisations) Act 2009*) that were regarded as being an “associated entity” due to their office bearers having voting rights with a registered political party.¹⁰¹

- 2.104 Some members of the committee also expressed concern that since unions came under the category of associated entity in 2006, only one compliance review of a union has been undertaken by the AEC. In 2011 the AEC undertook a review of HSU East Branch after it came to the AEC’s notice that a nil return had subsequently been amended to a disclosure of \$24 million.¹⁰²

- 2.105 The AEC argued that unless certain elements are satisfied, ‘the Electoral Act provides the AEC with no legal authority to issue the notices to any person or entity to ascertain whether a contravention has occurred or whether any entity is an “associated entity”’.¹⁰³

- 2.106 The FWA Delegate was also questioned on this issue. However, as the Electoral Act is not his area of expertise, he was only able to respond in more general terms:

100 *Committee Hansard*, 6 July 2012, Canberra, pp. 7-8. See also *Committee Hansard*, 16 July 2012, Canberra, pp. 16-22.

101 AEC, *Submission 1.2*, p. 2.

102 *Committee Hansard*, 6 July 2012, Canberra, pp. 30-31. See also AEC, *Submission 1.3*.

103 AEC, *Submission 1.1*, p. 9.

Mrs BRONWYN BISHOP: I now have a list of registered organisations. It says here that the Health Services Union is 'U' type. Presumably that is a union. It has an abbreviation and a code. So the Health Services Union itself is a registered organisation under your act.

Mr Nassios: Correct.

Mrs BRONWYN BISHOP: We have been told all along that it was the national office of the Health Services Union that was registered under the act and it was not an associated entity – I think I said 'related' entity before, but I meant associated entity – whereas it clearly shows in this list that the Health Services Union itself is registered. I am at a loss to know whether there was ever to your knowledge a distinction made between the registration of the union and the national office.

Mr Nassios: Again, I am going to struggle. I do not understand the Electoral Act at all. I do not know how that operates. As best as I can assist you, in terms of the Health Services Union and the Registered Organisations Act, the easiest way to explain this is if we presume that there is an overriding national body and each state has a branch in its own name. The way the Registered Organisations Act works is that each of those branches – in other words, each of the states – are referred to as reporting units. It has to report on its finances as a component part of the whole national body. The HSU has a number of branches, most of which are based in the various states, and there are a number that are based in Victoria.

Mrs BRONWYN BISHOP: Yes, I can see that.

Mr Nassios: Our finding in terms of HSU is that the national office itself – this is a unique situation; it is certainly not common amongst most organisations – is also a reporting unit for the purposes of financial reporting. Hence the reason we had an inquiry and investigation into the national office.

Mrs BRONWYN BISHOP: I see.

Mr Nassios: It is important to make the distinction that we did not investigate the Health Services Union as a whole. We did not look at, for example, Tasmania's branch reports. That is a different entity in terms of the Registered Organisations Act.

Mrs BRONWYN BISHOP: I see. So you would have treated the national office like a branch – as a reporting entity.

Mr Nassios: Correct.¹⁰⁴

- 2.107 The issue of the difficulties associated with determining whether organisations are associated entities will be discussed under measure 5 in Chapter 3.

KPMG review of the FWA investigation

- 2.108 On 21 August 2012 the FWA released the KPMG *Process review of Fair Work Australia's investigations into the Health Services Union* (KPMG review). It covered the conduct of inquiries and investigations into the HSU National Office and the Victoria No.1 Branch.

- 2.109 The scope of the KPMG review was limited to the FWA investigation processes and did not involve an evaluation of the evidence:

The scope of work for Phase 1 and Phase 2 was restricted to a review of the process followed by FWA in undertaking their investigation of the matters and specifically did not include the re-performance of any part of the HSU investigations or the evaluation of evidence presented in support of the any findings made in the HSU investigation reports.¹⁰⁵

- 2.110 The FWA media release made reference to the following key findings:

- That the investigations by FWA were hampered by the absence of relevant investigation standards and procedures, document and case management protocols and insufficient appropriately qualified and experienced personnel.
- These issues almost certainly contributed to the time taken to complete the investigations.
- KPMG did not identify any indications of potential interference in the HSU investigations.
- KPMG made 31 recommendations to improve FWA's investigations procedures.¹⁰⁶

104 Mr Terry Nassios, FWA, *Committee Hansard*, 16 August 2012, Canberra, p. 6.

105 KPMG, *Process review of Fair Work Australia's investigations into the Health Services Union*, 17 August 2012, p. 2.

106 FWA, *Release of the review into HSU investigations*, Media Release, 21 August 2012, available at <<http://www.fwa.gov.au/index.cfm?pagename=aboutmediareleases>>

2.111 KPMG found that:

FWA is not experienced in the conduct of investigations, and has not previously had to deal with investigations which have generated as much public interest as the HSU investigations.¹⁰⁷

2.112 Some aspects of the HSU investigations were found to have been conducted appropriately. These were:

- Interviews conducted by the Investigations team;
- The process for the preparation and completion of the National Office report; and
- There was a formal process in place to ensure the accuracy of public statements made regarding the status of the HSU investigations.¹⁰⁸

2.113 However, KPMG also identified a number of key deficiencies:

This report includes 38 findings in relation to the conduct of the HSU investigations which are summarised as follows:

- FWA did not have and did not refer to any relevant investigation standards and procedures;
- There is a lack of adequate documentation setting out the investigation process followed by FWA;
- FWA did not implement an adequate investigation case management system or process, which resulted in deficiencies in the planning, management and execution of the HSU investigations;
- FWA did not have sufficient appropriately qualified and experienced resources involved in the conduct of the HSU investigations;
- FWA did not consider all potential sources of information, particularly electronic information, and did not appear to fully understand its rights to access all potentially relevant sources of information;
- FWA did not have protocols in place for the collection and retention of documents; and
- The security arrangements over documents were inadequate.

The findings referred to above almost certainly contributed to the time taken to complete the HSU investigations.¹⁰⁹

107 KPMG, *Process review of Fair Work Australia's investigations into the Health Services Union*, 17 August 2012, p. 3.

108 KPMG, *Process review of Fair Work Australia's investigations into the Health Services Union*, 17 August 2012, p. 5.

109 KPMG, *Process review of Fair Work Australia's investigations into the Health Services Union*, 17 August 2012, p. 4.

2.114 KPMG identified 31 opportunities for improving FWA investigation processes. The FWA General Manager indicated that the organisation 'had already made significant changes to its policies and processes and would adopt all of the review's recommendations'.¹¹⁰

2.115 When releasing the KPMG review, the FWA General Manager also stated:

FWA notes that this review did not consider the substance of the findings made by the Delegate of the General Manager regarding contraventions by the Victoria No.1 Branch and the National Office, their officers, employees and auditor. As such, the findings of the review do not detract from the validity of the findings of the Delegate, which will ultimately be tested in proceedings in the Federal Court of Australia.¹¹¹

110 FWA, *Release of the review into HSU investigations*, Media Release, 21 August 2012, available at <<http://www.fwa.gov.au/index.cfm?pagename=aboutmediareleases>>

111 FWA, *Release of the review into HSU investigations*, Media Release, 21 August 2012, available at <<http://www.fwa.gov.au/index.cfm?pagename=aboutmediareleases>>