

ATTACHMENT A

14 October 2011

Det. Sgt. Tyquin
Fraud and Extortion Squad
Victoria Police
5/452 Flinders Street
Melbourne VIC 3000



GENERAL MANAGER

By email: john.tyquin@police.vic.gov.au

Dear Det. Sgt. Tyquin

I refer to your email of 6 October 2011 to Ailsa Carruthers in which you ask certain questions about the Fair Work Australia (**FWA**) investigation into the National Office of the Health Services Union (**HSU**) that is being conducted under the *Fair Work (Registered Organisations) Act 2009* (Cth) (**RO Act**).

Naturally I wish to cooperate with your request to the extent that would be appropriate, consistent with the powers and functions conferred upon the General Manager of FWA by the RO Act.

As Acting General Manager of FWA, my powers of inquiry and investigation are set out in sections 330 and 331 of the RO Act. In essence those provisions empower me to inquire and investigate into whether there has been a contravention of one or more of:

- a provision of Part 3 Of Chapter 8 of the RO Act;
- a provision of the Reporting Guidelines made under Part 3 of Chapter 8 of the RO Act;
- a regulation made under Part 3 of Chapter 8 of the RO Act;
- a rule of a reporting unit (such as, the HSU National Office) relating to its finances or financial administration; or
- a civil penalty provision of the RO Act.

Transitional provisions contained in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* extend this power to inquiring or investigating into whether there has (before 1 July 2009) been a contravention of the equivalent provisions in Schedule 1 to the *Workplace Relations Act 1996* (Cth).

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Section 336 of the RO Act confers certain powers and duties upon the General Manager at the end of an investigation.

First, if I am satisfied that there has been a contravention by a reporting unit (such as the HSU National Office) of:

- a provision of Part 3 of Chapter 8 of the RO Act;
- a provision of the Reporting Guidelines made under Part 3 of Chapter 8 of the RO Act;
- a regulation made under Part 3 of Chapter 8 of the RO Act; or
- a rule of a reporting unit (such as, the HSU National Office) relating to its finances or financial administration;

I must notify the reporting unit accordingly (see subsection 336(1)).

Second, by reason of subsection 336(2), I may also do any or all of:

- issue a notice to the reporting unit requesting them to take specified rectification action;
- apply to the Federal Court for an order under Part 2 of Chapter 10 of the RO Act (that is, institute proceedings in relation to the contravention of a civil penalty provision); or
- refer the matter to the Commonwealth Director of Public Prosecutions for action in relation to a possible criminal offence.

Nothing in sections 330, 331 or 336 of the RO Act or indeed elsewhere confers any authority on me, or on FWA, to:

- inquire or investigate into whether a reporting unit (or anybody) may have contravened a Victorian law (criminal or otherwise);
- reach a conclusion about whether a reporting unit (or anybody) may have contravened such a law; or
- refer a 'matter' arising from an inquiry or investigation conducted under s330 or 331 of the RO Act to a Victorian law enforcement body.

To the extent that I am able, I have delegated my powers under sections 330 and 331 of the RO Act in respect of this matter to Mr Terry Nassios. Pursuant to that delegation, Mr Nassios is investigating whether the provisions of:

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- (i). Part 3 of Chapter 8 of Schedule 1 to the *Workplace Relations Act 1996* (Cth);
- (ii). the Reporting Guidelines made by the then Industrial Registrar on 20 June 2003 under Part 3 of Chapter 8 of Schedule 1B (as it then was numbered) to the *Workplace Relations Act 1996* (Cth);
- (iii). the rules of the HSU 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 HSU, and/or by officials or employees of the National Office of the HSU 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, Mr Nassios is examining whether:

- officers of the HSU 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 of the HSU 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 HSU made during this period were properly authorised;
- proper financial records were kept of such transactions by the National Office of the HSU; and
- proper financial, expenditure, donation and audit reports were approved by the National Office of the HSU and filed with the Australian Industrial Registry or FWA (as appropriate) in respect of the 2002/03 to 2008/09 financial years.

Mr Nassios is also investigating whether the Auditor of the National Office of the HSU 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.

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.

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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.

Yours Sincerely

Bernadette O'Neill
Acting General Manager
Fair Work Australia

