

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000226

Senator McKenzie provided in writing.

Question

FWC - Royal Commission Referrals – Health Services Union

The Heydon Royal Commission has made a number of referrals to various civil and criminal agencies arising from matters uncovered by the Royal Commission.

The Commission referred Kathy Jackson and Peter Mylan of the HSU for further investigation in respect of hundreds of thousands of dollars of union members' money being misspent on personal luxuries and other misappropriate of funds.

1. What steps have been taken in relation to this referral?
2. When does the FWC anticipate this investigation will be finalised?
3. Was the FWC aware of the allegations now being investigated before they were highlighted by the Royal Commission?
4. If the FWC was aware, what was done before the referral?
5. If the FWC was aware, why wasn't anything been done before the referral?
6. If the FWC was not aware, should the FWC have been aware?

Answer

1. What steps have been taken in relation to this referral?

In a letter dated 22 December 2015 the Trade Union Royal Commission (TURC) advised the Fair Work Commission (FWC) that it was proposing to refer matters to the FWC including:

- Whether proceedings should be commenced against Katherine Jackson for a possible breach of section 287 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act); and
- Whether proceedings should be commenced against Peter Mylan for a possible breach of sections 285, 286 and/or 287 of the RO Act;

The letter was not received by the FWC until 1 February 2016 because it was incorrectly addressed. The supporting material in relation to Mr Mylan (more than 5,700 pages) was received on 9 February 2016. As at 26 February 2016, the supporting material in relation to Ms Jackson had not been received by the FWC.

Planning, scoping, document management and increasing resources to deal with all the referrals is underway. This is a very significant undertaking. To date, more than 37,000 pages have been provided to the FWC. Each document that may evidence contraventions of the RO Act and fall within FWC's jurisdiction to investigate or otherwise bring proceedings in respect of, needs to be examined. This includes identifying how the material was obtained by the TURC. This is because any evidence (oral or documentary) obtained compulsorily by the TURC from a person may not be used in evidence in civil proceedings against that person.

Any such material could not be used by the FWC to decide whether, for example, to commence proceedings in respect of any contraventions.

In relation to Peter Mylan further referrals were simultaneously made to the NSW Industrial Relations Commission, the Director of Public Prosecutions of NSW and the Commissioner of the NSW Police. The FWC will work closely with these agencies to ensure that appropriate sequencing of investigations or other action occurs. The Australian Government has established a working group of Commonwealth regulators, in part to facilitate this coordination. For example, in general terms, criminal investigations and prosecutions take precedence over civil investigations and prosecutions.

2. When does the FWC anticipate this investigation will be finalised?

The FWC is unable to anticipate a date of finalisation regarding either matter at this stage.

3. Was the FWC aware of the allegations now being investigated before they were highlighted by the Royal Commission?

Although the supporting materials have not yet been received in relation to Ms Jackson, the FWC understands that the issues arise from a 232 page statement lodged with the TURC by the National Secretary of the HSU.

The RO Act does not provide power to the FWC to inquire or investigate the conduct of registered organisations unless it has received credible information that organisations are not or might not be complying with the law or rules relating to their finances or financial administration. The FWC was not aware of the allegations it expects to be referred to it before the TURC received the 232 page statement from the National Secretary of the HSU.

4. If the FWC was aware, what was done before the referral?

See response to question 3.

5. If the FWC was aware, why wasn't anything [sic] been done before the referral?

See response to question 3.

6. If the FWC was not aware, should the FWC have been aware?

The legislative scheme of the RO Act is directed at ensuring that organisations discharge their obligations of accountability to their members in relation to the financial affairs of the organisation through proper and regular disclosure of financial information.

Inquiries are conducted under section 330 of the RO Act into whether Part 3 of Chapter 8 of the RO Act, the reporting guidelines made under that Part, regulations made for the purposes of that Part, or the rules of an organisation relating to its finances or financial administration have been, or are being, complied with.

If there are reasonable grounds for doing so, an investigation into whether a civil penalty provision has been contravened can be conducted.

The information relating to Ms Jackson which is anticipated to be provided to the FWC did not emerge until the HSU National Secretary provided the statement to the TURC. The FWC is not aware of any fact or circumstance which indicates that it should or could have been aware of that information.

A preliminary overview of some of the more than 5,700 pages of supporting material referred to the FWC on 9 February 2016 in relation to Peter Mylan, indicates that the referral is based

in part on evidence gathered by the NSW Police utilising covert evidence gathering techniques not available to the FWC, including intercepted telephone calls and statements made by witnesses under compulsion. The FWC is not aware of any fact or circumstance which indicates that it should or could have been aware of any of that information or material.