

FAIR WORK AUSTRALIA

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

Investigation into the Victoria No.1 Branch of
the Health Services Union under section 331 of
the Fair Work (Registered Organisations) Act
2009

**Terry Nassios
23 December 2011**

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INTRODUCTION

Chronology of Events

1. On 29 January 2009 the Industrial Registrar wrote to the then Secretary of the Victoria No.1 Branch of the Health Services Union (**the Branch**), Mr Jeff Jackson, advising him that he was conducting an inquiry (**the Inquiry**) under section 330 of Schedule 1 to the *Workplace Relations Act 1996* (**the RAO Schedule**). The Inquiry arose from an article that had appeared in the Herald Sun newspaper on 18 December 2008 entitled 'Health Services Union boss Pauline Fegan suspended'. The article detailed a number of allegations against the President of the Branch, Ms Pauline Fegan, regarding alleged breaches of fiduciary duties. In particular, the article suggested that Ms Fegan may have improperly used her position to gain a financial advantage from a business in which she had an interest. The Industrial Registrar sought a response from the Branch Secretary regarding whether there were grounds to believe that any officer or employee of the Branch may have contravened section 287 of the RAO Schedule or whether there had been any related party transactions between the Branch and related parties within the meaning of Australian Accounting Standard AASB 124 – Related Party Disclosures.
2. By way of background to these events, Mr Jackson had received a letter dated 9 December 2008 from the Branch's Auditor, Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd, regarding allegations of 'irregular' purchasing practices between the Branch and a company known as 'Urban Giftware' that was operated by the domestic partner of the Branch President, Ms Pauline Fegan. Mr Dick stated in that letter that 'if the substance of the allegations is made out, it is a serious matter.' Mr Dick canvassed questions of fiduciary obligation and breaches of contract of employment and recommended that the matter be further investigated and referred for legal advice. Mr Jackson had then written to Ms Fegan on 15 December 2008 advising her that she was immediately suspended from her office as a member of the Branch Committee of Management pending determination of charges that had been laid against Ms Fegan by the Branch Assistant Secretary, Mr Shaun Hudson, on that same date.
3. Despite the charge laid by Mr Hudson and the letter suspending Ms Fegan from office both being dated 15 December 2008, minutes of a meeting of the Branch Committee of Management that was held on 10 December 2008 (that is, five days earlier) state that a motion was carried by that meeting which 'notes that the Branch Secretary has suspended the Branch President pending the hearing of charges against the Branch President'. At that same meeting the minutes state that Mr Dick spoke to the general purpose financial report (**GPFR**) for financial year 2007/2008 and that a motion was carried unanimously that the GPFR for financial year 2007/2008 be adopted.
4. In an affidavit sworn on 7 January 2009 by the Branch Senior Vice President, Ms Sonya McCormack states that she had called a meeting of the Branch Committee of Management on 23 December 2008 for the purpose of appointing independent auditors to investigate the finances of the Branch. On or about 22 December 2008, however, she had received an email from Mr Hudson attaching a notice from Mr Jackson to all members of the Branch Committee advising that he would not call a

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meeting of the Branch Committee on 23 December 2008 as requested, but proposed to call one on 7 January 2009.

5. Exhibit SM-8 of Ms McCormack's affidavit of 7 January 2009 is a document 'prepared on the instructions of the Branch Committee' outlining matters regarding which an independent investigation was being sought by Ms McCormack. The document sets out allegations against the Secretary and Assistant Secretary regarding (1) unauthorised payment of additional salary to Mr Jackson; (2) unauthorised payment in October 2008 of \$5,000 to Ms Alex Hicks; (3) unauthorised use of credit card by Mr Hudson; (4) unauthorised use of credit cards by Mr Jackson; and (5) unauthorised payments for airfares for officials and their partners in the last six months.
6. A meeting of the Branch Committee of Management was held on 7 January 2009. According to minutes that have been provided to Fair Work Australia (FWA), the meeting opened at 4.10 pm with Mr Jackson and Mr Hudson in attendance but both Mr Jackson and Mr Hudson left the meeting at 4.35 pm. The minutes state that a motion was subsequently carried unanimously that the Branch Committee appoint Mr Stephen Whitchurch of Pitcher Partners to examine financial and other records of the Branch and report on any irregularities on the financial affairs of the Branch since 1 January 2005, including but not limited to dealings between the business Urban Giftware and the Branch, and to present their report to Ms McCormack.
7. Although the resolution to appoint Mr Whitchurch was passed by the Branch Committee on 7 January 2009, an engagement letter setting out agreed procedures in relation to investigation of matters within the Branch was written by Mr Whitchurch to Macpherson + Kelley Lawyers (who acted for some of the members of the Branch Committee of Management) on 6 January 2009. It was noted in that letter that the specific scope of the procedures was yet to be determined.
8. On 12 February 2009 Mr Jackson responded to the Industrial Registrar's letter of 29 January 2009, stating that the Branch has engaged Pitcher Partners to conduct an investigation in respect of Ms Fegan and any other irregularities and that, at the conclusion of that investigation, the Branch will communicate further with the Registrar about matters raised in his letter of 29 January 2009. The Industrial Registrar also received a letter dated 12 February 2009 from Ms Kathy Jackson, National Secretary of the Health Services Union (HSU), in which she advised that at a meeting of the National Executive on 9 February 2009 a resolution had been passed stating that, once in receipt of the Branch's response to the Registrar, the National Executive will reconvene to consider how to respond. Ms Jackson noted that, while the HSU Rules confer a substantial degree of independence on individual branches, the National Executive 'will ensure that the matters you have raised are properly investigated and that any necessary action to ensure compliance with the obligations imposed by the Act is taken.'
9. In a letter to Mr Jackson dated 18 February 2009 and again on 11 March 2009, the Industrial Registrar noted that it appeared as though both the Branch and the National Executive of the HSU were conducting their own investigations. The Registrar stated that, unless advised to the contrary, he would expect the Branch and the National Executive to provide separate responses to his letter of 29 January 2009. Mr Jackson

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responded in a letter dated 13 March 2009 that the investigation by Pitcher Partners had commenced.

10. Suggestions that the National Executive was conducting its own parallel investigation arose partly from a decision in the Federal Court of Australia in *Conquo v Jackson* [2009] FCA 45 (VID 33 of 2009) that was handed down on 5 February 2009. His Honour Justice Sundberg discussed resolutions passed by the National Executive of the HSU on 27 January 2009 regarding the appointment of a new National Auditor who would be required to 'come to a view' as to whether allegations regarding financial irregularities in the Branch should be investigated and, if so, to report 'the extent and likely cost' of the investigation to the National Executive. The fourth resolution that was passed by National Executive resolved that any person wishing to make allegations shall put those allegations to the National Auditor who shall report to National Executive as to whether the allegations should be investigated and the likely cost of such investigation. This same resolution was expressed to forbid the use of 'funds of the HSU' to investigate claims other than an investigation undertaken as a result of the National Executive's resolutions.
11. Having found (at [50]) that the resolution with respect to funds of the HSU was 'antithetical to r 60(b) which vests the funds of a branch in the Branch trustees who must deal with them as directed by the Branch Committee', Justice Sundberg then stated:

[51] Further, the National Executive's resolutions lack any time frame for an investigation. They do not appoint an auditor, but just require the obtaining of quotations as to the cost of an appointment. The enquiries that are authorised by resolution 3 are conditional on an appointment. Until an auditor is appointed, there can be no enquiry. On appointment, the enquiry is limited to the preliminary question whether the allegations should be investigated. If the auditor thinks there should be an investigation, he or she must report to the National Executive about the likely cost. The resolution takes the matter no further. It is silent as to the next step. Resolution 4 requires any allegations to be put to the auditor, when appointed. The auditor is to report to the Executive as to whether the allegations should be investigated and the likely cost. Again the resolution takes the matter no further. Altogether, the resolutions have the hallmarks of a process which is not designed to get anywhere.

12. Justice Sundberg stated (at [52]) that 'there is serious doubt as to whether resolution 4 is a "proper direction" for the purposes of r 49(a)' (which vests the government, management and control of the affairs of each branch in the branch committee, subject to the Rules and 'any proper direction of the ... National Executive').
13. On 20 March 2009 Ms Jackson wrote to the Industrial Registrar advising that the National Executive had resolved on 19 March 2009 to advertise for a new National Auditor and had already determined to request the National Auditor to examine all allegations of financial irregularity in the Branch. Ms Jackson also advised the Registrar of a conversation she had had with the former National Secretary of the HSU in which it was alleged by the former National Secretary that Ms Fegan had stated to him that the Pitcher Partners investigation was 'in effect, under her direction and that she claimed that she could influence the conduct and outcome of the work being undertaken by Pitcher Partners.' Ms Jackson stated in her letter that members of the National Executive have been concerned about 'apprehended bias' by any person

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appointed by the Branch Committee to investigate 'claims of irregularities in which many Committee members have an interest and where the appointment takes place in a highly politically charged atmosphere'.

14. The scope of engagement of Pitcher Partners is set out in an Addendum to the Engagement letter from Pitcher Partners dated 25 March 2009. It was agreed that Mr Whitchurch would review allegations regarding transactions with Urban Giftware that are contained in the Branch Committee resolution of 7 January 2009 together with allegations against the Secretary and Assistant Secretary that are set out in Exhibit SM-8 to Ms McCormack's affidavit of 7 January 2009. Specifically, Mr Whitchurch was engaged to review the following:
 - a. dealings between Urban Giftware [being the business operated by Ms Fegan's domestic partner] and the Branch from 1 January 2005 to 31 December 2008;
 - b. unauthorised payment of additional salary to the Branch Secretary, Mr Jeff Jackson;
 - c. unauthorised payment to an employee of the Branch, Ms Alex Hicks;
 - d. unauthorised use of a credit card by the Branch Assistant Secretary, Mr Shaun Hudson;
 - e. unauthorised use of a credit card by Mr Jackson;
 - f. unauthorised payment of airfares for officials and their partners; and
 - g. any other financial irregularities identified while reviewing the above allegations.
15. In a letter to the Industrial Registrar dated 26 March 2009, Mr Jackson contended that the Registrar could not rely on the Pitcher Partners Report because Mr Whitchurch was engaged by Macpherson + Kelley Lawyers who do not act for the Branch, but for certain members of the Branch Committee of Management, including the Branch President, Ms Fegan. Mr Jackson formally requested that the Registrar conduct an investigation of any allegations against officers or officials of the Branch, advising that he did not believe that any investigation of allegations against Ms Fegan was being undertaken by Mr Whitchurch and otherwise. Mr Jackson stated that he believed that Ms Fegan, Ms McCormack, Mr Whitchurch and their lawyers, Macpherson + Kelley, 'are involved in a process designed to shield Ms Fegan from investigation while investigating only those retaliatory allegations originating from Ms Fegan and her allies, including from Ms McCormack'.
16. The findings made by Mr Whitchurch are detailed in a report dated 26 March 2009 (**the Pitcher Partners Report**). A copy of the Pitcher Partners Report was sent to the Australian Industrial Registry (**AIR**) by Mr Jackson under cover of a letter dated 1 April 2009. Despite the terms of engagement, the Pitcher Partners Report was limited to an examination of the above issues between 1 July 2007 and 30 November 2008.
17. On 6 April 2009 the Industrial Registrar wrote to Ms Jackson enquiring whether the National Executive will conduct its own investigation into the financial affairs of the Branch in light of the findings of Justice Sundberg in *Conquo v Jackson*. Ms Jackson replied on 7 April 2009 stating that, since she understood that the Branch Secretary

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had invited AIR to conduct its own inquiry, it appeared that 'a still further inquiry by the National Auditor on behalf of the National Executive is unnecessary'. The Industrial Registrar responded in a letter of 9 April 2009 that the National Office must make its own decision regarding whether to conduct its own inquiry or investigation into the Branch.

18. Having received the Pitcher Partners Report on 1 April 2009, the Industrial Registrar also wrote to Mr Jackson on 6 April 2009 making further inquiries about the Pitcher Partners Report regarding:
 1. whether the Pitcher Partners Report is a final or draft report;
 2. if it is final, why was its scope limited;
 3. why were terms of the original engagement letter changed;
 4. will Pitcher Partners continue its examination and report with respect to the period 1 January 2005 to 30 June 2007;
 5. what further action will the Branch take to investigate allegations against Ms Fegan;
 6. why are there no disclosures of related party transactions in the Branch's financial report that was lodged with AIR for the year ended 30 June 2007;
 7. details regarding whether a donation made to Ms Alex Hicks was approved under the Rules of the HSU;
 8. what action was being taken by the Branch regarding inadequate internal controls that were identified by the Pitcher Partners Report;
 9. what action was being taken by the Branch to recoup monies that the Pitcher Partners Report had identified as being paid without evidence of authorisation; and
 10. whether financial reports for the years ended 30 June 2005, 30 June 2006 and 30 June 2007 need to be amended with respect to annual leave entitlements as identified by the Pitcher Partners Report.
19. On 7 May 2009 Mr Jackson advised that a financial report for the year ended 30 June 2008 had not been lodged because the Branch's auditor 'was not prepared to sign off on the financial documents' until questions regarding related party transactions were resolved. Mr Jackson also advised that questions 1 to 6 of the Registrar's letter of 6 April 2009 would be discussed at the meeting of the National Executive of the HSU on 11 May 2009 and that the National Executive had already determined to establish its own investigation into these matters. With respect to question 7, Mr Jackson advised that the payment was improperly described as a political donation and that he had directed that records be corrected accordingly. With respect to question 8, Mr Jackson advised that he was currently reviewing internal systems and would make a report to the Branch Committee and to the AIR once complete. With respect to question 9, Mr Jackson advised that the National Executive will consider an investigation of this issue. With respect to question 10, Mr Jackson advised that he had requested the Branch's auditor to review this matter.
20. As at the date of this Report, FWA has not been advised whether the National Executive has ever undertaken an investigation of its own into the financial affairs of

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the Branch and, if so, of the findings of any such investigation. Nor has it been advised of any report that has been made to the Branch Committee of Management regarding internal controls or the results of any request to the auditor to review the reporting of annual leave entitlements. In response to a letter from the Industrial Registrar dated 1 June 2009 making further inquiries regarding the outcome of the National Executive meeting on 11 May 2009, solicitors for Mr Jackson, Minter Ellison, advised that on 11 May 2009, and again on 12 May 2009, the National Executive passed resolutions relating to an application to the Federal Court of Australia under section 323 of the RAO Schedule.

21. On 20 May 2009 the HSU applied to the Federal Court of Australia (VID 378 of 2009) under section 323 of the RAO Schedule for a declaration that the Branch had ceased to function effectively and that there was no effective means under the rules of the HSU or the Branch by which it could function effectively. The Court was asked to approve a scheme for the taking of action by the National Executive to enable the Branch to function effectively. On 30 June 2009 a Deed of Agreement was entered into between the HSU and the majority of members of the Branch's Committee of Management, including Mr Jackson, Mr Hudson, Ms Fegan, Ms McCormack and Ms Conquo. The Deed agreed to make joint application to the Federal Court for approval by the Court of a Scheme related to the section 323 application.
22. In an order dated 4 August 2009 his Honour Justice Tracey approved a Scheme under which Mr John Vines OAM was appointed as Administrator of the Branch from 17 August 2009. On and from that date, all elected offices in the Branch were declared vacant. Pursuant to his Honour's order, fresh elections for all offices in the Branch were held and new officers took up office upon declaration of the election on 9 December 2009. Amongst other things, the Deed of Agreement also provided for the Branch to continue to pay the salaries of Ms Fegan, Mr Jackson and Mr Hudson for specified periods, payment by Mr Jackson of \$15,000 to the Branch and payment by the Branch of legal costs of parties to the Deed.
23. In his reasons for judgment, his Honour included the following summary of events in the Branch in the preceding year which ultimately lead to the granting of the order under section 323:
 1. For over a year the Victoria No.1 Branch of the Health Services Union has become progressively more dysfunctional. At its root, the cause of this dysfunction has been antagonism between two groups formed by members of the Branch's Committee of Management and their supporters within the Branch membership. One group coalesces around the Branch President Ms Pauline Fegan. Ms Fegan is also a paid employee of the Branch. The other is led by the Branch Secretary Mr Jeff Jackson.
 2. Disputes between the two groups have given rise to a series of events which have severely undermined the functioning of the Branch. The result has been that Branch officers have been deflected and distracted from the pursuit of the industrial interests of the members.
 3. It is unnecessary to record all of the disruptive events which have occurred over the past year. Some examples will suffice:

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Allegations by staff members of the Branch that they have been harassed and intimidated by Ms Fegan and some of her supporters. These allegations have led to the institution of inquiries and laying of disciplinary charges.

The terminations of the employment of some staff members which were challenged in proceedings in the Australian Industrial Relations Commission.

A dispute between Mr Jackson and Ms Fegan which led to staff members not being paid for some weeks.

Staff "locking-out" Branch officials from the Branch office.

Meetings of the Branch's Committee of Management being disrupted by bickering and walkouts by some members.

The making of allegations and counter allegations of misconduct on the part of Ms Fegan and Mr Jackson.

The suspension from duty of various officers of the Branch.

4. Attempts by federal officials of the Union to mediate in the dispute have not succeeded. Various inquiries have not led to decisive remedial action. An attempt to bring matters to a head at a specially convened general meeting of the Branch was frustrated when the meeting dissolved into disorder and had to be abandoned without dealing with all of the business which it had been convened to consider. Various applications, made to this Court, have not had any impact on the underlying issues. Large sums have been spent on legal fees and inquiries with the result that the Branch is in a parlous financial state.
24. On 26 July 2009 an article entitled 'Union nude photo row' appeared in the Sunday Herald Sun newspaper. The article alleged that on 18 December 2008 \$54,000 was transferred from a 're-election fund controlled by HSU No.1 Branch staff' into the personal account of the Branch Assistant Secretary, Mr Hudson. Mr Hudson is quoted in the article as saying 'The money was only in my account for a few days before I moved it into the HSU Social Club account.'
25. Documents relevant to the Inquiry were received from Macpherson + Kelley Lawyers (solicitors for Ms Fegan, Ms Conquo, Ms McCormack and other members of the Branch Committee of Management) under cover of letters dated 27 April 2009, 30 April 2009 and 4 June 2009.
26. In a letter to solicitors for Mr Jackson, Minter Ellison, dated 18 May 2009 the Industrial Registrar sought copies of an extensive list of documents that appear on pages 6 and 7 of the Pitcher Partners Report and are said to have been 'considered and relied upon' by Mr Whitchurch in conducting his investigation. The Registrar also sought copies of any other documents relied upon by Mr Whitchurch in conducting his investigation. Documents were received from Minter Ellison under cover of letters dated 9 June 2009 and 11 June 2009. Minter Ellison advised in their letter of 11 June 2009 that they were not able to provide copies of some documents which they had been informed Pitcher Partners did not possess, including purchase invoices for the period 1 July 2007 to 30 November 2008 supporting entries in the general ledger accounts and some credit card statements.

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27. The following people were interviewed by FWA during the course of the Inquiry:
 - a. Ms Pauline Fegan on 6 October 2009;
 - b. Mr Shaun Hudson on 10 November 2009;
 - c. Mr Jeff Jackson on 12 November 2009; and
 - d. Ms Rita Wills, Branch Office Manager, on 15 December 2009.
28. With the exception of Mr Jackson, all of the interviews conducted by FWA were recorded and transcribed with the permission of the person being interviewed.
29. Having noted in its letter of 29 January 2009 to Mr Jackson that the Branch's financial report for the year ended 30 June 2008 had not been lodged (although it should have been lodged with AIR no later than 15 January 2009), AIR (and subsequently FWA) sought lodgment of the outstanding financial report in letters dated 6 April 2009, 4 May 2009, 18 May 2009, 1 June 2009 and 12 October 2009. On 10 June 2009 the Branch's auditor, Mr Dick, lodged a copy of his audit report for the year ended 30 June 2008 with AIR, although it was not accompanied by the financial documents to which it related. The financial report for the year ended 30 June 2008 – including the auditor's report dated 9 June 2009 - was lodged with FWA by the Court appointed Administrator, Mr Vines, on 15 October 2009, with further information regarding compliance with section 268 of the RAO Schedule being provided on 16 October 2009.
30. On 24 December 2009 I wrote to the new Branch Secretary, Mr Marco Bolano (who was declared elected on 9 December 2009), seeking his comments or explanation regarding compliance of the financial report for the year ended 30 June 2008 with various Australian Accounting Standards. On that same date I also wrote to the Branch's Auditor for that financial year, Mr Dick, seeking his comments or explanation regarding compliance of the GPFR with various Australian Accounting Standards and compliance of the Auditor's Report with various Australian Auditing Standards. A response was received by FWA from Mr Dick on 21 January 2010 and from Mr Bolano on 19 February 2010. I wrote a further letter to Mr Bolano on 23 March 2010 requesting that the Branch lodge a Statement of Loans, Grants and Donations as required by section 237 of RAO Schedule should any of the individual amounts paid as donations in the year ended 30 June 2008 exceed \$1,000. As at the date of this report no statement of loans, grants and donations has been lodged by the Branch for the year ended 30 June 2008.
31. The financial report of the Branch for the year ended 30 June 2009 was lodged with FWA by Mr Vines on 23 November 2009. On 7 January 2010 I wrote to Mr Bolano seeking his comments or explanation regarding compliance of the financial report for the year ended 30 June 2009 with various Australian Accounting Standards. In that letter I also sought lodgment of a Statement of Loans, Grants and Donations should any of the individual amounts paid as donations in the year ended 30 June 2009 exceed \$1,000. I received a reply from Mr Bolano on 12 February 2010. On 12 March 2010 I wrote to the auditor of the Branch for the year ended 30 June 2009, Mr Michael Shulman of Stannards Accountants and Advisors Pty Ltd, seeking his comments and explanation regarding compliance of the Auditor's Report with various Australian Auditing Standards. A statement of loans, grants and donations for the year ended

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- 30 June 2009 was lodged with FWA on 31 March 2010. A response to my letter of 12 March 2010 was received from Mr Shulman on 6 April 2010.
32. On 13 April 2010 the National Office of the HSU lodged with FWA an application under section 159 of the Act for certification of alterations to the rules of the HSU. The alterations, which were certified on 24 May 2010, provided for merger of the Victoria No.1 Branch and the Victoria No.3 Branch with the New South Wales Branch and renaming of that branch as 'HSU East Branch'.
33. I commenced an investigation under section 331 of the Act on 27 April 2010 (**the Investigation**) following a review of information and evidence gathered by the Inquiry to that date.
34. A notice pursuant to paragraph 335(2)(b) of the Act was sent to Mr Michael Williamson, General Secretary of the HSU East Branch, on 22 June 2010 requiring production to FWA of various documents pertinent to the investigation, including minutes of meetings of the Branch Committee of Management, documents tabled at Branch Committee of Management meetings and documents evidencing transactions between the Branch and Urban Giftware. Documents in response to the notice were lodged with FWA on 6 July 2010. Those documents indicate, amongst other things, that the first transaction between the Branch and Urban Giftware occurred on 10 July 2006.
35. A notice under paragraph 335(2)(b) was also sent to Mr Ian Dick, the Branch's auditor for financial years up to and including the year ended 30 June 2008, on 23 July 2010 requiring production of Mr Dick's audit file for financial years ended 30 June 2007 and 30 June 2008. Documents in response were received from Mr Dick on 17 August 2010.
36. On 14 October 2010 I sent letters to each of Ms Fegan, Mr Jackson and Mr Hudson setting out findings that I was proposing to make as a result of the Investigation, based on the evidence I had examined. The recipients were advised that some of those findings may be adverse to their interests and they were provided with an opportunity to respond by 12 November 2010 as each of them deemed appropriate. On 3 November 2010 Mr Jackson was sent a second copy of the letter dated 14 October 2010 after Mr Jackson advised FWA that he had changed address.
37. An email was received from Ms Fegan on 9 November 2010 requesting an extension of time until the end of January 2011 in which to respond. A voicemail message was left by Mr Jackson on 11 November 2010 requesting an extension of time of one month for himself and advising that Mr Hudson had received FWA's letter of 14 October 2010 but that Mr Hudson had been in China for three weeks and that Mr Jackson was of the view that Mr Hudson would also need an extension of time in which to respond.
38. On 15 November 2010 I wrote to each of Ms Fegan, Mr Jackson and Mr Hudson granting each of them an extension of time until 3 December 2010 in which to respond to my letters of 14 October 2010. On 2 December 2010 FWA received an email from MacPherson + Kelley advising that they were acting for Ms Fegan and requesting an extension of time until 10 December 2010 in order to obtain advice from counsel. Ms Fegan's response to the proposed findings that were set out in my letter of

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- 14 October 2010 was lodged with FWA by MacPherson + Kelley on 10 December 2010.
39. No response to the proposed findings set out in my letter of 14 October 2010 has been received from Mr Hudson.
 40. On 5 December 2010 an email was received from Mr Jackson advising that he had been unwell, including being hospitalised. Mr Jackson stated that he wished to obtain legal advice but that he would need to undertake 'a large amount of work' prior to obtaining such advice, including accessing documents relied upon by FWA to which he currently does not have access. Mr Jackson also asserted that, in circumstances where FWA has taken more than a year to conduct its investigation and produce the letter to which a response is sought, it is 'only fair' that he be given 'proper and adequate opportunity to respond'.
 41. Having reviewed my letter of 14 October 2010 to Mr Jackson and in light of his email of 5 December 2010, I wrote to Mr Jackson on 10 December 2010 advising him that, in my view, he had already had an adequate opportunity to respond. Nevertheless, I had formed a view that my letter of 14 October 2010 did not provide sufficient particulars of my proposed findings regarding deficiencies in the Branch's financial report for the year ended 30 June 2008. I therefore withdrew the proposed findings in paragraphs 76 and 77 of my letter dated 14 October 2010 and, in their place, invited comment regarding proposed findings that were set out in new paragraphs 76 to 96 of my letter of 10 December 2010. In the circumstances, an extension of time for responding to my letters of 14 October 2010 and 10 December 2010 was provided until 28 January 2011.
 42. I also advised Mr Jackson in my letter of 10 December 2010 that many, if not all, of the documents which he wishes to obtain may already be held by FWA as part of the Investigation. He was invited to contact FWA in order to determine whether FWA is able to assist him in accessing documents he needs. No such request has been received from Mr Jackson.
 43. No response has been received from Mr Jackson to the proposed findings set out in my letters of 14 October 2010 and 10 December 2010.
 44. I also wrote to Mr Dick on 10 December 2010 setting out findings that I was proposing to make regarding the audit that he conducted on the Branch's financial return for the years ended 30 June 2007 and 30 June 2008. I sought Mr Dick's response to those proposed findings by 28 January 2011. I have not received a response from Mr Dick to my letter of 10 December 2010.
 45. Some of my proposed findings concerning contraventions by the Branch of the RAO Schedule may also be adverse to the Branch. I therefore wrote to Mr Michael Williamson, General Secretary of the HSU East Branch, on 17 December 2010 and put those proposed findings to him and gave him an opportunity to respond on behalf of the Branch, or its successor, should he wish to do so. I invited Mr Williamson to provide any response that he may wish to give by 28 January 2011. On 13 January 2011 a letter was received from Slater & Gordon, who act for Mr Williamson, advising that my letter was received on 21 December 2010, that the office of the HSU East Branch closed on 23 December 2010 and that Mr Williamson will not return to work until February 2011. No extension of time in which to respond was sought on

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Mr Williamson's behalf. No response has been received from Mr Williamson to my letter of 17 December 2010.

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Legislative Changes – Fair Work (Registered Organisations) Act 2009

46. With legislative changes that commenced on 1 July 2009, all of the provisions of the *Workplace Relations Act 1996 (WR Act)*, with the exception of Schedules 1 and 10, were repealed and the WR Act was renamed the *Fair Work (Registered Organisations) Act 2009 (the Act)*.
47. Most of the conduct that is the subject of this Inquiry and subsequent Investigation occurred prior to 1 July 2009 when requirements with respect to financial records, accounting and auditing were set out in the RAO Schedule. As a result, extracts from legislation that appear below are taken from the RAO Schedule. When referring to conduct that occurred on or after 1 July 2009, the legislation that is extracted below should be read as though a reference to a thing listed in the first column of the table below is a reference to the thing listed opposite in the second column, unless the context otherwise requires¹:

Commission	Fair Work Australia or FWA
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
RAO Schedule	Fair Work (Registered Organisations) Act 2009
Schedule 1B to the Workplace Relations Act 1996	Fair Work (Registered Organisations) Act 2009
RAO Regulations	Fair Work (Registered Organisations) Regulations 2009
Workplace Relations (Registration and Accountability of Organisations) Regulations 2003	Fair Work (Registered Organisations) Regulations 2009

48. The Inquiry was commenced by the Industrial Registrar on 29 January 2009 under section 330 of the RAO Schedule. With legislative changes that commenced on 1 July 2009, the Inquiry was continued under section 330 of the Act. The subsequent

¹ Since the RAO Schedule was not repealed, the provisions set out in the RAO Schedule continued from 1 July 2009 but with the substitutions set out in the table in paragraph 47. See Schedule 22 of the *Fair Work (Transitional Provisions and Consequential Amendment) Act 2009*.

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Investigation has also been conducted under the Act. From 1 July 2009, I have conducted both the Inquiry and the later Investigation under a delegation by the General Manager of FWA of powers and functions conferred by sections 330, 331, 335 and subsection 336(1) of the Act.

49. Under transitional provisions, financial documents that were lodged with the AIR have effect as if they were lodged with FWA. 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 with the AIR under, or for the purposes of, a provision of the RAO Schedule has effect after 1 July 2009 as if it had been lodged with FWA.
50. Conduct that occurred prior to 1 July 2009 is dealt with by FWA in accordance with the processes contained in the Act. Item 11 of Schedule 2 to the TPCA Act provides that the WR Act continues to apply, on and after 1 July 2009, in relation to conduct that occurred before 1 July 2009. Regulation 5.11 of the Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009 (**TPCA Regulations**), however, provides that, to avoid doubt, item 11 of Schedule 2 to the TPCA Act does not apply to provisions of the WR Act that are not repealed by Schedule 1 to the TPCA Act. Schedule 1 to the TPCA Act does not repeal the RAO Schedule. 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.

Source of the Power

51. Part 4 of Chapter 11 of the RAO Schedule sets out powers held by the Industrial Registrar up until 30 June 2009 to make inquiries and to conduct investigations. From 1 July 2009 identical powers under the corresponding provisions of the Act have been held by the General Manager of FWA:

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.

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- (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.

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

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- (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 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).
52. Subsections 330(2) and 331(2) make reference to section 305 of the RAO Schedule, which relevantly provides:

305 Civil penalty provisions

- (1) Subject to this Part, an application may be made to the Federal Court for orders under sections 306, 307 and 308 in respect of conduct in contravention of a civil penalty provision.
- (2) These provisions are the *civil penalty provisions*:
 - ...
 - (u) subsection 237(1) (particulars of loans, grants and donations);
 - (v) subsection 237(3) (false statement about loans, grants and donations);
 - (w) sections 253 and 254 (keeping and preparation of accounts);
 - (x) subsection 256(1) (appointment of auditors);
 - ...
 - (z) subsections 257(10) and (11) (auditor's report);
 - ...
 - (zd) subsections 265(1), (4) and (5) and 266(1) and section 267 (accounts, reports etc.);
 - (ze) section 268 (failure to lodge accounts etc.);
 - ...
 - (zj) subsections 285(1), 286(1) and (2), 287(1) and (2), and 288(1) and (2) (officers' duties);
 - ...
- (3) For the purposes of this Part, any contravention of a civil penalty provision by a branch or reporting unit is taken to be a contravention by the organisation of which the branch or reporting unit is part.

What are 'Reasonable Grounds' for Conducting an Investigation?

53. The power to conduct an investigation must be exercised in accordance with the objects of the Act. Relevant objects of the Act include:

5 Parliament's intention in enacting this Act

- ...
- (3) The standards set out in this Act:
 - (a) ensure that employer and employee organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and
 - ...
 - (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and ...

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54. The power of the General Manager to conduct an investigation under the Act (or of a Registrar to conduct an investigation under the RAO Schedule) has not been the subject of specific judicial consideration. Guidance as to the principles which govern this power can be found in judicial decisions which have considered the exercise of similar compulsive powers of investigation.
55. It is clear from the terms of section 331 of the Act that the General Manager will not be entitled to exercise his or her powers of investigation unless satisfied that there are reasonable grounds for conducting such an investigation. Not only must there be an actual belief that reasonable grounds exist, but there must also exist a proper factual basis for that belief (see *TNT Australia Pty Ltd v Fels* (1992) ATPR 41-190 at 40,598 and *Nakkuda Ali v Jayaratne* (1951) AC 66 at 77).
56. In *Power v Hamond* [2006] VSCA 25 Chernov JA of the Supreme Court of Victoria considered a requirement that there be 'reason to believe':

[105] ... It is now settled law that the question whether there is "reason to believe" a specific matter in a context such as the present is to be determined by the person concerned on an objective basis and that the correctness of the conclusion may be tested in court. Thus, for example, it was said in *George v Rockett* that "[w]hen a statute prescribes that there must be 'reasonable grounds' for a state of mind — including suspicion and belief — it requires the existence of facts which are sufficient to induce that state of mind in a reasonable person." Consequently, in order to have launched the impugned investigation lawfully the Ombudsman had to conclude, on an objective basis, that Power's failure to obtain insurance might amount to misconduct or unsatisfactory conduct. The question, therefore, is whether, in all the circumstances, a reasonable Ombudsman would have so concluded.

[106] It is not necessary in order to satisfy the requirement that there be "reason to believe" that a prima facie case be made out against the person the subject of the investigation. Moreover, in assessing whether the above requirement has been made out, the investigative nature of the powers must be borne in mind. Nevertheless, the belief must rest on objective facts that would induce the relevant state of mind in a reasonable person.

57. The concept of 'reasonable grounds' in relation to section 58(5) of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**) was considered by Downes J in *McKinnon v Department of Treasury* [2004] AATA 1364. That section required the Administrative Appeals Tribunal to determine whether 'reasonable grounds' existed for the Minister's claim that the disclosure of a document under the FOI Act would be contrary to the public interest. At [15] and [16] Downes J stated:

... "reasonable grounds" means grounds based on reason, as distinct from something "irrational, absurd or ridiculous" on the one hand, or "fanciful, imaginary or contrived" on the other" ... To say that reasonable grounds must be grounds based on reason does not resolve one critical issue relating to the test. The concept of reasonable grounds conveys more than the idea of reason. Were that not so, the only task for the tribunal would be to test the logic of the claim and not to examine its basis. What is required is reasonable grounds for the claim. Finding the existence of grounds is an essential aspect of the test. Determining the reasonableness of grounds require more than reason or logic. It requires the examination of the foundation for the claim.

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58. The known and suspected facts must at least be capable at law of amounting to a contravention of the RAO Schedule. If the matrix of facts which exist and facts which might reasonably be suspected to exist could not give rise to a contravention then the grounds relied upon by the General Manager would not be reasonable (*WA Pines v Bannerman* (1980) 30 ALR 559 per Brennan J at 565-566).
59. In my view it is not necessary that the General Manager have sufficient material before him in order to believe, or even suspect, that there *has been* a contravention before he is entitled to embark upon an investigation. Rather, it is sufficient that the General Manager has a suspicion that there *may have been* a contravention and that this suspicion is based upon material from which a reasonable person could reach the same conclusion. A reasonable suspicion that there may have been a contravention would generally constitute a sufficient reason to investigate the possibility of whether a contravention has occurred (*Queensland Bacon Pty Ltd v Rees* (1966) 115 CLR 266 per Kitto J at 303).

SCOPE OF THIS INQUIRY AND INVESTIGATION

60. The Inquiry and subsequent Investigation have considered:
- a. each of the matters considered by the Pitcher Partners Report, namely allegations of:
 - i. breach of fiduciary duty by Pauline Fegan;
 - ii. unauthorised payment of additional salary to Jeff Jackson;
 - iii. unauthorised payment of \$5,000 to Alex Hicks;
 - iv. unauthorised use of credit card by Shaun Hudson;
 - v. unauthorised use of credit card by Jeff Jackson; and
 - vi. unauthorised payments for airfares for officials and their partners.;
 - b. transfer by Mr Hudson of monies from a 'Social Club Account' into a personal bank account;
 - c. whether the Branch kept proper financial records;
 - d. in the years ended 30 June 2007, 30 June 2008 and 30 June 2009:
 - i. whether the Branch had produced general purpose financial reports (**GPFRs**) in accordance with the requirements of Part 3 of Chapter 8 of the RAO Schedule (or the Act, as appropriate), and in particular whether such GPFRs had been prepared in accordance with Australian Accounting Standards and the Reporting Guidelines;
 - ii. whether the Branch had lodged a full financial report with the AIR/FWA (as appropriate) within timeframes prescribed by the RAO Schedule (or the Act, as appropriate); and
 - iii. whether the Branch had lodged statements regarding the making of loans, grants and donations with the AIR/FWA (as appropriate) within timeframes prescribed by the RAO Schedule (or the Act, as appropriate);
 - e. whether Audit Reports produced by auditors appointed by the Branch for the years ended 30 June 2007, 30 June 2008 and 30 June 2009 met the requirements of the RAO Schedule (or the Act, as appropriate).

Role of the Pitcher Partners Report

61. In conducting the Inquiry and subsequent Investigation, I have made my own inquiries regarding the findings made by the Pitcher Partners Report. In exercising my powers of inquiry and investigation, I am conscious that I must form an actual belief of my own that has been formed on a proper factual basis. I must exercise care in relying upon findings of the Pitcher Partners Report since Mr Whitchurch made findings based on examination of certain documents that were provided to him but that have not been provided to me.

Scope of this Inquiry and Investigation

62. In a letter to the Industrial Registrar dated 20 March 2009, Ms Jackson advised the Registrar of a conversation she had with the former National Secretary of the HSU, Mr Rob Elliott, in which it was alleged that Ms Fegan had stated to Mr Elliott that the Pitcher Partners investigation was 'in effect, under her direction and that she claimed that she could influence the conduct and outcome of the work being undertaken by Pitcher Partners.' Ms Jackson stated that members of the National Executive have been concerned about 'apprehended bias' by any person appointed by the Branch Committee to investigate 'claims of irregularities in which many Committee members have an interest and where the appointment takes place in a highly politically charged atmosphere'.
63. In a letter to the Industrial Registrar dated 26 March 2009, Mr Jackson also contended that the Registrar could not rely on the Pitcher Partners Report because Mr Whitchurch was engaged by Macpherson + Kelley Lawyers who do not act for the Branch, but for certain members of the Branch Committee of Management, including Ms Fegan. Mr Jackson stated that he did not believe that any investigation of allegations against Ms Fegan was being undertaken by Mr Whitchurch and that he believed that Ms Fegan, Ms McCormack, Mr Whitchurch and their lawyers, Macpherson + Kelley, 'are involved in a process designed to shield Ms Fegan from investigation while investigating only those retaliatory allegations originating from Ms Fegan and her allies, including from Ms McCormack'.
64. In a letter to the Industrial Registrar dated 27 April 2009, Macpherson + Kelley Lawyers confirmed that they act on behalf of Ms Conquo, Ms Fegan, Ms McCormack 'and a large number of the Branch Committee members, who together form the overwhelming majority of the branch Committee.'
65. In an affidavit sworn by Mr Jackson on 22 June 2009 in *Conquo v Jackson* (VID 267 of 2009), Mr Jackson had outlined in greater detail his concerns about the independence of Pitcher Partners in carrying out its investigation.
66. In an order issued on 5 February 2009 in *Conquo v Jackson* [2009] FCA 45, Justice Sundberg ordered that Mr Jackson cease and restrain from obstructing, hindering or in any other way preventing Pitcher Partners from carrying out an examination and preparing a report on any irregularities in the financial affairs of the Branch and to provide Pitcher Partners with full access to the records of the Branch in accordance with resolutions passed by the Branch Committee of Management on 7 January 2009. Those orders were sought by Ms Conquo. In his reasons for decision, his Honour stated that no attack had been made on Mr Whitchurch's qualifications to undertake the investigation (at [44]).
67. Mr Whitchurch is an independent Chartered Accountant who has been in public practice for over 15 years. At page 5 of the Pitcher Partners Report he states the following:
- c I have made all the inquiries I believe are necessary and appropriate and to my knowledge there have not been any relevant matters omitted from this report, except as otherwise specifically stated in this report.
 - d I believe that the facts within my knowledge that have been stated in this report are true.

Requirements placed upon Reporting Units

- e The opinion I have expressed in this report are independent and impartial.
 - f I have complied with the requirements of the professional code of conduct or protocol issued by the Institute of Chartered Accountants in Australia and CPA Australia.
68. While recognising that I must examine for myself the matters investigated by the Pitcher Partners Report, I have considered its findings. In my view, the findings of the Pitcher Partners Report constitute credible material that reasonably leads me to suspect that contraventions within the terms of section 331 of the RAO Schedule may have occurred with respect to the matters examined by the Pitcher Partners Report. I do not agree with the contentions of either Ms Jackson on 20 March 2009 or Mr Jackson on 26 March 2009 that Mr Whitchurch's investigation was under the direction of Ms Fegan or that it was 'designed to shield Ms Fegan from investigation while investigating only those retaliatory allegations originating from Ms Fegan and her allies'.

REQUIREMENTS PLACED UPON REPORTING UNITS

Part 3 of Chapter 8 of the RAO Schedule

69. Accounting obligations are imposed upon registered organisations by Part 3 of Chapter 8 of the RAO Schedule. Obligations are placed upon 'reporting units', which are determined in accordance with section 242 of the RAO Schedule. Where an organisation is divided into branches, each branch is a reporting unit unless a certificate has been issued by the Industrial Registrar stating that the registered organisation is divided into reporting units on an alternative basis (see subsection 242(3)). As no such certificate has been granted with respect to the HSU, the Branch is a reporting unit for the purposes of Part 3 of Chapter 8 of the RAO Schedule.
70. In summary, Part 3 of Chapter 8 places general obligations upon reporting units to keep proper financial records and to prepare a GPFR from those records. The reporting unit must also prepare an Operating Report. The financial report must be prepared in accordance with Australian Accounting Standards and the Reporting Guidelines that have been issued by the Industrial Registrar. Once the financial report has been audited, it must be provided to members and presented to a meeting before being lodged with AIR (or FWA as appropriate).

The Keeping of Financial Records

71. 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

Requirements placed upon Reporting Units

- (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.

72. "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.

Preparation of GPFR and Operating Report

73. Each year a reporting unit is required to prepare a GPFR from the financial records that have been kept under section 252 together with an Operating Report:

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).

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- (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).

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
 - (iii) 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).

74. The information that is prescribed for the purposes of section 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)*

Requirements placed upon Reporting Units

Regulations), and, since 1 July 2009, has been set out in identical terms in regulation 159 of the *Fair Work (Registered Organisations) Regulations 2009 (RO 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.

75. Paragraphs (b) and (c) of section 253(2) refer to requirements of the Reporting Guidelines that were issued by the Industrial Registrar under section 255 of the RAO Schedule on 12 October 2004. 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. Included in the Guidelines at paragraphs 24 to 26 is a requirement that the reporting unit cause to be prepared a Committee of Management Statement containing declarations by the committee of management in relation to the GPFR, as follows:

- 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

Requirements placed upon Reporting Units

- (e) during the financial year to which the GPFR relates and since the end of that year:
 - (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.
76. The Reporting Guidelines also require disclosure of additional information in a reporting unit's Profit and Loss Statement, including the following:
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;

Requirements placed upon Reporting Units

- (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.

Provision of Financial Documents to Members and Presentation to a Meeting

77. 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 GPFR, Auditor's Report and Operating Report (which together constitute the 'full report') must be provided by the reporting unit to its members, free of charge:

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).

...

- (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).

78. 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).

Requirements placed upon Reporting Units

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

79. 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).

Part 2 of Chapter 8 of the RAO Schedule

80. Apart from the obligation to prepare and lodge a financial report in accordance with the requirements of Part 3 of Chapter 8 of the RAO Schedule, the Branch is also required, within 90 days of the end of the financial year, to 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).

Duties placed upon Officers – Chapter 9 of the RAO Schedule

- (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.

DUTIES PLACED UPON OFFICERS – CHAPTER 9 OF THE RAO SCHEDULE

81. Chapter 9 of the RAO Schedule sets out duties of officers of registered organisations and their branches in relation to their financial management. Those duties concern obligations to exercise powers and discharge duties with care and diligence and in good faith. Obligations are also imposed regarding the improper use of position to gain an advantage or to cause detriment.

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 Act 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:

Requirements placed upon Auditors

- (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).

REQUIREMENTS PLACED UPON AUDITORS

- 82. A reporting unit must ensure that there is an auditor of the reporting unit as required by section 256(1) of the RAO Schedule. The powers and duties of auditors are set out in section 257 of the RAO Schedule and include the following:

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).

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(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).

RULES OF THE HEALTH SERVICES UNION

83. A registered organisation must have rules that make provision as required by the RAO Schedule (s.140(1)). Those rules must provide, amongst other things, for matters set out in section 141, including the powers and duties of branch committees and of the holders of office in those branches (paragraph (1)(b)(i)), the manner in which property of the organisation is to be controlled and its funds invested (paragraph(1)(b)(ix)), the yearly or other more frequent audit of accounts (paragraph (1)(b)(x)) and the conditions under which funds may be spent (paragraph (1)(b)(xi)). The rules of an organisation must also provide that a loan, grant or donation of an amount exceeding \$1,000 must not be made unless approved by the committee of management, which must have satisfied itself that to do so would be in accordance with other rules and that, with respect to a loan, any proposed security is adequate and repayment arrangements are satisfactory (s.149).
84. Apart from the provisions regarding financial regulation that are contained in Part 3 of Chapter 8, the RAO Schedule is not concerned with, and does not seek to regulate, the internal structure of a registered organisation. At the time of registration, it is the 'organisation' upon which corporate status is conferred by section 27(a).
85. The term 'branch' is not defined in the Act. The nature of a branch of a registered organisation of employees was described by Fullagar J in *Williams v Hursey* (1959) 103 CLR 30 at 54-55:
- It has no separate identity — no existence apart from the registered organization, of which it is an integral and inseverable part. Its members are merely a section of the total membership of the federation — locally organized for the sake of convenience, but in no respect independent of the federation, and in all respects subject to the control of the federation.
86. An organisation's internal structure is entirely at its own discretion and varies widely from one registered organisation to another. While many organisations choose to divide their membership into branches on a geographical basis, others constitute braches on an occupational basis and some (usually smaller) organisations are not divided into branches at all.
87. The HSU has divided itself into branches on both a geographical and occupational basis (see rule 48 of the HSU Rules). From February 2008 until May 2010 there were four branches of the HSU in Victoria. The Victoria No.1 Branch consisted of all

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members of the HSU who were employed in Victoria other than those members who were employed under the provisions of the *Public Administration Act 2004 (Vic)*, in or in connection with the provision of mental and/or mental retardation services or who were eligible to be members of the Victoria No.3 or Victoria No.4 Branches.

88. The government, management and control of the affairs of each branch of the HSU are vested in the branch committee. The branch committee consists of the officers of the branch and between five and 15 ordinary members, as determined from time to time by the branch (rule 51). With the exception of the New South Wales Branch and (since May 2010) the HSU East Branch, the officers of a branch are the branch president, branch senior vice-president, branch junior vice-president, branch secretary, branch assistant secretary and two branch trustees (rule 50). A branch committee is required to meet at least quarterly (rule 53). The duties of a branch president include presiding over all meetings of the branch and of the branch committee and signing all minutes of the branch (rule 54). The branch secretary is the chief executive officer of a branch and, subject to the Rules, has charge of the general conduct, administration and business of a branch (rule 56). A branch secretary is required to call and attend all meetings of the branch and branch committee, to receive or cause to be received all moneys on behalf of the branch and pay all such moneys into a financial institution, to have charge of the branch's financial books and statements and to prepare and present to each meeting of the branch committee an up-to-date financial statement and, when called to do so by the branch committee, produce all relevant books. A branch secretary is also responsible under the rules for preparing financial returns that are required to be lodged with the AIR/FWA.
89. Amounts payable for membership subscriptions are determined by the branch committee of management from time to time. All subscriptions, fees, fines and levies are paid to, and collected by, the branch secretary (Rule 8). National Council determines the amount of capitation fees that are paid annually by branches to National Council (rule 36). Branch funds and property include real and personal property held by the branch, entrance fees, contributions, fees and levies collected by the branch, funds operated or controlled by the branch and income derived from investment of branch funds (rule 60).
90. The officers of the Branch who were declared elected on 21 June 2006 and who ceased to hold office on 17 August 2009 were:

Branch President	Pauline Fegan
Branch Senior Vice-President	Sonya McCormack
Branch Junior Vice-President	Donna Conquo
Branch Secretary	Jeff Jackson
Branch Assistant Secretary	Shaun Hudson
Branch Trustees	April Johnston Maria Toro

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91. The ordinary members of the Committee of Management who were declared elected on 21 June 2006 were:

Jenny Banks	Toni Jouce
Matthew Boxell	Stuart Marshall
Angelo Dritsas	Bill Ricketts
Anastasia Hondros	John Tuovinen

92. Specific provisions of the HSU Rules that are relevant to the Inquiry and Investigation are:

52 - POWERS AND DUTIES OF BRANCH COMMITTEE

A Branch Committee shall, subject to these rules and to the control of the branch members as hereinafter mentioned, have power -

...

- (b) to supervise and pay all, lawful debts of the Branch;

...

- (e) to fix the remuneration and terms and conditions of employment of any officer or employee of the branch;

56 - BRANCH SECRETARY

The Secretary shall be the chief executive officer of the branch and subject to these Rules, have charge of the general conduct, administration and business, of the branch. He/she shall be the investigating and organising officer of the branch and shall be the officer to sue and to be sued on behalf of the branch. The Secretary shall be ex-officio, a member of all committees and Sub-Committees of the branch.

The Branch Secretary shall -

- (a) call and attend all meetings of the branch and Branch Committee unless excused and keep or cause to be kept minutes of the business transacted at such meetings;

...

- (c) have charge of the financial books and statements of his/her Branch;
- (d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee, produce all relevant books;

...

- (l) prepare returns required by the Industrial Relations Act 1988;

60 - BRANCH FUNDS AND PROPERTY

...

- (b) The funds and property of a branch shall be vested in the Trustees of the branch who shall deal with the same as directed by the Branch Committee.
- (c) All cheques drawn on the funds of a branch shall be signed by the Branch Secretary (or in his/her absence the Branch Assistant Secretary) together with any two members of the Branch Committee.
- (d) For the expenditure of the funds of a branch on the general administration of the branch and for purposes reasonably incidental to the general administration of the branch, the prior approval of the Branch Committee shall not be necessary before such cheques are signed or accounts paid.

OFFICE PROCEDURES REGARDING EXPENDITURE AND INTERNAL CONTROLS

- 93. Many of the findings that I make in this Report have at their foundation, at least in part, failures within the Branch to establish and maintain appropriate office procedures and systems of internal control and authorisation.
- 94. In carrying out his investigation, Mr Whitchurch was required to examine the Branch's procedures for ordering and payment of goods and services and payment of other expenses such as salaries. The Pitcher Partners Report found in its synopsis on page 2 that:
 - 3. In carrying out the above tasks, I first reviewed the systems of internal controls of the Branch which should have ensured that all payments were bona fide branch expenses and properly authorised. I found that the controls were inadequate in that:
 - a. There is no requirement for written authorisation of expenses;
 - b. Ms Wills has stated that Ms Fegan and Mr Hudson have provided her with their electronic passwords for the Bendigo Bank payment system so she can approve payments without further authorisation; and
 - c. Ms Wills advised that Mr Jackson and Mr Hudson sign blank cheques which enable her to make payments without further authorisation.

I regard these inadequacies as serious breaches of internal control procedures, which bypasses the requirement for all payments to be approved by responsible officials.
- 95. Mr Whitchurch's detailed findings regarding the Branch's authorisation procedures for expenditure are set out on page 8 of the Pitcher Partners Report. A summary of his findings on pages 8 to 10 regarding weaknesses identified in authorisation procedures is as follows:
 - a. the Branch does not raise written purchase orders prior to ordering goods or services and no formal quote is kept on file or reconciled to delivery dockets or invoices;

Office Procedures regarding expenditure and internal controls

- b. no authorisation documentation is created or kept as evidence of approval of any expenditure. Approval is given verbally by the Secretary. Such documentary evidence is 'a key compensating control to not raising purchase orders. The lack of either purchase orders or documentary evidence of authorisation of expenditure is considered to be a significant weakness in the internal control structure of the Branch.'
 - c. Staff who incur work related expenditure are required to complete an expense claim form and attach receipts relating to the expense. This form is then filed with the invoice. Mr Whitchurch found numerous instances where the form was not completed or not completed in full prior to a credit card being reimbursed. Ms Wills stated that procedure is often not completed and it is difficult to follow up as staff claim to lose invoices or forget to comply with the request. There are no ramifications (such as denial of reimbursement) if receipts are not provided.
 - d. An invoice is required to be provided for all credit card expenditure. No form is required to be completed. On numerous occasions credit card loan repayments were made without appropriate documentation being completed and no invoices supporting the business expense was provided.
 - e. Payments are not formally approved; invoices are paid by the office manager and on occasion by the accountant. Ms Wills has knowledge of all three personal identification numbers (**PINs**) and is able to process electronic funds transfer transactions without other parties' authorisation.
 - f. Although three signatures are required for the cheque account, Ms Wills stated that it was common for a series of cheques to be signed in advance of being completed by Mr Jackson and Mr Hudson and kept on hand by Ms Wills until required.
96. Appendix 5 to the Pitcher Partners Report is a written statement of Branch Procedures for Ordering and Expenditure that was prepared by Ms Wills at the request of Mr Whitchurch. The Pitcher Partners Report states on page 8 that no formal written procedures relating to expenditure had ever been compiled prior to Mr Whitchurch's investigation.
97. In his letter of 7 May 2009 to the Industrial Registrar Mr Jackson stated that he was currently reviewing internal control systems in consultation with the National Office of the HSU to ensure that payments were properly approved and that he would make a report to the Branch Committee and to the Industrial Registrar once complete. Further the letter stated that the National Executive of the HSU would consider its own investigation of payments lacking authorisation and would consider what action would be taken to recoup any such payments. As at the date of this Report, FWA has not been advised by either Mr Jackson or the National Executive of the HSU of the results of any review of internal control systems or of an investigation by the National Executive.
98. The following information was provided to FWA in interview by Mr Hudson:
- a. Mr Hudson's credit card was used 'as a dogsbody card to pay for this or that or anything' and that it was used 'just as a general card to pay for the office

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equipment that's coming, all the paper or a function that was held somewhere for one of the groups ... my credit card could be used for anything to pay those things if needed'. Mr Hudson was required to bring his monthly credit card statement to the Branch together with receipts. In the event that there were purchases on Mr Hudson's credit card that he had not made, Ms Wills would have the receipts and he expects that she would have filed them with his other receipts.

- b. Ms Fegan had tight control of the finances of the Branch which made it difficult for Ms Wills and for him to actually organise and process payments. If he had his time again, Mr Hudson would have 'probably tightened up a few procedures here and there and put a few more things in writing'.
 - c. Invoices or receipts for payments by the Branch to Urban Giftware were never presented to the Branch Committee of Management for authorisation. Payments were made by Ms Wills on the instruction of Ms Fegan. It was not a practice for invoices that had been paid in the previous month to be presented to the Committee for approval or authorisation. The Committee would get monthly statements of bank account balances and 'general finances', such as 'general costings on what's been spent on A, B, C and D over the previous month but not a breakdown, not individual receipts as such.' If there was a large transaction the information would be presented 'in a general format. 'Say we had a conference and we had a \$30,000 bill for the conference, that would appear on the monthly statements and the expenses for the conference but not the individual receipt from say the hirer or whoever, arts centre or whoever.'
 - d. A number of bills would be paid with cheques. Blank cheques were signed by himself, Mr Jackson and Ms Fegan and they would be filled in later by Ms Wills. With respect to electronic funds transfer (EFT), Ms Wills had been given PINs for himself, Mr Jackson and Ms Fegan that enabled her to make payments by EFT without reference to, or authorisation by, any of the officers of the Branch.
 - e. Employees were required to fill in a leave application form which had to be approved prior to taking leave. Mr Hudson was responsible for approving a lot of leave, although Mr Jackson could also approve leave. It was not uncommon for staff to have leave paid out. If, for instance, Mr Jackson wanted to have leave paid out then he would have it approved by either Mr Hudson or Ms Fegan but it would not be taken to the Committee. All staff are required to fill out forms regarding the taking or paying out of leave.
99. The following information was provided to FWA in interview by Ms Fegan:
- a. When staff had made purchases for which they needed reimbursement from the Branch, staff would obtain an expense form from Ms Wills which would usually then be authorised by Mr Hudson and then Ms Wills would pay it.
 - b. Invoices for services or products would usually 'go just to Rita [Wills]'. When it came to things like ordering paper, Ms Wills 'used to do all that really and she sort of had authority'. So, in general, 'unless it was an expense that was

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completely out of nature, the officer manager sort of basically just dealt with it'. Invoices were given to Ms Wills when they came in.

- c. Ms Fegan did draw up a written policy regarding formal procedures in relation to the obtaining of quotes but is not sure whether it was ever used. A lot of suppliers for the general running of the union had been used for years. The media unit would deal with such matters as magazines, newsletters and layouts. They would get quotes from different companies and Mr Hudson would approve the expenditure.
- d. For big contracts such as telephones, internet, insurances and the membership system, Ms Wills would 'do the groundwork' and they would normally go to the Branch Committee of Management and be signed off on the first occasion. It was generally expected that anything new or of significance would go to Committee.
- e. EFT was used by Ms Wills for payment of wages every week and to pay invoices. Ms Wills had access to all three PINs and passwords of Ms Fegan, Mr Jackson and Mr Hudson so that Ms Wills was able to process payments that required authorisation from the three officials without the officials actually being present.
- f. Ms Fegan stated that Mr Jackson and Mr Hudson both signed blank cheques but that she had never signed a blank cheque.
- g. Ms Fegan had not been aware that Ms Wills was a signatory to the cheque account but had been advised by Ms Wills that Mr Jackson had made Ms Wills a signatory. When she found out, Ms Fegan contacted the Bendigo Bank to advise them that cheques were being processed that were not correctly authorised under HSU rules and the bank froze the Branch's accounts.
- h. When an employee wanted to take annual leave they would get a leave form approved by their direct supervisor and then provide that form to Ms Wills. Leave balances are maintained in an electronic record by Ms Wills.
- i. In terms of credit cards, receipts and invoices for expenses charged to cards were given to Ms Wills.
- j. In the past all invoices that had been paid in the previous month would be taken to the Committee of Management 'and everybody would have the ability to go through and see what invoice has been paid, question any invoices'. That process then 'seemed to stop'. Ms Fegan stated that she asked for invoices to be presented to meetings but that they were never presented. Ms Wills had previously presented them but was told not to deliver them to the Committee meetings.

100. The following information was provided to FWA in interview by Ms Wills:

- a. Ms Wills was the sole person in the Branch responsible for the processing of invoices and payments unless she was on leave, in which case a former employee, Mr Graeme Goller, had performed that role;

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- b. Ms Wills confirmed that both Mr Jackson and Mr Hudson signed blank cheques. Ms Fegan very occasionally also signed blank cheques, such as if she was going on leave. Ms Fegan's usual practice, however, was to view the invoice and then to sign a cheque in which details had been filled in;
- c. Ms Wills was a signatory to the cheque account and did sign cheques herself if there were already two other signatures on them and she was unable to find a third signatory. She had been authorised to become a signatory by Mr Jackson;
- d. Ms Wills confirmed that she had the PINs for Mr Jackson, Mr Hudson and Ms Fegan, enabling her to process payments without reference to the three office bearers. Mr Goller also had knowledge of the three PINs to enable him to perform Ms Wills' role when she was on leave. Initially Ms Wills would print out a report regarding EFT transactions that would be signed off by the office bearers but that process 'just all pretty much fell apart' and Ms Wills was 'just told to put them through'. Ms Wills continued to print out reports of matters processed by EFT and to attach invoices to those reports so the information was there for people to look at if any issues arose. As Ms Wills put it, 'people weren't in the office half the time either'. Ms Wills had access to all three PINs probably just for convenience because it was too difficult to get wages and other payments processed because people were not in the office.
- e. There were no written procedures in place regarding expenditure of Branch funds. Purchase orders were not created. Often Ms Wills, who was only responsible for ordering a limited amount of material (such as office stationery), did not even know goods had been ordered until she received an invoice in the mail. There was no formal receipt book or delivery log in which delivery of goods was checked off against orders to ensure that goods had been delivered as ordered. Ms Wills maintained a folder of invoices that had been paid each month.
- f. Ms Fegan was responsible for going through the mail and handing invoices on to Ms Wills. If Ms Wills received an invoice but did not have any other supporting receipt or documentation and she was not sure about it then she would make inquiries. If Ms Wills knew what it was, however, and had no queries about it then she would 'just enter it and pay it'.
- g. Prior to November or December 2008 invoices had not been presented to the Committee of Management meetings for authorisation. The Committee was presented with a profit and loss statement from MYOB for the month and year to date but not the invoice folder. At the end of 2008 Ms Wills received a request to make her invoice folder available to Committee but, to her knowledge, it was never actually taken to a meeting. Mr Jackson instructed Ms Wills 'to keep it and if they wanted it they would come and have a look at it'.
- h. Employees were entitled to 25 days of recreation leave per annum. Ms Wills devised a leave form which needed to be authorised by Mr Jackson, Mr Hudson or Ms Fegan in order for staff to take leave. Once approved, the leave forms go onto personnel files. Ms Wills also maintained a spreadsheet

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of each person's entitlements. Mr Hudson, Mr Jackson and Ms Fegan approved each other's leave, although nine times out of 10 Ms Wills would have to fill out Mr Jackson's leave form because 'he would never fill them in'. Ms Wills described Mr Jackson's attitude to paperwork as 'very sloppy' and stated that 'Jeff was very bad with filling out paperwork'. Both Mr Hudson and Ms Fegan would always fill in paperwork.

- i. There was not a particular system for paying out annual leave entitlements in addition to salary but it certainly occurred. Mr Jackson was probably the main person whose leave entitlements were paid out. Leave was paid out frequently to Mr Jackson over a long period of time. Although Mr Jackson was expected to fill out a form, Ms Wills usually filled it out and, if she could not get him to fill it out, she filled it out herself 'just for the record'. Ms Wills disagreed with the findings of the Pitcher Partners Report that Mr Jackson had not completed any formal leave forms. Mr Jackson 'did complete the odd one', although it was Ms Wills who filled them out and got him to sign them 'if I could catch him. I made him sign but not always.' Ms Wills stated that it was possible that there were occasions when Mr Jackson took leave without a form being filled out. Mr Jackson was 'always coming in' asking to be paid out one or two weeks' leave. Ms Wills has been intending to undertake an audit of leave records for at least 12 months. Ms Wills stated:

I wouldn't say 100 per cent that there wasn't an occasion where a leave form wasn't filled out because you'd be in the middle of pays and he'd just come in and say can you pay out a week's leave or something, you know, and you sort of just want to finish that and get interrupted. So I wouldn't swear that there was never an occasion where, you know, a form wasn't filled out.

- j. Ms Wills would have been surprised if there were 30 days for which leave was paid out but for which forms were not filled out.
 - k. Ms Wills has stated in interview that it is 'very difficult' to get Mr Jackson to put things in writing. She then stated that 'I mean he was in charge. If he requested you to do something, well, you know, you're an employee, you just do it so – and you'd say to him, "Will I get that in writing", and he'd say, "Yes, yes", but you never did.' When then asked whether she would check an instruction from Mr Jackson with someone else (such as Ms Fegan) or whether she would just do it anyway, Ms Wills replied 'Probably do it anyway, maybe go to Pauline. It's very difficult when you know it's going to cause a big blue.'
 - l. With respect to payment of Branch credit cards and reimbursement of work-related expenses on personal credit cards, people were expected to provide receipts to Ms Wills which she would check off against the statement and then allocate amounts in the general ledger. If there was a transaction for which someone could not provide a receipt then Ms Wills would ask what the purchase was for and payment was still generally made. Usually the receipts were provided.
101. In their letter on behalf of Ms Fegan dated 10 December 2010, Macpherson + Kelley state that Ms Fegan denies that she signed blank cheques. She admits that she

Office Procedures regarding expenditure and internal controls

signed cheques without amounts but only under specific circumstances to ensure that the Branch met its financial obligations. If Ms Fegan was going to be interstate, out of the country or not physically contactable, cheques would be requisitioned in advance. On these 'rare occasions', Ms Fegan would sign a cheque that was made payable to a specific Payee without an amount. The amount was completed at a later date when Ms Wills could determine how much was owing to the relevant authorities. All cheques were marked "Not negotiable" and were kept under lock and key by Ms Wills in a safe place until payment was due by a certain date. These invoices were then approved by the Branch Committee of Management in accordance with the Branch's practice.

102. The Statement of Ms Wills dated 24 November 2010 that was attached to the letter from Macpherson + Kelley dated 10 December 2010 also states that 'In the record of interview I stated that Pauline Fegan, Jeff Jackson & Shaun Hudson signed blank cheques. However, in my state of anxiety I was remiss in elaborating the context of when this was done. In relation to Pauline Fegan, to the best of my recollection, this was done quite rarely'. Ms Wills' statement goes on to reiterate the information provided in the body of the letter from Macpherson + Kelley, including that Ms Fegan would sign cheques to a specific Payee but without an amount.
103. In her statement of 24 November 2010, Ms Wills also corrected information that she had provided in interview regarding presentation of paid invoices to meetings of the Branch Committee of Management. Ms Wills' stated that prior to approximately April 2008 all monthly paid invoices were presented to the Branch Committee of Management. In April 2008 Mr Jackson directed her not to present paid invoices to the Branch Committee of Management.
104. The letter from Macpherson + Kelley dated 10 December 2010 states that after April 2008 Mr Jackson failed to provide invoices to the Branch Committee of Management 'despite several requests from Ms Fegan and the BCOM'. The letter then goes on 'Further, it was Mr Jackson's failure to repeated refuse (sic) to comply with the direction of the BCOM to provide financial documentation with respect to expenditure of the Branch that forced Ms Fegan and the majority of the BCOM to seek legal advice'. Ms Wills' statement of 24 November 2010 also states that her 'understanding' was that 'the majority of Committee members...passed resolutions seeking disclosure and audit of the finances'. Macpherson + Kelley submit that Ms Fegan did not allow payment by the Branch of expenses that had not been authorised by the BCOM.
105. Minutes of the Branch Committee of Management record that it was not until a special Branch Committee of Management meeting on 14 November 2008 (that is, some seven months after Ms Wills has stated that invoices ceased being presented) that a resolution was carried that 'all monthly invoices and accounts paid shall be available to the Branch Committee from 9.30am on the day of the meeting'.
106. In their letter of 10 December 2010 on behalf of Ms Fegan, Macpherson + Kelley acknowledge that Ms Fegan provided her PIN and password for electronic banking to Ms Wills.

UNAUTHORISED PAYMENTS

Electronic Funds Transfer

107. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
108. I must consider whether each of Ms Fegan, Mr Jackson and Mr Hudson have exercised his or her powers and discharged his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch President, Branch Secretary and Branch Assistant Secretary respectively and having the responsibilities of that office.

Finding 1

	Finding
1.	<p>By giving the office manager their PINs and passwords and enabling Ms Wills to execute electronic transactions without their authorisation, each of Ms Fegan, Mr Jackson and Mr Hudson have contravened subsection 285(1) of the RAO Schedule in that they failed to exercise their powers and discharge their duties as Branch President, Branch Secretary and Branch Assistant Secretary respectively with a degree of care and diligence that a reasonable person would exercise occupying the positions, and having the responsibilities, of Branch President, Branch Secretary and Branch Assistant Secretary respectively.</p> <p>A reasonable person holding the office of Branch President, Branch Secretary or Branch Assistant Secretary would not have provided his or her PIN and password to the office manager, thus enabling her to execute electronic transactions without authorisation.</p>

Particulars of Finding 1

109. Pursuant to subsection 242(3) of the RAO Schedule, the Branch is a reporting unit for the purposes of Part 3 of Chapter 8 of the RAO Schedule.
110. I have set out at paragraphs 93 to 106 above information regarding procedures that operated within the Branch for payment and authorisation of expenses.
111. The offices of Branch President, Branch Secretary and Branch Assistant Secretary were held by Ms Fegan, Mr Jackson and Mr Hudson respectively until 17 August 2009, being the date upon which Mr Vines was appointed Administrator.
112. Each of Ms Fegan, Mr Jackson and Mr Hudson has admitted that they provided Ms Wills with their PIN and password in order to enable Ms Wills to make payments from the bank account held by the Branch without further authorisation from them.

Unauthorised Payments

Signing of Blank Cheques

- 113. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
- 114. I must consider whether each of Ms Fegan, Mr Jackson and Mr Hudson have exercised his or her powers and discharged his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch President, Branch Secretary and Branch Assistant Secretary respectively and having the responsibilities of that office.

Finding 2

Finding	
2	<p>By signing cheques prior to payment details being completed and without first having seen documentation supporting the payment for which the cheque was to be used, each of Ms Fegan, Mr Jackson and Mr Hudson has contravened subsection 285(1) of the RAO Schedule in that each of them has failed to exercise his or her powers and discharge his or her duties as Branch President, Branch Secretary and Branch Assistant Secretary respectively with a degree of care and diligence that a reasonable person would exercising occupying the position, and having the responsibilities, of Branch President, Branch Secretary and Branch Assistant Secretary respectively.</p> <p>A reasonable person holding the office of Branch President, Branch Secretary or Branch Assistant Secretary would have ensured that each cheque that he or she signed contained details of the payee and the amount to be paid, and that those details corresponded with a substantiated transaction.</p> <p>A reasonable person holding the office of Branch President, Branch Secretary or Branch Assistant Secretary would have signed cheques only after having viewed substantiating documentation (such as a purchase order and/or invoice).</p>

Particulars of Finding 2

- 115. I have set out at paragraphs 93 to 106 above information regarding procedures that operated within the Branch for payment and authorisation of expenses.
- 116. Cheques were signed by each of Ms Fegan, Mr Jackson and Mr Hudson prior to all payment details being completed.
- 117. Cheques were signed by each of Ms Fegan, Mr Jackson and Mr Hudson without them having first seen documentation supporting the payment for which the cheque was to be used.

Unauthorised Payments

Signing of Cheques by the Office Manager

- 118. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
- 119. I must consider whether Mr Jackson has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and having the responsibilities of that office.

Finding 3

Finding	
3	<p>By allowing Ms Wills to sign cheques that were drawn on Branch funds in contravention of HSU Rules, Mr Jackson contravened subsection 285(1) of the RAO Schedule in that he failed to exercise his powers and discharge his duties as Branch Secretary with a degree of care and diligence that a reasonable person would exercise occupying the position, and having the responsibilities, of Branch Secretary.</p> <p>A reasonable person holding the office of Branch Secretary would not have allowed cheques to be drawn on the Branch fund in contravention of the HSU Rules.</p>

Particulars of Finding 3

- 120. I have set out at paragraphs 93 to 106 above information regarding procedures that operated within the Branch for payment and authorisation of expenses.
- 121. Mr Jackson arranged for Ms Wills to become a signatory to the Branch's cheque account. Mr Jackson admitted in interview that Ms Wills was a signatory and provided the explanation that it was sometimes difficult on a practical level to find three members of the Branch Committee of Management who could sign a cheque.
- 122. Ms Wills did, on occasion, sign cheques on the Branch cheque account.
- 123. Ms Wills has never been a member of the Branch Committee of Management.

Authorisation of Payments by the Branch Committee of Management

Background

- 124. Rule 60(d) of the HSU Rules provides that the prior approval of the branch committee of management shall not be necessary before cheques are signed or accounts paid for expenditure of funds of a branch on general administration of the branch and for purposes reasonably incidental to the general administration of the branch. Pursuant to rule 52(b), the branch committee of management shall have power to supervise and pay all lawful debts of the branch.

Unauthorised Payments

125. I have set out at paragraphs 93 to 106 above information regarding procedures that operated within the Branch for payment and authorisation of expenses.
126. As well as payment of invoices by the Branch in general, allegations that have been made regarding related party transactions have resulted in part of my Investigation considering the payment of invoices from Urban Giftware (being the company operated by Ms Fegan's domestic partner).
127. One of the issues that is before me is whether payments to Urban Giftware fall within the exception in rule 60(d) or whether prior approval of such payments by the Branch Committee of Management was necessary under the Rules of the HSU.
128. I am of the view that items that were purchased from Urban Giftware could reasonably be categorised as part of, or incidental to, the 'general administration' of the Branch and fall within the exception set out in Rule 60(d) of the HSU Rules. As such, their payment would not have required prior approval by the Branch Committee of Management. I am of this view for the following reasons:
- a. Some of the individual invoices from Urban Giftware were for quite substantial sums. The MYOB general ledger that was provided to AIR by Minter Ellison under cover of a letter dated 11 June 2009 shows that the largest single invoice paid to Urban Giftware in the financial year ended 30 June 2008 was \$24,250 on 4 February 2008. Other significant invoices in that year were for \$17,650 on 10 December 2007 and \$14,500 on 5 March 2008. The largest invoice paid to Urban Giftware between 1 July 2008 and 30 November 2008 was for \$14,250 on 6 November 2008. Ms Fegan has stated in interview that 'big contracts' such as telephone contracts, internet, the membership system and 'big insurances' were always presented to the Committee for approval. Ms Wills also stated in interview that if an expense was 'a really large amount' then it would go to Committee.
 - b. All of the people who were interviewed by FWA agreed that purchases of goods by the Branch from Urban Giftware were not approved by the Branch Committee of Management. It is not clear from the evidence that was given in interview what constituted a 'big contract' or an invoice for 'a really large amount'. While the invoices from Urban Giftware were for relatively large amounts of money, the goods that were being supplied were items such as lanyards, pens, magnets, squeeze balls, wrist bands, mouse pads, caps, keyrings and stubbie holders. An examination of Urban Giftware invoices that were provided to FWA by Macpherson + Kelley Lawyers under cover of a letter dated 4 June 2009 shows that the invoice for \$24,250 (invoice #1112 issued on 9 December 2007) was for supply of 5,000 white HSU logo badges and 5,000 HSU diamante badges. The invoice for \$17,650 (invoice #1079 issued on 10 November 2007) was for 2,000 HSU mouse pads and 3,000 HSU caps. The invoice for \$14,500 (invoice #1128 issued on 16 February 2008) was for 5,000 badges and the invoice for \$14,250 (invoice #1174 issued on 9 October 2008) was for 3000 HSU diaries for 2009.
 - c. While it is arguable that at least some of the invoices paid to Urban Giftware were for large amounts of money, it is equally arguable that the purchases were for items that could be categorised as part of, or incidental to, the

Unauthorised Payments

'general administration' of the Branch. Evidence has been given by Ms Fegan that items were ordered from Urban Giftware by Mr Kelly (with Mr Hudson's authorisation), who worked in the Branch's media unit. They were branded with the HSU logo and were given out to members as a way of advertising the union.

129. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
130. I must consider whether Mr Jackson has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and having the responsibilities of that office.

Finding 4

Finding	
4	<p>By issuing an instruction to Ms Wills not present monthly paid invoices to meetings of the Branch Committee of Management, Mr Jackson has contravened subsection 285(1) of the RAO Schedule in that he has failed to exercise his powers and discharge his duties as Branch Secretary with a degree of care and diligence that a reasonable person would exercise in occupying the position, and having the responsibilities, of Branch Secretary.</p> <p>A reasonable person holding the office of Branch Secretary would not have instructed Ms Wills to not present monthly paid invoices to meetings of the Branch Committee of Management. A reasonable person in such circumstances would have ensured that all documentation relevant to the expenditure by the Branch in the preceding month was presented to meetings of the Branch Committee of Management.</p>

Particulars of Finding 4

131. Prior to approximately April 2008 all monthly paid invoices were presented to meetings of the Branch Committee of Management.
132. From approximately April 2008 monthly paid invoices were not presented to meetings of the Branch Committee of Management under instruction of Mr Jackson to Ms Wills. From that time, the only document that was generally considered by Branch Committee of Management meetings and which was relevant to authorisation of any of the Branch's expenditure was a profit and loss statement produced from MYOB for the preceding month.
133. Minutes indicate that it was not until a meeting of the Branch Committee of Management on 14 November 2008 that a resolution was passed directing Mr Jackson to provide financial documentation to the Branch Committee of Management.
134. Between approximately April 2008 and at least November 2008 expenditure of the Branch, including payment and reimbursement of credit card expenses and payment

Unauthorised Use of Credit Card by Mr Jackson and Mr Hudson

of invoices from suppliers such as Urban Giftware, was made without direction from, or authorisation by, the Branch Committee of Management.

UNAUTHORISED USE OF CREDIT CARD BY MR JACKSON AND MR HUDSON

Findings of the Pitcher Partners Report

135. The third and fourth allegations that were made in exhibit SM-8 to the affidavit sworn by Ms McCormack on 7 January 2009 and that were investigated by Mr Whitchurch were:

3. Unauthorised use of Credit Cards by Shaun Hudson

It is alleged that the credit card issued to Mr Shaun Hudson was used by Mr Hudson to make unauthorised purchases.

It is further alleged that Mr Hudson was reimbursed for those purchases without substantiating the expenses with the appropriate documentation.

Mr Hudson is the only person who has access to this credit card.

4. Unauthorised use of Credit Cards by Jeff Jackson

It is alleged that the Union credit card issued to Mr Jeff Jackson was used by Mr Jackson to make unauthorised purchases.

It is further alleged that Mr Jackson was reimbursed for those purchases without substantiating the expenses with the appropriate documentation.

Mr Jackson is the only person who has access to this credit card.

136. Mr Whitchurch found on pages 16 to 17 and 18 to 20 of the Pitcher Partners Report that:

- a. Mr Hudson was reimbursed \$135,371 during the period 1 July 2007 to 30 November 2008 by the Branch for purchases on his Citibank credit card;
- b. The Branch has invoices and other documents substantiating reimbursement of expenditure by Mr Hudson totalling \$128,376;
- c. There were no documents or other evidence substantiating expenditure of the remaining \$6,995 for which Mr Hudson was reimbursed;
- d. During the period 1 July 2007 to 30 November 2008 the Branch incurred \$7,254 on credit cards held in the name of Ms Wills relating directly to Mr Jackson;
- e. Mr Jackson was reimbursed \$19,019 for Branch expenditure incurred personally during the period 1 July 2007 to 30 November 2008;
- f. The Branch has records for \$14,891 in invoices and other documents substantiating the reimbursement of expenditure by Mr Jackson;
- g. There were no documents or other evidence substantiating expenditure of the remaining \$4,128 for which Mr Jackson was reimbursed; and

- h. There was no evidence of authorisation of credit card expenditure referred to in paragraphs a., d. and e. above.

137. Mr Jackson stated in his letter of 1 April 2009 to the Industrial Registrar, in which he enclosed a copy of the Pitcher Partners Report, that 'I am currently preparing my response to that report insofar as it makes any reference to me.' Neither the AIR nor FWA has received a detailed response as anticipated in Mr Jackson's letter.

Part 3 of Chapter 8 of the RAO Schedule

138. Requirements regarding the keeping of proper financial records are set out in subsection 252(1) of the RAO Schedule, which requires a reporting unit to keep such financial records as correctly record and explain transactions and the financial position of the reporting unit, that will enable a GPFR to be prepared and that will enable the accounts to be conveniently and properly audited.

139. The objective of the present legislative scheme relating to accounting practices and financial reporting requirements for registered organisations is derived from the findings of a Royal Commission constituted by Justice Sweeney. In a second reading speech for the Conciliation and Arbitration Amendment Bill 1980 on 6 March 1980, the then Minister for Industrial Relations stated in the Parliament that:

... the royal commissioner had expressed the view that the Conciliation and Arbitration Act and Regulations were not adequate to ensure that individual members of organisations, and the public, were able to establish the uses to which funds were appropriated and the financial state of the organisation.

140. The definition of 'financial records' in section 6 of the RAO Schedule (which is also set out at paragraph 72 of this Report) is 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.

141. There is a similar provision to subsection 252(1) in the *Corporations Act 2001*. Section 286 of the *Corporations Act 2001* 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:

Unauthorised Use of Credit Card by Mr Jackson and Mr Hudson

- (i) the methods by which financial statements are made up; and
- (ii) adjustments to be made in preparing financial statements.

142. In *Frauenstein v Farinha* [2007] FCA 1953 which dealt with section 286 of the *Corporations Act 2001*, His Honour Justice Emmett 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.

143. 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 *Corporations Act 2001* as it encompasses any document that relates to finances or financial administration of the Branch.

144. At paragraph 202 of his decision, His Honour found that 'detailed invoices, cash docketts and the like are normally kept to support cash expenses'. In my view, similar requirements would apply to expenses that have been charged to a credit card.

HSU Rules relating to Finances or Financial Administration

145. None of the Rules of the HSU specifically address the use of credit cards.

146. Rule 60(d) provides that the prior approval of the Branch Committee shall not be necessary before cheques are signed or accounts paid for the expenditure of funds of a branch on the general administration of the branch and for purposes reasonably incidental thereto.

General Duties

147. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.

148. I must consider whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and having the responsibilities of that office.

149. I must also consider whether Mr Hudson, as Branch Assistant Secretary, has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Assistant Secretary and having the responsibilities of that office.

Findings 5 to 7

Findings	
5	<p>By failing to keep, or cause to be kept, such records as correctly record and explain the authorisation of expenditure on Branch credit cards and failing to keep, or cause to be kept, the financial records of the Branch in such a manner as will enable the accounts of the Branch to be conveniently and properly audited, the Branch has contravened subsection 252(1) of the RAO Schedule.</p>
6	<p>By failing to keep, or failing to cause to be kept, receipts and other supporting documentation to substantiate expenditure on Branch credit cards, Mr Jackson, as Branch Secretary, contravened subsection 285(1) of the RAO Schedule in that he failed to exercise his powers and discharge his duties as Branch Secretary with a degree of care and diligence that a reasonable person would exercise occupying the position, and having the responsibilities, of Branch Secretary.</p> <p>A reasonable person holding the office of Branch Secretary would have ensured that the Branch had appropriate internal controls in place to ensure that all receipts or other supporting documentation necessary to substantiate expenditure on Branch credit cards were obtained and retained</p>
7	<p>By allowing Ms Wills to use his credit card and by failing to obtain, keep, or cause to be kept, receipts and other supporting documentation substantiating all expenditure on his credit card, Mr Hudson, as Branch Assistant Secretary, has contravened subsection 285(1) of the RAO Schedule in that he has failed to exercise his powers and discharge his duties as Branch Assistant Secretary with a degree of care and diligence that a reasonable person would exercise occupying the position, and having the responsibilities, of Branch Assistant Secretary.</p> <p>A reasonable person holding the office of Branch Assistant Secretary would have ensured that he was the only person to use a Branch credit card which had been issued in his name to make purchases and would have ensured that all receipts or other supporting documentation necessary to substantiate expenditure on the card was obtained and provided to the Branch.</p>

Particulars of findings 5 to 7

- 150. During the period in which Mr Jackson was Branch Secretary, credit cards were issued to some Branch officials.
- 151. Mr Hudson has stated in interview that his credit card was used 'as a dogsbody card to pay for this or that or anything'. In the event that there were purchases on Mr Hudson's credit card that he had not made, Mr Hudson presumed that Ms Wills would have the receipts and would have filed them with his other receipts.
- 152. Ms Wills, the office manager, has admitted in interview that the Branch has not retained invoices and receipts or dockets substantiating all occasions on which credit

Payment of Additional Salary to Mr Jackson

card payments were made or expenses reimbursed. Ms Wills has told FWA that when she was processing payments associated with credit cards 'if I knew what it was about and had no queries about it then I will just enter it and pay it.'

153. 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;
 - (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.

Was there a contravention of HSU Rules relating to Finances or Financial Administration?

154. Neither the Registry nor FWA has examined the records that were seen by Mr Whitchurch in conducting his investigation into alleged unauthorised use of credit cards by Mr Hudson and Mr Jackson and although copies of all documents relied upon by Mr Whitchurch were requested from Mr Jackson, solicitors for Mr Jackson advised in their letter of 11 June 2009 that they were not able to provide copies of some documents which they had been informed Pitcher Partners did not possess, including purchase invoices for the period 1 July 2007 to 30 November 2008 supporting entries in the general ledger accounts and some credit card statements.
155. Without having seen the documents that were examined by Mr Whitchurch, I am unable to determine whether any or all of the expenditure associated with credit cards by Mr Hudson and Mr Jackson fell into the category of requiring prior approval of the Branch Committee under rule 60(d).

PAYMENT OF ADDITIONAL SALARY TO MR JACKSON

Background

156. The first allegation that is made in exhibit SM-8 to the affidavit sworn by Ms McCormack on 7 January 2009 and that was investigated by Mr Whitchurch is as follows:

1. Unauthorised payment of additional salary

Rule 52(e) of the Rules of the Health Services Union states:

"A Branch Committee shall ... have power to fix the remuneration and terms and conditions of employment of any officer or employee of the branch;"

It is alleged that three payments of \$5,000 were paid into Jeff Jackson's salary account over and above his normal salary. It is alleged that these payments were made without being authorised in accordance with Rule 52(e) or accompanied by documentation.

157. Mr Whitchurch was engaged by the Branch to investigate, amongst other things, allegations regarding unauthorised payment of additional salary to Mr Jackson. Mr Whitchurch found on pages 12 to 14 of the Pitcher Partners Report that:

Payment of Additional Salary to Mr Jackson

- a. no evidence of Mr Jackson's salary as set by the Branch Committee was able to be provided, this information was not kept on Mr Jackson's personnel file;
 - b. Mr Jackson received \$5,000 in addition to his weekly salary on 3 occasions, namely the weeks ended 20 May 2008, 3 June 2008 and 22 July 2008. These transactions were described in the MYOB ledger as 'back pay';
 - c. Ms Wills had stated that Mr Jackson had instructed her to pay the sum to him and that it related to a pay rise granted to him by the Committee of Management. Ms Wills also stated that Mr Jackson had not provided any documentation to her to support this instruction.
158. Mr Whitchurch also made findings regarding the paying out of accrued annual leave to Mr Jackson in addition to his normal salary and regarding associated discrepancies in the leave register. These issues are examined below in my consideration of the obligations imposed by section 252 of the RAO Schedule regarding the keeping of records.
159. An examination of the MYOB Pay Details Summary for Mr Jackson (Appendix 6 to the Pitcher Partners Report) shows that in both of the weeks ending 20 May 2008 and 22 July 2008 Mr Jackson received an additional gross payment of \$5,000 over and above his usual weekly wage. In the week ending 3 June 2008 Mr Jackson received an additional gross payment of \$16,301.29 over and above his usual weekly wage.
160. On 24 April 2009 an application was filed in the Federal Court of Australia in *Conquo v Jackson* seeking recovery from Mr Jackson of \$15,000.
161. Copies of statutory declarations sworn in late April 2009 by members of the Branch Committee of Management, namely Ms Fegan, Ms Conquo, Mr Bill Ricketts, Ms Toni Joyce, Ms Anastasia Hondros, Mr Stuart Marshall, Ms Jennifer Banks and Ms Maria Toro, were provided to the AIR by Macpherson + Kelley Lawyers under cover of letters dated 27 April 2009 and 30 April 2009. Each person's statutory declaration states that:
- a. they were unaware of any motion being put forward or resolution passed by the Branch Committee of Management to authorise backpay to Mr Jackson in an amount of \$5,000 or any other amount;
 - b. at none of the meetings that they attended, or at any other time, did Mr Jackson ever mention that he was going to backpay himself; and
 - c. they were unaware of any motion being put forward or resolution being passed by the Committee of Management to authorise backpay to Mr Jackson.
162. On 24 April 2009 application was made to the Federal Court (in VID 267 of 2009) by the Branch Junior Vice President, Ms Donna Conquo, for recovery of \$15,000 that had been paid to Mr Jackson in additional salary. Ms Conquo stated in an affidavit sworn on 24 April 2009 that she was present at all meetings of the Branch Committee of Management between 26 February 2008 and 24 September 2008 inclusive and that she is not aware of any motion being put forward or resolution being passed by the Branch Committee of Management at any of those meetings granting a pay rise to Mr Jackson. Further, Ms Conquo is not aware of any motion being put forward or resolution being passed by the Branch Committee of Management at any of those

Payment of Additional Salary to Mr Jackson

meetings to authorise the three payments of an additional \$5,000 in salary to Mr Jackson. Further, Ms Conquo is not aware of any motion being put forward or resolution being passed by the Branch Committee of Management at any of those meetings to authorise payment of backpay to Mr Jackson in any amount. Ms Conquo was not aware of the payment of additional salary to Mr Jackson until she read the Pitcher Partners Report. At none of the meetings of the Branch Committee of Management referred to did Mr Jackson ever report that he was going to backpay himself or ask for permission of the Branch Committee of Management to do so. Further, Mr Jackson did not at any of the said meetings advise that he had back paid himself.

163. In an affidavit sworn on 22 June 2009 in those proceedings, Mr Jackson stated as follows:

- a. at a Branch Committee of Management meeting on 27 July 2004 a resolution was passed appointing a former Secretary of the Branch, Mr Les Butler, to provide an independent review of salaries of officers of the Branch. Branch Committee of Management minutes of that meeting that are exhibited to Mr Jackson's affidavit show that a resolution was carried that 'Branch Committee of Management endorses and supports an independent review of the officers salaries within the organisation and that review be conducted by Les Butler'. An amendment to that resolution was carried that 'the review to also include specialist officers salaries';
- b. Another Branch Committee of Management meeting was held on 30 August 2004 in which Mr Jackson tabled a report written by Mr Butler (**the Butler Report**) that documented his findings and recommendations regarding the remuneration of Branch officers. The Branch Committee of Management passed a resolution adopting Mr Butler's recommendations, effective as of 30 August 2004. The Branch Committee of Management minutes of that meeting that are exhibited to Mr Jackson's affidavit show that a resolution was carried that 'the remuneration review be adopted and take effect as of 30 August 2004';
- c. Mr Jackson does not have a copy of the Butler Report. A copy was kept in the Branch's office but he is not aware of what has happened to it. Mr Jackson has recently sought a copy of the report from Mr Butler but he also does not have a copy of his final report;
- d. The Butler Report recommended that the remuneration of the Branch President, Secretary and Assistant Secretary, and all other Branch employees, be increased. In implementing the recommendations of the Butler Report, a subcommittee of the Branch Committee of Management was formed, consisting of the Branch President, Secretary and Assistant Secretary, who would be jointly responsible for future reviews of the remuneration of the Branch's employees and officers, including the Branch President, Secretary and Assistant Secretary;
- e. The subcommittee initially consisted of the Branch President Pauline Fegan, Branch Assistant Secretary Rob McCubbin and Mr Jackson as Branch Secretary. In or about 2006 Mr McCubbin ceased to be the Branch Assistant

Payment of Additional Salary to Mr Jackson

Secretary and was replaced by Mr Hudson, who assumed Mr McCubbin's role on the subcommittee;

- f. The approach that the subcommittee has taken in reviewing the salaries of staff members working at the Branch office (Branch staff), other than the President, Secretary and Assistant Secretary, has been to provide staff with either a percentage increase each year consistent with the percentage wage increases applying to the Branch's members in the public sector, or to apply some other increase agreed by the subcommittee. Since 2006 the agreement that provided wage increases to the Branch's members in the public sector has been the *Health Services Union of Australia Health and Allied Services Administrative Officers Victorian Public Sector Multi Employer Certified Agreement 2006-2009* (HSU Public Sector Agreement);
- g. The HSU Public Sector Agreement provided that all employees covered by it receive a pay increase of 3% on 1 February 2006, and then annual increases of 3% in September 2006, 2007 and 2008. Those percentage wage increases were passed by the subcommittee to various members of Branch Staff, other than the President, Secretary and Assistant Secretary;
- h. The subcommittee decided not to use the HSU Public Sector Agreement to set the wages of the Branch President, Secretary and Assistant Secretary. Instead, the subcommittee continued to itself review the remuneration of those Branch officers;
- i. The Branch Committee of Management passed a resolution on 21 June 2006 authorising the 'Branch Secretary to review and implement wage increases as per the guidelines of the external wage review document 2004', namely the Butler Report;
- j. In July 2006, consistent with the resolution of the Branch Committee of Management of 21 June 2006 and the guidelines that had been followed in 2004 in relation to the Butler Report, the subcommittee met and decided that the Branch President, Secretary and Assistant Secretary would receive a \$10,000 increase in annual remuneration, an increase the subcommittee believed to be commensurate with the two pay increases the Branch staff would receive in that year;
- k. Both Ms Fegan and Mr Jackson took the pay rise in the form of a \$10,000 travel allowance to be spent on costs associated with interstate and overseas travel and accommodation. Mr Hudson received a \$10,000 increase in his annual salary. On 10 July 2006 Mr Jackson sent Ms Fegan a letter headed 'Employment Variation' in which he confirmed to her details of the \$10,000 travel allowance. On 19 July 2006 Ms Fegan, as Branch President, sent Mr Jackson an identical letter documenting Mr Jackson's entitlement to the same travel allowance. The letters dated 10 July 2006 and 19 July 2006 are exhibited to Mr Jackson's affidavit;
- l. Ms Fegan has used her travel allowance on several occasions using a credit card issued to her by HSU to pay for travel-related expenses which were then reimbursed by the Branch;

Payment of Additional Salary to Mr Jackson

- m. At that same meeting [in July 2006] the subcommittee decided that the Branch Secretary would receive an additional increase of \$20,000 per annum commencing in 2007. The subcommittee discussed how the \$20,000 increase would be paid to Mr Jackson, who asked to receive it in four amounts of \$5,000 each, commencing in 2007. Ms Fegan and Mr Hudson agreed to this;
- n. Subsequent to the 2006 subcommittee meeting, Ms Fegan approached the Branch's auditor, Mr Dick, to discuss with him the proposed arrangements for the \$10,000 pay increases in 2006 and Mr Jackson's \$20,000 pay increase by instalments commencing in 2007. After those discussions, Ms Fegan informed Mr Jackson that Mr Dick had said he was 'okay with' the proposed arrangements. Mr Dick confirmed to Mr Jackson that he was okay with those arrangements, including the four instalments of \$5,000;
- o. In or about late 2007 or early 2008, the subcommittee met again. Mr Jackson informed Ms Fegan and Mr Hudson that he had not yet received any of the amounts of \$5,000 which the subcommittee had decided in 2006 that he was to commence receiving in 2007. When Ms Fegan, Mr Hudson and Mr Jackson discussed how Mr Jackson would receive the pay increase, Ms Fegan had suggested that she could 'funnel' these payments through her husband's business, Urban Giftware, so that the money did not show up in the records as income of Mr Jackson. Mr Jackson did not agree to this suggestion. Instead, Mr Jackson asked that the instalments of \$5,000 be paid to him over the next few months. Ms Fegan and Mr Hudson agreed to that course;
- p. Mr Jackson referred to an affidavit sworn by Ms Fegan in the proceedings in which Ms Fegan stated that 'at none of the meetings [referred to in her affidavit], or at any other time, did Jeff Jackson ever mention to me that he was going to backpay himself'. While Mr Jackson may not have used the word 'backpay' when talking to Ms Fegan, it is not correct that he had not discussed the \$5,000 payments with Ms Fegan. Ms Fegan was a member of the subcommittee that decided to pay Mr Jackson four instalments of \$5,000, as a pay increase. The matter was discussed in 2006 and in late 2007 or early 2008;
- q. Ms Fegan, as Branch President, is fully aware of the circumstances that led to Mr Jackson receiving three payments of \$5,000 in 2008. Ms Fegan was aware of, and consented to, these payments. She received similar benefit herself, through travel and accommodation expenses for her and her husband;
- r. Consistent with subcommittee decisions, the Branch has paid Mr Jackson three of the four \$5,000 instalments representing his pay increase. It took some time for these payments to be processed – Mr Jackson approached Ms Wills in or about May 2008 and mentioned the payments to her, and asked that she discuss the matter with Ms Fegan. Some time later, the first instalment was paid in May 2008. Two further payments were made in June and July 2008. The fourth instalment, which is owing to Mr Jackson if the subcommittee's decision is to be implemented, is yet to be paid;

Payment of Additional Salary to Mr Jackson

- s. The payments made on 20 May 2008, 3 June 2008 and 22 July 2008 were made with the prior knowledge and consent of Ms Fegan and Mr Hudson as members of the subcommittee;
 - t. Decisions of the subcommittee, including the decision to increase the remuneration of Branch Staff and of the President, Secretary and Assistant Secretary, were regularly the subject of oral reports, either by Ms Fegan or by Mr Hudson to the Branch Committee of Management. The content of those oral reports are not reflected in Branch Committee of Management minutes, but either Mr Jackson or Ms Fegan did disclose to the Branch Committee of Management the subcommittee's decision to increase the remuneration of the President, Secretary and Assistant Secretary in 2006, and the Secretary's remuneration with effect from 2007;
 - u. The pay increase awarded to Mr Jackson by the subcommittee and the \$5,000 payments that followed are and were authorised under the Union's rules;
 - v. Given that this proceeding is likely to cost the Union and its members thousands of dollars in legal fees, Mr Jackson has decided to unreservedly pay back to the Branch the \$15,000 and to forego his entitlement to the fourth \$5,000 which is still payable to him.
164. In an affidavit that was also sworn on 22 June 2009 in *Conquo v Jackson* (VIC 267 of 2009), Mr Hudson states:
- a. he has held the position of Branch Assistant Secretary for approximately three years;
 - b. he was present at a meeting of the Branch Committee of Management on 21 June 2006. The Branch Committee of Management passed a resolution instructing Mr Jackson to review and implement wage increases as per the guidelines of a document referred to as the 'external wage review document 2004' (the Butler Report);
 - c. In or around early July 2006, a subcommittee, consisting of the Branch President (Ms Fegan), Mr Jackson and himself conducted a meeting concerning wage increases referred to in the resolution of the Branch Committee of Management on 21 June 2006. Mr Hudson was informed at that meeting by Ms Fegan and Mr Jackson that the Branch Committee of Management had previously delegated to the Branch President, Secretary and Assistant Secretary the responsibility of setting the remuneration of staff and office-holders of the Branch. Ms Fegan and Mr Jackson informed Mr Hudson that this power was delegated by the Branch Committee of Management to the subcommittee as a result of recommendations contained in the Butler Report;
 - d. The \$5,000 payments were made to Mr Jackson as a result of a decision made by Ms Fegan, Mr Jackson and himself to review the remuneration of all Branch employees, including themselves, exercising power that had been delegated to them by the Branch Committee of Management;

Payment of Additional Salary to Mr Jackson

- e. Exercising that delegated power, the subcommittee, consisting of Ms Fegan, Mr Jackson and himself, decided to increase Branch staff members' remuneration levels. The subcommittee awarded to Ms Fegan, Mr Jackson and Mr Hudson a pay increase of \$10,000 plus a percentage increase in September 2008 consistent with other Branch employees. In addition, as Branch Secretary, Mr Jackson would receive an additional \$20,000 per annum commencing in 2007;
 - f. Ms Fegan decided that, rather than taking her pay increase as salary, she would take an increased travel allowance from the Branch;
 - g. Mr Hudson considered that the most appropriate way for him to receive his pay increase was through an increase in weekly salary;
 - h. When Ms Fegan, Mr Jackson and Mr Hudson discussed how Mr Jackson would receive his salary increase of \$20,000 commencing in 2007, Ms Fegan offered to 'funnel' these payments through Urban Giftware, a business owned by her husband. Mr Hudson advised Mr Jackson that he thought this was unwise and would be a form of money laundering. Mr Jackson agreed with Mr Hudson and rejected Ms Fegan's offer. Instead, Ms Fegan, Mr Jackson and Mr Hudson agreed that Mr Jackson would receive his 2007 pay increase of \$20,000 in four instalments of \$5,000 each;
 - i. The first three of those \$5,000 instalments, of which Ms Fegan and Mr Hudson were aware and to which, as members of the subcommittee, they had consented, were paid by the Branch to Mr Jackson in May, June and July 2008. The fourth instalment is yet to be paid to Mr Jackson.
165. The Deed of Agreement that was entered into on 30 June 2009 between the HSU and members of the Branch Committee of Management (including Mr Jackson) provides for repayment of \$15,000 to the Branch by Mr Jackson on the following terms:
8. Jeff Jackson
 - (a) shall repay \$15,000 to the Branch, over a six month period from the date of signing of this Deed by all parties. Payments will be made by deduction from his weekly remuneration package at the rate of \$576.92 per week.
 - (b) releases and forever discharges the HSU in respect of any claim for a salary increase of \$20,000.00 (or any other sum) alleged by him in proceeding VID 267 of 2009 in the Federal Court of Australia.
166. Clause 9 of the Deed also provided that, within seven days of appointment of the Administrator, all legal proceedings (including those in *Conquo v Jackson*) will be withdrawn.
167. The following information was provided to FWA in interviews with the persons specified:
- a. Mr Jackson agreed that he instructed Ms Wills to pay three payments of \$5,000 each to himself. The payments were for wages. Mr Jackson says that he had consulted with Mr Hudson and Ms Fegan about the payments and subsequent attempts to recover the payments in proceedings in the Federal Court in *Conquo v Jackson* were an attempt to destroy him electorally.

Payment of Additional Salary to Mr Jackson

- b. Ms Fegan stated that employees of the Branch have the same salary every week which does not change from week to week unless someone is on leave or leave without pay. In about 2004 or 2005 the Branch had an independent consultant come in and conduct a review for team leaders that was taken to the Committee of Management. The review determined that certain members of staff would be on set wages that were reviewed and other staff would continue to receive salary increases in line with public sector determinations. Once it had authorised increases, the Committee would let the office manager know the new wage levels. Mr Jackson did not consult with her at any stage regarding payment of an additional \$15,000 in salary and the payments were never approved by the Committee of Management.
- c. Mr Hudson stated that the officials (being Mr Jackson, Ms Fegan and Mr Hudson) were entrusted to manage the Branch on a daily basis, including making sure it gets the right staff and competent staff, especially in a competitive market. Such decisions were not taken to the Committee because '[w]e can't sit on our hands for weeks on end'.
- d. Mr Hudson became an official of the Branch when the previous Branch Assistant Secretary [Mr Robert McCubbin] resigned, probably six months or so before Mr McCubbin's term ended. He said that monies were owed to Mr Jackson from 'before I became an official'.
- e. In reference to an official's meeting attended in 2006 by Mr Jackson, Ms Fegan and himself, Mr Hudson stated that 'it was agreed that day with Fegan that the money was owed, it hadn't been paid and it has to be paid'. Mr Hudson alleged that Ms Fegan had proposed to Mr Jackson at that meeting that he 'siphon' the payment 'through her [Ms Fegan's] company' but that he and Mr Jackson were of the view that it was a legitimate entitlement which should go 'through the books as per normal'. Mr Hudson stated that he knew that Ms Fegan had authorised payment of \$15,000 to Mr Jackson because Ms Wills had told him at the time that Ms Fegan had been to see her.
- f. Ms Wills stated that she was given verbal instructions by Mr Jackson to make the \$5,000 payments and that she had no paperwork to say what Mr Jackson's salary should have been in the first place. She was not sure exactly what Mr Jackson's salary should have been. She agreed that, while she was not aware of a formal subcommittee, it was Ms Fegan, Mr Jackson and Mr Hudson who determined salaries within the Branch and she did recall Mr Les Butler being engaged to undertake a review of salaries, although she never saw the report that was produced by Mr Butler. Ms Wills recalls that, after the Butler Report, both Ms Fegan and Mr Jackson put \$10,000 of their salary aside for use for travel but that Mr Hudson took a \$10,000 salary increase.
- g. Ms Wills stated that, whenever there was a pay increase generally, she was usually instructed verbally of the increment.

Payment of Additional Salary to Mr Jackson

- h. Ms Wills gave the following information regarding Mr Jackson's approach to paperwork:

MS CARRUTHERS: ... Was there a general problem with sloppiness?

MS WILLS: It has, yes, yes. It's probably behind a lot of the issues that you're bringing up now because nothing is in – it was very difficult to get him [Mr Jackson] to put things in writing and, you know, I mean he was in charge. If he requested you to do something, well, you know, you're an employee, you just do it so – and you'd say to him, "Will I get that in writing", and he'd say, "Yes, yes", but you never did.

MS CARRUTHERS: And would you ever feel – would people in the office feel if he gave them a direction they were uncertain about would they say go to Pauline [Fegan] to check about that or would they just do it anyway and hope they got the thing in writing?

MS WILLS: Probably do it anyway, maybe go to Pauline. It's very difficult when you know it's going to cause a big blue.

- i. Ms Wills put the three payments of \$5,000 through on Mr Jackson's verbal instructions. Ms Wills denied the suggestions by Mr Jackson and Mr Hudson that she had spoken to Ms Fegan before making the first payment or that Ms Fegan had authorised Ms Wills to make the payments. Ms Wills confirmed that the payments to Mr Jackson were processed as salary and that both PAYG taxation and superannuation were deducted from the gross figures of \$5,000.
- j. Ms Wills was able to process salary and other payments using electronic funds transfer without reference to, or supervision by, any officers of the Branch because she had been given all of the 'electronic PINs' (that is, personal identification numbers) that were required in order to process payments. This had come about for the sake of convenience because officers were not necessarily in the office at the times when she was processing payments, meaning that otherwise payments would not have been made. Ms Wills kept transaction reports of all electronic payments with associated invoices which, in theory, were to be approved and signed by an officer. Some payments were signed off at first but that process 'just all pretty much fell apart', particularly given that people were not in the office half the time.
- k. Mr Jackson, Ms Fegan and Mr Hudson all agreed in interview that they had provided their electronic PINs to Ms Wills. Mr Jackson said that his time was better spent not sitting in front of a computer paying bills.

HSU Rules relating to Finances or Financial Administration

168. Rule 52(e) states that the Branch Committee shall have power 'to fix the remuneration and terms and conditions of employment of any officer or employee of the branch.'
169. Both Mr Jackson and Mr Hudson have given affidavit evidence that a subcommittee of the Branch Committee of Management was formed following the Butler Report to determine salaries of employees and officers of the Branch. It is not clear, however,

Payment of Additional Salary to Mr Jackson

whether this subcommittee had ever been formally established by the Branch Committee of Management. Minutes of the Branch Committee of Management meeting on 21 June 2006 which are exhibited to Mr Jackson's affidavit of 22 June 2009 state that a motion was carried instructing '*the Secretary* to review and implement wage increases' as per the Butler Report (my emphasis). Neither Mr Jackson nor Mr Hudson has provided any minutes or, indeed, any other documents of any description evidencing the existence of a subcommittee. Further, despite the fact that she is said to be a member of that subcommittee, Ms Fegan (who was interviewed by FWA prior to Mr Jackson and Mr Hudson) made no reference in interview to such a subcommittee.

170. From information that was provided by Ms Wills in interview, whether or not a formal subcommittee existed, it is clear that discussions were held between Ms Fegan, Mr Jackson and Mr Hudson regarding remuneration of employees of the Branch.
171. The substance of any discussions in relation to Mr Jackson's salary is hotly disputed by Mr Jackson, Mr Hudson and Ms Fegan. It is not necessary that I make any findings as to whose version of events is to be preferred since, whatever discussions may have occurred between Ms Fegan, Mr Jackson and Mr Hudson, it remained the Branch Committee of Management which had the responsibility to authorise the remuneration of employees and officers and there is no evidence that the Branch Committee of Management did exercise such responsibility in relation to Mr Jackson's salary. I am of this view on the basis of the following:

- a. paragraph 51 of Mr Jackson's affidavit sworn on 22 June 2009 states as follows:

I note that a number of the BCOM, including Ms Conquo, have stated that they do not recall these matters being discussed in BCOM meetings in 2008. The decisions of the BCOM Subcommittee, including the decision to increase the remuneration of Branch Staff and of the Branch President, Secretary and Assistant Secretary, were regularly the subject of oral reports, by either Ms Fegan or me, to the BCOM. The content of those oral reports are not reflected in the BCOM minutes, but either I or Ms Fegan did disclose to the BCOM the BCOM Subcommittee's decision to increase the remuneration of the President, Secretary and Assistant Secretary in 2006, and the Secretary's remuneration with effect from 2007;

- b. Ms Fegan stated in interview that '*normally the secretary once the authorisation had gone through the committee would let the office manager know that these are the wages*' (my emphasis);
- c. The following information was provided in interview by Ms Wills:

MS CARRUTHERS: So when you say that it's the committee who determines the salary of office bearers?

MS WILLS: Well, they probably don't determine it. That's probably the wrong ---

MR NASSIOS: Some sort of resolution.

Payment of Additional Salary to Mr Jackson

MS WILLS: Yes, it's put to them and then they either agree or disagree or pass it, whatever the case may be; and

- d. Minutes of a Branch Committee of Management meeting on 27 May 2008 record Ms Fegan's consent to the office of Branch President becoming an honorary office. The motion was then subsequently carried that 'The Branch Committee authorises the Branch Secretary to employ Pauline Fegan on such terms and conditions as may be agreed between the Branch Secretary and Pauline Fegan'.
- e. An affidavit sworn by Ms Conquo on 24 April 2009 and statutory declarations sworn by various members of the Branch Committee of Management in late April 2009 all indicate that if a salary increase had been granted to Mr Jackson they, as members of the Branch Committee of Management, would have known about it.

General Duties

- 172. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
- 173. I must consider whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and having the responsibilities of that office.
- 174. Subsection 286(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties in good faith in what he or she believes to be the best interests of the organisation and for a proper purpose. I must consider whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties in good faith in what he believes to be the best interests of the organisation and for a proper purpose.
- 175. Subsection 287(1) requires that an officer of a branch must not improperly use his or her position to gain an advantage for himself or herself or to cause detriment to the organisation or to another person. I must consider whether Mr Jackson, as Branch Secretary, has improperly used his position to gain an advantage for himself or to cause detriment to the organisation or to another person.

Payment of Additional Salary to Mr Jackson

Findings 8 to 10

Findings	
8	<p>By directing the office manager to make the three \$5,000 payments in the circumstances in which he did, Mr Jackson contravened subsection 285(1) of the RAO Schedule in that he failed to exercise his powers and discharge his duties as Branch Secretary with a degree of care and diligence that a reasonable person would exercise occupying the position, and having the responsibilities, of the Branch Secretary.</p> <p>A reasonable person holding the office of Branch Secretary would not have instructed the office manager to make the three \$5,000 payments in the absence of documented authorisation from the Branch Committee of Management and would have provided Ms Wills with documentary evidence of any authorisation of payment of additional salary.</p>
9	<p>By directing the office manager to make the three \$5,000 payments in the circumstances in which he did, Mr Jackson contravened subsection 286(1) of the RAO Schedule in that he failed to exercise his powers and discharge his duties in good faith in what he believes to be the best interests of the organisation and for a proper purpose.</p> <p>Mr Jackson was aware these payments were not authorised by the Branch Committee of Management and that Ms Wills was able to make such payments without reference to or authorisation from the Branch Committee of Management. Rather than discharging his duties in good faith in the best interests of the organisation and for a proper purpose, Mr Jackson acted in a manner designed to secure a private advantage outside the purpose of benefiting the Branch.</p>
10	<p>By directing the office manager to make the three \$5,000 payments in the circumstances in which he did, Mr Jackson contravened subsection 287(1) of the RAO Schedule in that he improperly used his position to gain an advantage for himself and to cause detriment to the Branch.</p> <p>Mr Jackson was aware these payments were not authorised by the Branch Committee of Management and that Ms Wills was able to make such payments without reference to or authorisation from the Branch Committee of Management.</p>

Particulars of findings 8 to 10

176. Mr Jackson received three payments of \$5,000 each in additional salary during May, June and July 2008. Mr Jackson admitted receiving these payments at interview and in the affidavit he swore on 22 June 2009 and filed in proceedings in the Federal Court of Australia brought by Ms Donna Conquo (VID 267 of 2009).
177. Mr Jackson states in his affidavit that decisions about salary-related matters were determined by a sub-committee of the Branch Committee of Management consisting of

Payment of Additional Salary to Mr Jackson

three office bearers, namely the Branch President, Branch Assistant Secretary and Branch Secretary.

178. While the sub-committee may have held discussions regarding the terms and conditions of employment of employees and officers of the Branch, on the basis of the material before me I am of the view that it was the Branch Committee of Management which authorised such terms and conditions of employment. Mr Jackson states in paragraph 51 of his affidavit that 'decisions of the BCOM Subcommittee, including the decision to increase the remuneration of Branch Staff and of the Branch President, Secretary and Assistant Secretary, were regularly the subject of oral reports, by either Ms Fegan or me, to the BCOM.' Ms Fegan has told me in interview that the Branch Secretary would let the office manager know of any changes in wages once the authorisation had gone through the Committee. In addition, Ms Wills told me in interview that proposed salaries of office bearers are put to the Branch Committee of Management and the Committee will either 'agree or disagree'.
179. Mr Jackson was aware that the three \$5,000 payments were not authorised by the Branch Committee of Management. No documentation of any such authorisation has been provided to FWA.
180. Mr Jackson directed the office manager of the Branch to make the three \$5,000 payments to him, despite knowing that those payments were not authorised by the Branch Committee of Management.
181. Mr Jackson admitted to me at interview that he was aware that the office manager held all of the necessary PINs and passwords to make the three \$5,000 payments without reference to, or authorisation from, other officers of the Branch or the Branch Committee of Management.
182. I must consider under subsection 286(1) of the RAO Schedule whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties in good faith in what he believes to be the best interests of the organisation and for a proper purpose. While here has not been any judicial consideration of section 286 of the RAO Schedule, there has been judicial consideration of section 181 of the *Corporations Act 2001*, which largely mirrors section 286:
- a. The requirement to act in 'good faith' is a common element of corporate regulation, and is generally taken to refer to an obligation to act honestly. Acting honestly will not, however, necessarily be sufficient. The general rule is that directors, as fiduciary agents of the company, are required to exercise their powers only for the benefit of the company. Any use of power by directors that is not undertaken for the benefit of the company is an improper use of that power and therefore a breach of fiduciary duty. The organisation's interests include the interests of members 'as a whole'.
 - b. An exercise of power that is designed to secure some private advantage for a director is considered to be an improper purpose because it is outside the purpose of benefiting the company (*Mills v Mills* (1938) 60 CLR 150 at 185 per Dixon J).

Payment of \$5,000 to Ms Alex Hicks

- c. A court will determine, firstly, the purpose of the power and, secondly, as a matter of fact what purpose a director had in exercising that power and whether that purpose is within the range of permissible purposes.
183. Despite the basis of the additional payment made to Mr Jackson being vigorously contested, in my view, there is sufficient information to establish a contravention of subsection 286(1) by Mr Jackson.
184. I must consider under subsection 287(1) of the RAO Schedule whether Mr Jackson, as Branch Secretary, has improperly used his position to gain an advantage for himself or to cause detriment to the organisation or to another person. While there has not been any judicial consideration of section 287 of the RAO Schedule, there has been judicial consideration of section 182 of the *Corporations Act 2001*, which largely mirrors section 287. Section 182 of the *Corporations Act 2001* has been broadly interpreted by the courts. In *Chew v R* (1992) 173 CLR 626 the High Court found that this section does not require proof that the officer actually achieved his or her purpose in attaining a benefit for themselves or for another person (this was applied by the subsequent decision in *R v Byrnes and Hopwood* (1995) 183 CLR 501). Rather, the section requires proof that the officer believed that the intended result would be an advantage for himself or herself or for some other person or a detriment to the corporation.
185. Despite the basis of the additional payment made to Mr Jackson being vigorously contested, and that Mr Jackson did not ultimately achieve his purpose, in my view, there is sufficient information to establish a contravention of subsection 287(1) by Mr Jackson.

PAYMENT OF \$5,000 TO MS ALEX HICKS

Background

186. The second allegation that is made in exhibit SM-8 to the affidavit sworn by Ms McCormack on 7 January 2009 and that was investigated by Mr Whitchurch is as follows:

2. Unauthorised payment to Alex Hicks

It is alleged that in October 2008, Jeff Jackson authorised payment of \$5,000 into Ms Alex Hicks' account. Ms Hicks is an employee of the Union. It is alleged that these payments were made in addition to her employment entitlements and without being authorised in accordance with rule 52(e).

It is further alleged that Mr Jackson authorised these payments without the appropriate documentation.

187. Mr Whitchurch found on pages 2 to 3 and 14 to 16 of the Pitcher Partners Report that:
- a. the leave register indicated that Ms Hicks had taken annual leave from 19 May 2008 through to 3 October 2008;
 - b. \$5,000 was deposited by the Branch into Ms Hick's personal account on 13 October 2008 (while Ms Hicks was on unpaid leave). Ms Wills stated that Mr Jackson instructed her to make the deposit and that it was to be made because Ms Hicks was campaigning for Barack Obama in the United States

Payment of \$5,000 to Ms Alex Hicks

of America. The payment was expensed in the MYOB general ledger as a Political Donation;

- c. no evidence of authorisation of the payment was found.
188. Federal Court proceedings in *Conquo v Jackson* were instituted by Ms Conquo against Mr Jackson to recover the payment made to Ms Hicks. Copies of statutory declarations sworn in late April 2009 by members of the Branch Committee of Management, namely Ms Fegan, Ms Conquo, Mr Bill Ricketts, Ms Toni Joyce, Ms Anastasia Hondros, Mr Stuart Marshall, Ms Jennifer Banks and Ms Maria Toro, were provided to FWA by Macpherson + Kelley Lawyers under cover of letters dated 27 April 2009 and 30 April 2009. The statutory declarations each declare that the declarer was unaware of any motion or resolution passed by the Branch Committee of Management to pay \$5,000 to Ms Hicks or to make a donation of any sort to the election campaign of Barack Obama or any other person in the United States.
 189. On 6 April 2009 the AIR wrote to Mr Jackson asking: 'Was the donation approved under Rule 60? If so, what evidence demonstrates approval? If not, why not?' A letter in reply from Mr Jackson on 7 May 2009 stated that the payment to Ms Hicks was improperly described as a political donation and any entry of that nature into the general ledger was not done at his direction. While Mr Jackson admits that he authorised the payment, he stated that he did so 'in consultation with the Branch President and the Assistant Branch Secretary'. Mr Jackson has directed that union records be corrected.
 190. No documentary evidence regarding approval of the payment of \$5,000 to Ms Hicks in October 2008 has been provided to AIR or FWA.
 191. The following information was provided to FWA in interviews with the persons specified:
 - a. Mr Jackson stated that he instructed Ms Wills to make the payment of \$5,000 to Ms Hicks because she had an opportunity to participate in the Obama campaign. Mr Jackson stated that he consulted both Ms Fegan and Mr Hudson regarding the payment and that the three of them authorised the payment. The payment was reported to the Branch Committee of Management and to the National Executive;
 - b. Ms Fegan stated that she knew nothing about the payment to Ms Hicks and that it was never authorised by the Branch Committee of Management;
 - c. Mr Hudson stated that Mr Jackson had come to him and said that he had been approached about sponsoring someone to work on the Obama campaign. Mr Hudson does not think that the Branch Committee of Management had any role in authorising the expenditure but he could not recall precisely. Ms Hicks was working out of Obama campaign offices in different cities and was not acting as an official representative of the HSU. The purpose of such trips is to gain experience and knowledge that can be brought back to the union;
 - d. Ms Wills stated that Mr Jackson instructed her to pay \$5,000, without deductions, to Ms Hicks because she had been invited to go on the Barack Obama campaign. When she asked Mr Jackson for associated paperwork he

Payment of \$5,000 to Ms Alex Hicks

said that he would give it to her but it was never provided. Ms Wills recalls that, in probably May or June 2009, Mr Jackson asked her to include the \$5,000 in Ms Hicks' salary for the year as a travel allowance, although originally Ms Wills had understood that the payment was being made for political campaigning. As far as Ms Wills knew, the payment was never authorised by the Branch Committee of Management.

HSU Rules relating to Finances or Financial Administration

- 192. Rule 52(e) states that the Branch Committee shall have power 'to fix the remuneration and terms and conditions of employment of any officer or employee of the branch.'
- 193. Information has been previously set out that a subcommittee of the Branch Committee of Management (consisting of Ms Fegan, Mr Jackson and Mr Hudson) was formed following the Butler Report to determine salaries of employees of the Branch.
- 194. I have earlier expressed the view at paragraph 178 that, whether or not a formal subcommittee existed, in practice discussions were held between Ms Fegan, Mr Jackson and Mr Hudson regarding remuneration of employees of the Branch. I have also expressed the view that any decisions regarding salaries and other conditions of employment that may have been made by Mr Jackson, Mr Hudson and Ms Fegan (whether or not as members of a formal subcommittee) were required to be authorised by the Branch Committee of Management.

Subsection 285(1) of the RAO Schedule

- 195. Subsection 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
- 196. I must consider whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and having the responsibilities of that office.

Finding 11

Finding	
11	<p>By directing the office manager to make the \$5,000 payment to Ms Hicks in the circumstances in which he did, Mr Jackson contravened subsection 285(1) of the RAO Schedule in that he failed to exercise his powers and discharge his duties as Branch Secretary with a degree of care and diligence that a reasonable person would exercise occupying the position, and having the responsibilities, of the Branch Secretary.</p> <p>A reasonable person holding the office of Branch Secretary would not have instructed the office manager to make the payment of \$5,000 to Ms Hicks in the absence of documented authorisation from the Branch Committee of Management.</p>

Payment of \$5,000 to Ms Alex Hicks

Particulars of finding 11

197. In October 2008 a payment of \$5,000 was made by the Branch to Ms Hicks, an employee of the Branch.
198. The office manager, Ms Wills, has told me in interview that, at the time the monies were paid to Ms Hicks, Mr Jackson instructed her to make a payment of \$5,000, without deductions, to Ms Hicks as a political donation for campaign purposes related to the Barack Obama campaign. Ms Wills has further stated that in May or June 2009 Mr Jackson instructed her to alter the Branch's records to record the payment as having been for travel allowance. As travel allowance, the payment to Ms Hicks was part of her remuneration as an employee of the Branch.
199. Authority to approve (and vary) the terms and conditions of employment of employees and officers is held by the Branch Committee of Management.
200. Mr Jackson admitted in interview that he did not seek or obtain a direction from the Branch Committee of Management that the payment of \$5,000 be made to Ms Hicks prior to that payment being made or at all.
201. Mr Jackson stated in a letter to the AIR dated 7 May 2009 that he authorised payment of \$5,000 to Ms Hicks 'in consultation with the Branch President and Assistant Secretary'. Mr Jackson also stated in interview that the subcommittee authorised payment of \$5,000 to Ms Hicks and that it was subsequently reported to the Branch Committee of Management. Ms Fegan, however, has told FWA in interview that she knew nothing about the payment to Ms Hicks and that it was never authorised by the Branch Committee of Management. Mr Hudson stated to FWA in interview that he did not think that the Branch Committee of Management had any role in authorising payment of \$5,000 to Ms Hicks, although he could not precisely recall. Further, statutory declarations sworn by a number of members of the Branch Committee of Management in April 2009 state that no motion was put forward to, or resolution passed by, the Branch Committee of Management in 2008 regarding payment of \$5,000 to Ms Hicks. Further, no documents have been provided to the AIR or FWA supporting authorisation of the payment of \$5,000 to Ms Hicks.
202. Mr Jackson instructed the Branch office manager to make the payment to Ms Hicks, knowing that the Branch Committee of Management had not directed the payment to be made.

Other General Duties- subsections 286(1) and 287(1) of the RAO Schedule

203. Section 286(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties in good faith in what he or she believes to be the best interests of the organisation and for a proper purpose.
204. I must consider whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties in good faith in what he believes to be the best interests of the organisation and for a proper purpose.
205. I am not of the view that there is information before me that there has been a contravention of subsection 286(1) of the RAO Schedule with respect to the payment of \$5,000 to Ms Hicks for the following reasons:

Payment of Airfares for Officials and their Partners

- a. Mr Hudson has given information in interview that it is a common practice for different Australian unions to send people overseas during political campaigns. ALP unions have sent people over to work in English elections. Mr Hudson can remember New Zealanders and Englishmen coming over to Australia for the last federal election campaign 'because it gives political operators experience. So, yes, that's been done since the year dot as far as I know'. Mr Hudson also stated that people go over as political strategists so that they can gain experience and knowledge that they then bring back to the union. Ms Wills has also told FWA in interview that she believed the HSU National Secretary, Ms Kathy Jackson, also took part in the Obama political campaign.
 - b. While I have found that the Branch Committee of Management did not authorise the payment of \$5,000 to Ms Hicks, I do not believe that the payment was intended by Mr Jackson to secure some private advantage for himself or for Ms Hicks. Rather, its purpose was to enable Ms Hicks to gain experience and knowledge from the political campaign for Barack Obama which she could then use in Australian political campaigns. I am therefore of the view that Mr Jackson believed that the payment to Ms Hicks was in the best interests of the organisation and for a proper purpose.
206. Section 287 states that an officer of a branch must not improperly use his or her position to gain an advantage for himself or herself or to cause detriment to the organisation or to another person.
207. I must consider whether Mr Jackson, as Branch Secretary, has improperly used his position to gain an advantage for himself or to cause detriment to the organisation or to another person. I am not of the view that there is information before me that there has been a contravention of subsection 287(1) of the RAO Schedule with respect to the payment of \$5,000 to Ms Hicks. As stated above, the purpose of the payment to Ms Hicks was to enable her to gain experience and knowledge from the political campaign for Barack Obama which she could then use in Australian political campaigns. While I have found that the Branch Committee of Management did not authorise the payment of \$5,000 to Ms Hicks, I do not believe that Mr Jackson has improperly used his position as Branch Secretary to gain an advantage for himself. Nor has he improperly used his position to cause detriment to the organisation. Rather, the purpose of the payment was to provide experience and skills to an employee which could subsequently be used to the advantage of the union movement.

PAYMENT OF AIRFARES FOR OFFICIALS AND THEIR PARTNERS

Travel to China in May and October 2008

208. The fifth allegation that is made in exhibit SM-8 to the affidavit sworn by Ms McCormack on 7 January 2009 and that was investigated by Mr Whitchurch is as follows:

5. Unauthorised payments

It is alleged that unauthorised payments have been made for airfares for officials and their partners in the last 6 months without authorisation.

209. The Pitcher Partners Report identified two separate trips made by Branch officials to China in May and October 2008. Four of the staff who went on the October 2008 trip were accompanied by their partners and each of those four staff members reimbursed the Branch for expenditure relating to their partners during the trip. Mr Whitchurch was unable to ascertain whether the reimbursement was a reasonable amount of the costs incurred on the trip.

210. In interview Ms Fegan stated that these trips were approved by the Branch Committee of Management. The policy with respect to spousal travel was that any expenses relating to a spouse (such as accommodation and airfares) that were paid by the Branch were reimbursed so that it 'doesn't cost the union any money'. Ms Fegan stated that invoices for spouse-related expenses were drawn up by Ms Wills prior to the trip in October 2008 and that all monies owing for spouse-related travel have been paid to the Branch. Mr Jackson confirmed in interview that his understanding was that all spouse-related expenses associated with the trip to China had been reimbursed.

211. Minutes of meetings of the Branch Committee of Management between 26 February 2008 and 28 October 2008 do not show that any resolutions approving trips by officials to China in either May or October 2008 were put to, or authorised by, the Branch Committee of Management. Reference is made, however, to the May 2008 trip in minutes of a meeting on 25 June 2008 and to the October 2008 trip in minutes of a meeting on 28 October 2008.

212. Although I was unable to confirm in the minutes of Committee of Management meetings that the trips to China were authorised by the Committee, I am satisfied that the Committee of Management was aware of the trips. I am also satisfied that monies for the cost of travel of spouses to China have been reimbursed by officials to the Branch.

213. On the information before me I am not satisfied the allegation has been made out that unauthorised payments for airfares were made for officials and their partners with respect to the trips to China in May and October 2008.

Payment by the Branch for Spousal Travel to the Wedding of Mr Ben Morgan

Background

214. Ms Fegan stated in interview that the reason she raised the question of spousal travel with Mr Whitchurch was that she had become aware of airfares and accommodation

Payment of Airfares for Officials and their Partners

being paid for by the Branch for the partners of Mr Jackson and Mr Hudson when they attended the wedding of a Branch employee, Mr Ben Morgan, in Sydney. As Ms Fegan understood the situation, expenses incurred by the two spouses were not reimbursed.

215. When asked about his attendance at Mr Morgan's wedding in Sydney, Mr Jackson stated in interview that it is appropriate for the Branch to pay for travel of an official's spouse to a wedding of a Branch employee.
216. Mr Hudson confirmed in interview that the Branch had paid for flights and accommodation for himself and his wife. Both he and Mr Jackson were attending the wedding as representatives of the union. Mr Hudson stated that the Branch Committee of Management did not approve payment of costs associated with attendance by spouses of Branch officials at Mr Morgan's wedding. Mr Hudson stated that Mr Morgan was employed as one of the Branch's 10 or 12 industrial organisers. When asked whether he would expect that senior officials would have their accommodation and flights paid for each organiser who gets married, Mr Hudson replied that 'Special circumstances interstate I would have no qualms with it. It's probably the first one we've had interstate.'
217. Ms Wills confirmed in interview that airfares for the partners of Mr Jackson and Mr Hudson were paid for by the Branch when they attended Mr Morgan's wedding, although she did not recall that the Branch had paid for accommodation. Bookings were made by Mr Jackson's personal assistant. As far as she is aware, the cost of the airfares has not been reimbursed to the Branch. Ms Wills stated that payment of the airfares was not authorised and, although she knew the purpose of the trip, the invoice that was received by the Branch was 'just paid'.

General Duties

218. Subsection 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
219. I must consider whether Mr Jackson and Mr Hudson have exercised their powers and discharged their duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and Branch Assistant Secretary respectively and having the responsibilities of that office.
220. Subsection 286(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties in good faith in what he or she believes to be the best interests of the organisation and for a proper purpose.
221. I must consider whether Mr Jackson and Mr Hudson as Branch Secretary and Branch Assistant Secretary respectively have exercised their powers and discharged their duties in good faith in what they believe to be the best interests of the organisation and for a proper purpose.
222. Subsection 287(1) states that an officer of a branch must not improperly use his or her position to gain an advantage for himself or herself or to cause detriment to the organisation or to another person.

Payment of Airfares for Officials and their Partners

223. I must consider whether Mr Jackson and Mr Hudson as Branch Secretary and Branch Assistant Secretary have improperly used their position to gain an advantage for themselves or to cause detriment to the organisation or to another person.

Findings 12 to 14

Findings	
12	<p>By allowing the Branch to pay invoices for travel expenses incurred by Mr Jackson and Mr Hudson and their spouses, knowing that payment of those expenses had not been approved by the Branch Committee of Management, and by not subsequently reimbursing the Branch (or requiring reimbursement to the Branch) of those amounts, each of Mr Jackson and Mr Hudson have contravened subsection 285(1) of the RAO Schedule in that they have failed to exercise their powers and discharge their duties as Branch Secretary and Branch Assistant Secretary respectively with a degree of care and diligence that a reasonable person would exercise occupying those positions, and having the responsibilities, of Branch Secretary and Branch Assistant Secretary respectively.</p> <p>A reasonable person holding the office of Branch Secretary or Branch Assistant Secretary would not have allowed the Branch to pay invoices for the cost of travel to attend the wedding of Mr Morgan where those payments were not authorised by the Branch Committee of Management. Where the Branch had already paid for such travel expenses, a reasonable person holding the office of Branch Secretary or Branch Assistant Secretary would have taken steps to ensure that the cost of such travel was reimbursed to the Branch.</p>
13	<p>By allowing the Branch to pay invoices for the cost of travel expenses incurred by Mr Jackson and Mr Hudson and their spouses to attend Mr Morgan's wedding, knowing that payment of those expenses had not been approved by the Committee of Management, and by not subsequently reimbursing the Branch (or requiring reimbursement to the Branch) of those amounts, both Mr Jackson and Mr Hudson have contravened subsection 286(1) of the RAO Schedule in that they have failed to act in good faith in the best interests of the Branch and for a proper purpose.</p>
14	<p>By allowing the Branch to pay invoices for the cost of travel expenses incurred by Mr Jackson and Mr Hudson and their spouses to attend Mr Morgan's wedding, knowing that payment of those expenses had not been approved by the Committee of manager, and by not subsequently reimbursing the Branch (or requiring reimbursement to the Branch) of those amounts, both Mr Jackson and Mr Hudson have contravened subsection 287(1) of the RAO Schedule in that they have improperly used their position to gain an advantage for themselves and have caused detriment to the Branch.</p>

Leave Discrepancies for Mr Jackson

Particulars of findings 12 to 14

224. The Branch paid for flights and accommodation for Mr Jackson and Mr Hudson and their partners to attend the wedding of a Branch employee, Mr Ben Morgan, in Sydney in 2008.
225. Payment of airfares and accommodation by the Branch was not authorised by the Branch Committee of Management. Mr Hudson and Ms Wills both separately told FWA that the Branch Committee of Management had not authorised these payments.
226. At the time the Branch paid for the airfares and accommodation, Mr Jackson and Mr Hudson were aware that they were not authorised by the Branch Committee of Management.

LEAVE DISCREPANCIES FOR MR JACKSON

Background

227. Mr Whitchurch was engaged by the Branch to investigate, amongst other things, allegations regarding unauthorised payment of additional salary to Mr Jackson. In investigating this issue, Mr Whitchurch also found on pages 12 to 14 of the Pitcher Partners Report that:
228. In the period 1 July 2007 to 30 November 2008 Mr Jackson was paid approximately 65 days of annual leave as evidenced by narrations located in the wage auditing reports. Of the 65 days paid, nine days were taken instead of ordinary salary (indicating actual leave was taken on those days). The remaining 56 days were paid out in addition to Mr Jackson's normal salary;
229. The leave register indicated that Mr Jackson had taken 35 days of leave during the period 1 July 2007 to 30 November 2008, a variance of 30 days from the amount paid as leave. Ms Wills stated that the leave register required updating, possibly being the reason why Mr Jackson's leave taken in the leave balances does not agree with leave taken and paid out in the MYOB wage auditing report;
230. Ms Wills was unable to produce formal leave forms prepared by Mr Jackson.
231. The following information was provided to FWA in interview:
 - a. Mr Jackson agreed that he had cashed out large amounts of annual leave and described himself as 'the master of that'. He agreed that it was possible that he had cashed out 56 days' worth of leave, although he had not looked at the records. He had no idea why there is no record of leave applications. Mr Jackson stated that sometimes Ms Wills asked him to sign a leave form. Mr Jackson is not aware of any dispute regarding taking or paying out annual leave.
 - b. Ms Fegan stated that employees did sometimes ask to have some annual leave paid out and that it would be granted, although there is no policy of paying out entitlements to reduce liability.
 - c. Mr Hudson stated that the Branch would pay out leave entitlements to employees where staff had personal issues or needed assistance. Staff are required to fill in

Leave Discrepancies for Mr Jackson

a form and have it approved. If Mr Jackson had wished to have leave paid out the practice would have been for the application form to be approved by either himself or Ms Fegan.

- d. Ms Wills stated that Mr Jackson quite frequently had annual leave entitlements paid out but that Mr Jackson was 'very bad with filling out paperwork', with the result that '[n]ine times out of 10 I would fill out Jeff's forms because he would never fill them in'. Ms Wills disagreed with the findings of the Pitcher Partners Report that Mr Jackson had not completed any formal leave forms. Mr Jackson 'did complete the odd one', although it was Ms Wills who filled them out and got him to sign them 'if I could catch him. I made him sign but not always.' Ms Wills stated that it was possible that Mr Jackson had taken leave without the appropriate paperwork being filled out.

Part 3 of Chapter 8 of the RAO Schedule

232. Requirements regarding the keeping of proper financial records are set out in subsection 252(1) of the RAO Schedule, which requires a reporting unit to keep such financial records as correctly record and explain the transactions and financial position of the Branch and to keep its financial records in such a manner as will enable the accounts to be conveniently and properly audited.
233. Mr Whitchurch found that Mr Jackson's leave taken in the leave balances did not agree with leave taken and paid out in the MYOB wage auditing report. FWA has not examined the records that were seen by Mr Whitchurch in making his findings in the Pitcher Partners Report. I am therefore unable to determine whether Mr Jackson's leave taken in the leave balances agrees with leave taken and paid out in the MYOB wage auditing report.

General Duties

234. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.
235. I must consider whether Mr Jackson, as Branch Secretary, has exercised his powers and discharged his duties with a degree of care and diligence that a reasonable person would exercise occupying the office of Branch Secretary and having the responsibilities of that office.

Leave Discrepancies for Mr Jackson

Findings 15 and 16

Findings	
15	By failing to keep, or cause to be kept, such records as correctly record and explain the annual leave taken or cashed out by him during the period 1 July 2007 to 30 November 2008, and by failing to keep, or cause to be kept, leave records of the Branch in such a manner as will enable a general purpose financial report to be prepared, and failing to keep, or cause to be kept, leave records in such a manner as will enable the accounts of the Branch to be conveniently and properly audited, the Branch has contravened subsection 252(1) of the RAO Schedule.
16	<p>By failing to sign an application for leave and by failing to have that application authorised whenever he took annual leave or sought to have annual leave paid out in addition to his salary, Mr Jackson, as Branch Secretary, has contravened subsection 285(1) of the RAO Schedule in that he has failed to exercise his powers and discharge his duties as Branch Secretary with a degree of care and diligence that a reasonable person would exercise occupying the position, and having the responsibilities of that office.</p> <p>A reasonable person holding the office of Branch Secretary would have signed, and sought authorisation of, leave forms on each occasion on which he sought to take annual leave or have annual leave paid out to him.</p>

Particulars of findings 15 and 16

236. Whether or not the Branch has in its records a leave form for each occasion on which Mr Jackson either took leave or had leave paid out in addition to his salary, it is clear from the information provided by Ms Wills during interview that, having filled out the leave form herself '[n]ine times out of 10', there was only 'the odd one' that had actually been signed by Mr Jackson. As she said, Ms Wills got Mr Jackson to sign a leave form 'if I could catch him. I made him sign but not always'.
237. Rule 56 of the HSU Rules provides that the Branch Secretary shall be the chief executive officer of the branch and, subject to the Rules, have charge of the general conduct, administration and business of the branch.
238. Mr Jackson has failed to keep, or cause to be kept, records of annual leave that he took or 'cashed out' during the period 1 July 2007 to 30 November 2008. Mr Jackson did not complete, sign or seek authorisation of personal leave forms for each occasion of personal leave that was taken (or 'cashed out') during the period 1 July 2007 to 30 November 2008.
239. When it was put to Ms Wills in interview that Mr Jackson completed no formal leave forms she stated 'Well, that's not true. He did complete the odd one. There are some. There are some he did complete although I filled them out and got him to sign them if I could catch him. I made him sign but not always'. Ms Wills characterised Mr Jackson's paperwork as 'very sloppy' and 'very bad'.

Allegations against Ms Fegan regarding related party transactions

240. Mr Jackson was unable to explain to me in interview why there was no record of his leave applications.

241. 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;
- (b) keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them; 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.

ALLEGATIONS AGAINST MS FEGAN REGARDING RELATED PARTY TRANSACTIONS

242. A number of allegations have been made against the Branch President, Ms Fegan, regarding the purchase of goods by the Branch from a business known as Urban Giftware that is operated by Ms Fegan's domestic partner, Mr Phillip Grima.

Regulatory Framework

Part 3 of Chapter 8 of the RAO Schedule

243. As set out at paragraph 73 above, requirements regarding preparation of a GPFR by a reporting unit are set out in subsection 253(1) of the RAO Schedule:

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.

Australian Accounting Standards

244. Australian Accounting Standard AASB 124 *Related Party Disclosures* requires a financial entity to disclose transactions and outstanding balances pertaining to related parties of the reporting unit.

245. The objective of AASB 124 is set out in paragraph 1 as follows:

- 1. The objective of paragraphs 1 to 22 of this Standard is to ensure that an entity's financial report contains the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties.

246. Paragraph 9 of AASB 124 defines 'related party' to include, amongst other things, where:

- (d) the party is a member of the key management personnel of the entity or its parent;

Allegations against Ms Fegan regarding related party transactions

- (e) the party is a close member of the family of an individual referred to in ... (d);

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

Close members of the family of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity. They may include:

- (a) the individual's domestic partner ...

247. Paragraph 17 of AASB 124 prescribes the following mandatory requirement:

17. If there have been transactions between related parties, an entity shall disclose the nature of the related party relationship as well as information about the transactions and outstanding balances necessary for an understanding of the potential effect of the relationship on the financial statements ... At a minimum, disclosures shall include:

- (a) the amount of the transactions;
- (b) the amount of outstanding balances and:
 - (i) their terms and conditions, including whether they were secured, and the nature of the consideration to be provided in settlement; and
 - (ii) details of any guarantees given or received;
- (c) provisions for doubtful debts related to the amount of outstanding balances; and
- (d) the expense recognised during the period in respect of bad or doubtful debts due from related parties.

Background

248. On 9 December 2008 the Branch Secretary received a letter from the Branch's Auditor, Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd, in which he states that Mr Jackson has asked him 'to examine a past purchasing practice in the ... Branch which appears irregular.' Mr Dick states that he was informed of the following:

- a. Ms Pauline Fegan has been ordering promotional goods such as pens, badges and stickers, from a business which she and her partner operate;
- b. Ms Fegan not only orders the goods herself (deciding the quantity and quality), from herself (reportedly without seeking quotes from alternative suppliers), but also:
 - i. sets the price to the Union;
 - ii. delivers the goods herself; and
 - iii. authorised payments to her business (in her then capacity as an employee to whom was delegated the task of supervising the payment of accounts); and

Allegations against Ms Fegan regarding related party transactions

- c. preliminary investigations indicate that in many instances the prices paid by the Branch were well in excess of trade prices available for such goods, ranging from 20% to in excess of 100%. The only documentation in relation to these transactions are the invoices for payment.
249. Mr Dick advised Mr Jackson of his concern that, if these allegations were made out, there had been a possible breach by Ms Fegan of her fiduciary duty and of her contract of employment. Mr Dick recommended that the matter be further investigated and referred for legal advice.
250. On 15 December 2008 the Branch Assistant Secretary, Mr Shaun Hudson, wrote to Mr Jackson making a charge against Ms Fegan under rule 61(a) of the HSU Rules. The charge made by Mr Hudson concerned the allegations outlined by Mr Dick in his letter of 9 December 2008. On that same day Mr Jackson suspended Ms Fegan from her office as a member of the Committee of Management pending determination of the charges.
251. As outlined above, Mr Whitchurch was engaged by the Branch to investigate, amongst other things, allegations regarding transactions between the Branch and Urban Giftware. Mr Whitchurch found on pages 2 and 11 of the Pitcher Partners Report that:
 - a. The Branch transacted with the business Urban Giftware. Urban Giftware is a sole trader business registered by Mr Phillip J Grima, Ms Fegan's husband;
 - b. Between 1 July 2007 and 30 November 2008 the Branch purchased \$147,361 in promotional goods from Urban Giftware. All entries where Urban Giftware was denoted as the supplier in the general ledger were supported by what appeared to be a bona fide Urban Giftware invoice;
 - c. There was no evidence detailing who decides on quantities, who set prices, if alternate quotes had been obtained, if the goods were received by the Branch or who authorised payment for the goods;
 - d. He was unable to determine if prices paid for goods purchased from Urban Giftware were above an appropriate market value. He could not rely upon a table of comparative prices from alternative suppliers that was provided by Mr Hudson (and which forms Appendix 7 to the Pitcher Partners Report) as he could not verify the amounts in the table from any original documents;
 - e. He was unable to determine whether Ms Fegan's actions were motivated by her own personal interests or contained motives to make a personal profit.
252. An Australian Business Number search confirms that Urban Giftware is registered as a trading name for Phillip J Grima and that Mr Grima is registered as an individual/sole trader. This is confirmed in an affidavit sworn by Mr Grima on 16 December 2008 in the Federal Court of Australia in *McCormack v Jackson* (VID 1049 of 2008) which was received by the AIR from Macpherson + Kelley Lawyers under cover of a letter dated 4 June 2009. Mr Grima states in that affidavit that Ms Fegan is not in any way involved in the Urban Giftware business and she neither works in nor directly benefits from its operations in any way. Mr Grima states that he operates a party plan business and was approached by Mr Jackson two or three years previously at a Branch function and asked whether he could supply goods for the Branch. From that point Mr Grima supplied the Branch with a number of products, including badges, caps, keyrings,

Allegations against Ms Fegan regarding related party transactions

t-shirts and pins. Mr Grima states that it is usually Mr Hudson who orders the goods from Mr Grima, although occasionally the Publicity Officer, Mr Sam Kelly, will request goods. Mr Grima states that Ms Fegan has never requested the supply of any items. The normal practice is that Mr Grima is given a price which he has to beat if he is to be the successful supplier. Mr Grima sets prices of goods he supplies and normally arranges to have them delivered, although occasionally Ms Fegan will deliver them on his behalf.

253. In his affidavit sworn on 22 June 2009 in *Conquo v Jackson*, Mr Jackson described the types of promotional materials purchased by the Branch from Urban Giftware as 'pens, mouse-pad, t-shirts, banners and so on'. Mr Jackson stated that he was concerned that there was no records of goods ordered, no receipting of goods received, no record of other quotes having been sought and so on. On reviewing documentation relating to the purchases, the prices charged seemed high. Mr Jackson states that he caused enquiries to be made about market prices for the goods provided and that in many cases the prices charged by Urban Giftware seemed to be above market. He further stated that the quantity of goods purportedly provided did not tally with the inventory held by the Branch, even if generous assumptions were made for draw-down of stock for distribution to members. Further, no member of staff could vouch for goods having, in fact, been received. Several members of staff reported that from time to time they were directed by Ms Fegan to unload goods from the boot of her car but were unable to attest to quantities of goods delivered or even recall when they were delivered. No members of staff were able to offer any information which went towards reconciling goods received with invoices forwarded and paid. Mr Jackson also stated in his affidavit that the Office Manager confirmed to him that invoices were paid on the direction of Ms Fegan herself.
254. FWA obtained the following information during interviews conducted with Ms Fegan, Mr Hudson, Mr Jackson and Ms Rita Wills (the Branch's Office Manager):
- a. Ms Fegan stated that she thinks that the first transaction between the Branch and Urban Giftware occurred in 2005. She was not involved in the transaction. They were at a function when Mr Jackson approached Mr Grima to see whether Mr Grima could source any materials for the Branch more cheaply overseas. The usual process was that the Branch would get quotes for products from their usual suppliers and either Mr Sam Kelly or Mr Hudson would email the quote to Mr Grima. Usually it was Mr Kelly who got the quotes but Mr Kelly had to obtain Mr Hudson's authorisation for purchases. If Mr Grima could beat the quote then he supplied the goods. Ms Fegan stated that she has personally delivered goods to the Branch in the past but they were usually 'big orders so they would come in a truck'. Ms Fegan does not believe that the purchases from Urban Giftware were ever approved by the Branch Committee of Management. Ms Fegan stated that everybody on the Branch Committee of Management knew of her relationship with Mr Grima. Their relationship was also known to Mr Graeme Goller (the Branch's bookkeeper until his resignation on 28 February 2008), who worked very closely with the Branch's Auditor, Mr Iaan Dick. Ms Fegan states that she was never asked by Mr Dick about her relationship with Mr Grima.

Allegations against Ms Fegan regarding related party transactions

- b. Mr Jackson stated that he was aware that the Branch purchased goods from a business owned by Ms Fegan's husband, although he was not aware of the extent of payments made to Urban Giftware as identified by Mr Dick. Mr Jackson met Mr Grima at a social function in 2005 where Mr Grima told him that he was in the importing business. Mr Jackson does not believe that any of the Urban Giftware purchases were ever approved by the Branch Committee of Management and he is not aware of whether attempts were made to obtain quotes from other suppliers. Mr Jackson believes that the Branch Committee of Management knew that Ms Fegan and Mr Grima were in a relationship in about 2006/2007. Prior to preparation of the financial report for the year ended 30 June 2008, Mr Dick had never raised the issue of related party transactions and Mr Jackson had not been aware of the requirements of the Australian Accounting Standards in this regard.
- c. Mr Hudson stated that he was aware of Urban Giftware supplying goods to the Branch for probably the previous four years. Mr Hudson exchanged some emails with Mr Grima and he stated that he had ordered goods through Mr Grima. Mr Hudson would not obtain quotes from other people at the same time and, in fact, did not even get the prices. He stated that 'I just sent him emails on what we required'. Mr Hudson also stated, however, that he regularly sought to get some sort of tendering process in place but that he was 'cut off at the knees by Pauline Fegan most of the time'. He believed that Ms Fegan would take the bills for Urban Giftware straight to Ms Rita Wills for payment without his knowledge, although he would 'push his way in' and email Mr Grima 'now and again' with some supply orders. Mr Hudson became 'increasingly concerned' with the poor quality of the merchandise that was being supplied by Mr Grima and decided 'enough was enough' when he became aware that hundreds of thousands of dollars worth of goods had been supplied by Urban Giftware to the Branch. This expenditure was never approved by the Branch Committee of Management.
- d. Mr Hudson agreed that by November 2008 he had known that Mr Grima was the husband of Ms Fegan for at least two years, if not longer. Mr Hudson stated that the catalyst for his laying charges against Ms Fegan at that time was that in about November 2008 Ms Fegan 'had primarily declared war, as she called it' by calling a Branch Committee of Management meeting in which she 'hit us with lawyers motions' that would have 'empowered her greatly'. Mr Hudson had earlier stated that the 'genesis basically to what brought this on' was a report prepared in April 2008 by Ms Rilka Warbanoff of Lakemont Pty Ltd regarding bullying in the Branch.
- e. Ms Wills stated that she was aware from the first time goods were purchased from Urban Giftware, probably four years ago, that Mr Grima was Ms Fegan's husband. Although she did not see them, her understanding was that quotes were obtained and if goods were cheaper from China (through Urban Giftware) then the Branch would get them from China but otherwise they would get them from Australian suppliers. Invoices from Urban Giftware were not given any 'special treatment' but were 'treated exactly the same as all other invoices'. Ms Wills stated that all of the Branch was aware that goods were being received from Urban Giftware from the time of the first purchase

Allegations against Ms Fegan regarding related party transactions

as 'they're great big boxes. They're not something you can hide, you know, China all over them.'. Ms Wills stated that she was not aware of tension that had allegedly been building within the office regarding the amount of money that was being spent on purchases from Urban Giftware. She stated that she did bring up concerns herself about 'the amount of money we were spending on promotional material overall because it seemed to be, you know, growing out of all proportion, not necessarily just from Urban Giftware'. She stated that Urban Giftware was probably the Branch's principal supplier for the last few years up until 2008.

255. Further information was provided to FWA in a letter from Macpherson + Kelley dated 10 December 2010 that was sent on behalf of Ms Fegan in response to my letter of 14 October 2010. That letter contained a statement that was signed by Ms Wills on 24 November 2010. Ms Wills states that she is aware that Mr Shaun Hudson was the official in charge of the Branch's media unit which was in turn responsible for ordering promotional goods. Through conversations with Mr Hudson, he had advised her that he had discussions with Mr Grima regarding the purchase of promotional material. To Ms Wills' knowledge, all members of the Branch Committee of Management were aware that Mr Grima was Ms Fegan's partner and that he ran a company called Urban Giftware which was a supplier of goods to the HSU.

256. Ms Wills' statement of 24 November 2010 also states:

I stated in the record of interview that monthly paid invoices were not presented to the HSU Branch Committee of Management. I would like to elaborate on this issue. Prior to approximately April of 2008, all monthly paid invoices were presented to the Branch Committee of Management of the HSU. Subsequently, following this period, the monthly paid invoices were not forthcoming or presented to the Branch Committee of Management. Jeff Jackson directed me not to present the paid invoices to the Branch Committee and if any Committee member wanted to see them, then I could allow them access to my office for this reason. My understanding is that the majority of Committee members were disturbed by Jeff's failure to provide financial records and passed resolutions seeking disclosure and audit of the finances of the HSU.

257. The letter from Macpherson + Kelley dated 10 December 2010 also contained attachments A to D that are statements in identical terms by Ms Donna Conquo, Ms Jennifer Banks, Ms Maria Toro and Ms Toni Joyce. Those statements stated that each of them has known Mr Grima for seven years or more and that, to the knowledge of each of them, all Branch Committee of Management members were aware that Mr Grima was Ms Fegan's partner and that he ran a company called Urban Giftware which supplied goods to the Branch. As members of the Branch Committee of Management, none of them were aware that the Branch was required to disclose any related party transactions as required by AASB 124 *Related Party Disclosures*. They relied upon the Branch Secretary, who had charge of the financial books and statements in accordance with rule 56(c), to ensure the Branch complied with all its financial reporting obligations. Further, they relied upon the auditor, who they believed to be a professional advisor or expert in accounting, to ensure that the Branch complied with all relevant Acts and regulations in accordance with rule 59.

Allegations against Ms Fegan regarding related party transactions

258. Documents that were provided to FWA in response to the Notice sent to Mr Williamson under paragraph 335(2)(b) of the Act on 22 June 2010 show that the first transaction between the Branch and Urban Giftware occurred on 10 July 2006.
259. Minutes show that Ms Fegan, Mr Jackson and Mr Hudson were all in attendance at a meeting of the Branch Committee of Management on 26 September 2007 at which the Committee of Management passed a declaration with respect to the financial year ended 30 June 2007 that 'the financial statements and notes comply with Australian Accounting Standards'.
260. The financial report that was lodged with the AIR by Mr Jackson on 4 January 2008 for the financial year ended 30 June 2007 (FR2007/469) did not contain any disclosure of related party transactions of any kind.
261. Extracts from the MYOB general ledger for the Branch between 1 July 2007 and 30 June 2008 that were provided to the AIR on 11 June 2009 by Minter Ellison show that the \$108,935.60 of promotional materials were recorded in the general ledger as having been purchased from Urban Giftware. During that same period the Branch spent a total of \$153,143.08 on promotional material. The figure of \$108,935.60 agrees with the finding of the Pitcher Partners Report in paragraph xii on page 11 and with the comparative figure that was provided in Note 13 (related parties) of the financial report for the year ended 30 June 2009.
262. Minutes show that Mr Jackson and Mr Hudson were in attendance at a meeting of the Branch Committee of Management on 10 December 2008 at which the Committee of Management passed a declaration with respect to the financial year ended 30 June 2008 that 'the financial statements and notes comply with Australian Accounting Standards'.
263. The financial report that was lodged with FWA by the court appointed Administrator, Mr Vines, on 15 October 2009 for the financial year ended 30 June 2008 did not contain any disclosure of related party transactions of any kind. While the documents were lodged by Mr Vines, the Committee of Management Statement, the Operating Report and the designated officer's certificate prepared under section 268 of the RAO Schedule were all dated 12 December 2008 and had all been signed by Mr Jackson as the then Branch Secretary.
264. On 24 December 2009 I wrote to Mr Bolano seeking an explanation regarding the Branch's compliance with AASB 124 in its financial report for the year ended 30 June 2008 with respect to a number of matters, including failure to disclose related party transactions with the former President, Ms Fegan, regarding purchase of merchandise by the Branch from Urban Giftware.
265. I received a letter in response from Mr Bolano dated 12 February 2010 which did not address why the financial report did not contain the disclosure in question. The only information provided in the letter from Mr Bolano was that 'Mr Dick advises that he considered his reference in the audit report to the expert's report [namely, the Pitcher Partners Report] covered the requirements of AASB 124'.
266. A letter received from Mr Dick on 21 January 2010 similarly states that he considered his reference to the 'expert's report' to be sufficient to meet the requirements of AASB 124.

Allegations against Ms Fegan regarding related party transactions

267. For the financial year ended 30 June 2009, extracts from the MYOB general ledger for the Branch between 1 July 2008 and 30 November 2008 show that promotional materials to the value of \$38,425 were recorded as having been purchased from Urban Giftware (out of a total of \$125,755.25 purchased overall).
268. The MYOB general ledger that was provided to the AIR by Minter Ellison under cover of a letter dated 11 June 2009 shows that a total of \$38,425 was spent by the Branch on purchases from Urban Giftware in the five month period from 1 July 2008 to 30 November 2008. This agrees with the finding of the Pitcher Partners Report in paragraph xii on page 11. The financial report contains the following note with respect to transactions with Urban Giftware:

13. RELATED PARTIES

...

During the year, transactions amount to \$34,812 (2008: \$108,936) were incurred with an entity related to Ms P Fegan.

269. It is unclear why the figure in Note 13 is \$3,613 less than the amount identified by Pitcher Partners and recorded in the general ledger that was provided to AIR, particularly when the figure in Note 13 relates to the entire financial year and the figures examined by both Pitcher Partners and FWA were only for five months of that financial year.
270. On 7 January 2010 I wrote to Mr Bolano seeking an explanation regarding the Branch's compliance with AASB 124 in its financial report for the year ended 30 June 2009 with respect to a number of matters, including Note 12 of the GPFR, which discloses transactions to the value of \$34,812 with 'an entity related to Ms P Fegan'. Other than the value of those transactions, the report did not provide further information regarding the transactions and did not disclose the nature of the related party relationship.
271. I received a letter in response from Mr Bolano dated 12 February 2010 in which he relevantly stated that the related party transaction of \$34,812 with an entity related to Ms P Fegan was for the purchases of goods and services. The goods and services purchased were for merchandise products used by the Branch. The Branch are advised that Ms Fegan's partner owns the business and that Ms Fegan is not involved.
272. The financial report for the year ended 30 June 2009 contained an Audit Report that was signed by Mr Michael B Shulman of Stannards Accountants and Advisors on 16 November 2009. On 12 March 2010 I wrote to Mr Shulman seeking his comments or explanation regarding various matters, including asking him to explain his compliance with Australian Auditing Standard ASA 550 *Related Parties* in the conduct of his audit in light of the transactions with Urban Giftware that are set out in my letter to Mr Bolano dated 7 January 2010.
273. Mr Shulman's response regarding the transactions with Urban Giftware was that, through a combination of observation, enquiry, reperformance and verification procedures, Stannards sought to identify all related parties and the nature and amount of related party transactions. These procedures included discussions with the Administrator, management and legal advisors, review of accounting documentation, review of the Pitcher Partners Report and review of minutes of meeting of the

Allegations against Ms Fegan regarding related party transactions

Committee of Management, the objective being to ensure the financial report of the Branch was fairly represented.

274. On 14 October 2010 I wrote to Ms Fegan, Mr Jackson and Mr Hudson setting out findings that I was proposing to make with respect to disclosure of related party transactions between the Branch and Urban Giftware in the financial years ended 30 June 2007, 30 June 2008 and 30 June 2009 and providing an opportunity for each of them to respond. Ms Fegan, who was the only one of the three who took up the opportunity, responded by way of a letter dated 10 December 2010 from Macpherson + Kelley Lawyers. That letter stated that Ms Fegan was aware that the Branch acquired promotional material from Urban Giftware, a business registered to her domestic partner. This fact was known to all members of the Branch Committee of Management. As all members of the Branch Committee of Management had constructive and operational knowledge of the related party relationship, Ms Fegan felt that her obligations to disclose the relationship to the Branch Committee of Management had been fulfilled. Ms Fegan was unaware of the Branch's obligation to disclose the related party relationship in its financial reports. Further, it was the Branch Secretary who had charge of the Branch's financial books and statements under the rules. The Branch had appointed an auditor and Ms Fegan relied upon Mr Jackson and the auditor to properly advise the Branch Committee of Management as to its obligations. Ms Fegan did not play any part in briefing the auditor. Ms Fegan said she believed on reasonable grounds that the auditor was a professional adviser with relevant expertise and she relied upon that expertise in good faith. She said that her reliance upon Mr Jackson and the auditor was reasonable in the circumstances.

Consideration

275. The Branch acquired promotional material from Urban Giftware between 10 July 2006 and 30 June 2008.
276. During the financial years ended 30 June 2007 and 30 June 2008 there was a related party relationship between the Branch and Urban Giftware arising from the fact that the proprietor of Urban Giftware, Mr Phillip Grima, was the domestic partner of one of the key management personnel of the Branch, namely Ms Pauline Fegan, the Branch President.
277. All transactions that occurred between Urban Giftware and the Branch between 10 July 2006 and 30 June 2008 were related party transactions.
278. Findings regarding disclosure of related party transactions with Urban Giftware in financial reports for years ended 30 June 2007 and 30 June 2008 are included in findings 20 to 22 set out below.
279. This part of my Report considers whether Ms Fegan has breached any of her civil obligations that are set out in subsections 285(1), 286(1) and 287(1) of the RAO Schedule as a result of the related party relationship between the Branch and Urban Giftware:
- a. Section 285(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties with a degree of care and diligence that a reasonable person would exercise occupying the same office and having the same responsibilities.

Allegations against Ms Fegan regarding related party transactions

- i. I must consider whether Ms Fegan has exercised her powers and discharged her duties with a degree of care and diligence that a reasonable person would exercise if that person were Branch President. Relevant considerations are whether prices paid by the Branch for goods purchased from Urban Giftware were inflated, whether alternative quotes were obtained and, all things being equal, goods were purchased from the cheaper supplier and whether the relationship between Mr Grima and Ms Fegan was known to other members of the Branch Committee of Management.
 - ii. In my view, there is no or insufficient information to establish a contravention of section 285 by Ms Fegan. Information gathered by FWA has not established that Ms Fegan operated the Urban Giftware business, that she ordered goods from that business or that she set prices for those goods. Information has been given that alternative quotes for the supply of goods were obtained. Ms Wills has stated that her understanding was that goods were supplied by Urban Giftware from China if they were cheaper but otherwise they were obtained from a different supplier. There is insufficient information supporting the allegation that prices charged by Urban Giftware were in excess of trade value. Payment by the Branch for goods supplied by Urban Giftware occurred as part of the normal practice for payment of invoices received by the Branch. All persons who were interviewed agreed that the relationship between Ms Fegan and Mr Grima was widely known and had been known since the time of the first transaction between Urban Giftware and the Branch.
- b. Section 286(1) requires an officer of a branch to exercise his or her powers and discharge his or her duties in good faith in what he or she believes to be the best interests of the organisation and for a proper purpose.
- i. In my view, there is no or insufficient information to establish a contravention of section 286 by Ms Fegan. No information has been provided to FWA that Ms Fegan authorised payment for goods purchased from Urban Giftware in circumstances that were outside the ordinary practice for payment of invoices received by the Branch. Ms Wills has told FWA that payment for goods supplied by Urban Giftware occurred as part of the normal practice for payment of invoices received by the Branch. Further, there is insufficient information supporting the allegation that prices charged by Urban Giftware were in excess of trade value and information has been given to FWA that alternative quotes were obtained from other suppliers.
- c. Section 287 states that an officer of a branch must not improperly use his or her position to gain an advantage for himself or herself or to cause detriment to the organisation or to another person.
- i. In my view, there is no or insufficient information to establish a contravention of section 287 by Ms Fegan. There is insufficient information that prices charged by Urban Giftware were in excess of trade value and information has been given that alternative quotes

were obtained from other suppliers. Further, evidence has been given by Ms Wills and Mr Hudson that orders for promotional materials from Urban Giftware were placed by the media unit. FWA has not seen any evidence that Ms Fegan took steps herself to procure goods from Urban Giftware. I find that the evidence before FWA does not support the allegation that Ms Fegan used her position to gain what she believed would be an advantage for her husband, as proprietor of Urban Giftware, or to cause detriment to the Branch.

ALLEGATION OF TRANSFER OF MONEY BY MR HUDSON FROM A 'SOCIAL CLUB ACCOUNT' INTO HIS PERSONAL BANK ACCOUNT

280. On 26 July 2009 an article entitled 'Union nude photo row' appeared in the Sunday Herald Sun newspaper. The article stated that the Sunday Herald Sun had seen credit union statements which show that on 18 December 2008 \$54,000 was transferred from 'a re-election fund controlled by HSU No.1 Branch staff into Mr Hudson's personal account'. The article quoted Ms Fegan as stating that 'It's outrageous that he moved the funds into his personal account' and Mr Hudson as stating that 'he transferred the money into his account to stop Ms Fegan's accessing it. "The money was only in my account for a few days before I moved it into the HSU Social Club account."' Mr Hudson is said to have shown the Sunday Herald Sun statements revealing \$54,000 was deposited into the HSU Social Club on 29 December 2008.

281. The following information was provided to FWA in interviews with the persons specified:

- a. Ms Fegan stated that there has always been an account known as the 'returnees fund' into which employees of the Branch can voluntarily pay money. The fund is held with SGE Credit Union and employees can advise Ms Wills that they wish to contribute a sum from each pay into the fund. The signatories to the Returnees Fund are Ms Fegan and Mr Hudson. Earlier in 2009 Ms Wills told Ms Fegan that some employees had stopped paying into the Returnees Fund and were now paying into the HSU Social Club.
- b. Upon enquiry, Ms Fegan was advised by SGE in mid-2009 that \$54,000 had been transferred from the Returnees Fund into an account held in the name of Mr Hudson and his wife, despite the fact that there was a 'ceiling' of \$2,000 above which transfers cannot be made without the consent of both Ms Fegan and Mr Hudson (as signatories). Ms Fegan stated that Mr Hudson 'didn't have authority from me or a number of other people to take it out'.
- c. Ms Fegan understands that the signatories to the HSU Social Club account are Mr Jackson and Mr Hudson;
- d. Mr Hudson stated in interview that the Returnees Fund is not a union account. Mr Hudson and Ms Fegan are signatories. The fund was set up probably decades ago and is a political fund that can be used for elections, campaigns and other purposes. It is a voluntary scheme whereby most Branch employees contribute to the fund. Mr Hudson stated that 'Primarily,

Allegation of transfer of money by Mr Hudson from a 'social club account' into his personal bank account

look, it's a political fund and it's always been a view if the branch came under attack from an outside group it would help with an election, usual processes. I assume most unions would have a fund of that sort. It's your own money out of your own wages.'

- e. Mr Hudson stated that '[W]ith the behaviour that was going on just before Christmas the money that was being spent on lawyers, probably about 17 members of staff came to me and said they want their contributions out.' Mr Hudson went on to say that 'they didn't want Fegan to get her hands on that money, that it was theirs, not hers'. According to Mr Hudson, one signatory could withdraw funds and there was no 'ceiling' for withdrawals. Mr Hudson took out \$54,000 'based on what I believed the contributions of those staff had been'. He probably left about \$21,000 in the Fund 'that I believed Fegan and her small band of supporters had put into it'.
- f. When asked about whether the 17 staff gave him authorisation to withdraw the \$54,000 from the Returnees Fund, Mr Hudson stated that 'We were in a big enough mire as it was because of Fegan and her legal bills. The staff made it clear to me get that money out, they do not want her taking that money because they all believed that she would use it for her own purposes'. Mr Hudson stated that he told them at the time that he had to move it into his personal account because it was 'right on Christmas' and they needed to formalise a properly constituted social club. The money only stayed in his personal account 'for a couple of days and then it was moved when we opened the HSU social club account and it was put into there.' The Social Club account was opened 'roughly just after Christmas' but, even though they call themselves the 'HSU Social Club', the account does not contain any union funds. 'It has nothing to do with the union that account and it comes out of staff's wages. It's our own account'. The signatories to the account are Mr Hudson and Mr Jackson;
- g. Mr Jackson stated in interview that the Returnees Fund goes back to the 1980s. Staff paid into the fund on a purely voluntary basis and money was used at their discretion as determined by meetings of contributors. Ms Wills transferred money from contributors' pays each pay day. Mr Jackson fully supports Mr Hudson in withdrawing the money from the fund as the vast majority of employees who contributed to the fund said that they did not want to be paying into a fund that was controlled by Ms Fegan. There are no union or Branch funds in the Returnees Fund account;
- h. Ms Wills stated that the Returnees Fund is not a union account. Since union money cannot be used for election purposes, the Returnees Fund is an account into which people pay voluntarily by having money deducted from their salary for election purposes. Both Ms Fegan and Mr Hudson were signatories to the Fund. Ms Wills understands that two people were required to sign regarding transactions concerning the Fund. Money from the Fund had not been used for a number of years since the last election. In about March 2009 Mr Hudson told Ms Wills that a new Social Club Account had been set up with Bendigo Bank and that contributors would be contacting her

Lodgement of financial reports

to let her know the amounts they wished to contribute to that account. Ms Wills considered it probably accurate that about five or six people continued to contribute to the Returnees Fund and about 17 started contributing to the new Social Club Account.

282. All of the people interviewed by FWA agreed that the Returnees Fund does not contain any funds of the HSU or of the Branch. As a result, I have no power under the Act to make findings regarding the transfer of money out of the Returnees Fund by Mr Hudson on 18 December 2009.

LODGEMENT OF FINANCIAL REPORTS

Regulatory Framework

283. Subsection 266(1) of the RAO Schedule requires a reporting unit to cause 'the full report' to be presented to a general meeting of members of the reporting unit within the period of six months starting at the end of the financial year. Subsection (1) is a civil penalty provision. In circumstances that are specified in subsection (3), a reporting unit can present the full report to a meeting of the committee of management of the reporting unit instead of to a general meeting of members.

284. The 'full report' must also be provided to members of the reporting unit free of charge. The combined effect of subsections 265(1) and (5) of the RAO Schedule (both of which are civil penalty provisions) is to require that the full report be provided to members either:

- a. where it is presented to a meeting of the committee of management – within five months of the end of the financial year; or
- b. where a general meeting of members is held to consider the report within six months of the end of the financial year – no fewer than 21 days before the date of that meeting of members.

285. When read together, subsections 265(1)(a) and 253(2) of the RAO Schedule and paragraph 25 of the Reporting Guidelines provide that the 'full report' shall consist of:

- a. 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
- b. a copy of the GPFR to which the report relates. The GPFR shall consist of:
 - i. financial statements containing:
 1. a profit and loss statement, or other operating statement;
 2. a balance sheet;
 3. a statement of cash flows;
 4. any other statements required by the Australian Accounting Standards; and
 - ii. notes to the financial statements containing:
 1. notes required by the Australian Accounting Standards; and

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2. information required by the reporting guidelines; and
 - iii. a Committee of Management Statement and any other reports or statements required by the reporting guidelines; and
 - c. a copy of the operating report to which the report relates.
286. When an auditor audits a GPFR under section 257, one of the documents that must make up that GPFR is the committee of management statement that has been prepared in accordance with the requirements of paragraphs 24 to 26 of the Reporting Guidelines. In particular, the committee of management statement must be made in accordance with a resolution that has been passed by the committee of management and must specify the date of that resolution.
287. The full report, together with a certificate in accordance with paragraph (c) of section 268 of the RAO Schedule, must then be lodged with AIR within 14 days of the meeting to which the full report was presented (see section 268). Section 268 is a civil penalty provision.
288. Rule 36(f) of the HSU Rules provides that 'the financial year of the Union and the Branches shall end on the 30th June in each year'. As a result, in the absence of the granting of an application for an extension of time by a Registrar, the RAO Schedule requires the Branch to meet the following requirements each year:
- a. a full report must be provided free of charge to members either:
 - i. where it is being presented to a meeting of the Branch's Committee of Management - by no later than 30 November immediately following the end of the financial year; or
 - ii. where it is being presented to a general meeting of the members of the Branch - by no later than 21 days before the date of that meeting. Since that meeting must be held by 31 December immediately following the end of the financial year, the full report must be provided to members by no later than 10 December immediately following the end of the financial year;
 - b. a full report must be presented to either a meeting of the Branch's Committee of Management or to a general meeting of members by no later than 31 December immediately following the end of the financial year;
 - c. a full report, together with a certificate under paragraph (c) of section 268, must be lodged with the AIR within 14 days of the meeting at which the full report was presented.
289. While it is therefore possible to lodge financial documents with AIR at an earlier date depending upon when the full report was provided to members and presented to a meeting, the effect of sections 266 and 268 of the RAO Schedule is to require lodgement of financial documents by the Branch no later than 14 January immediately following the end of the financial year.
290. It is important to understand that the legislative scheme set out in the RAO Schedule requires documents to be presented to two separate meetings before being lodged with AIR:

Lodgement of financial reports

- a. at the first meeting, the reporting unit's committee of management must pass a resolution as required by the Reporting Guidelines with respect to the committee of management statement (**the first meeting**). Most reporting units also consider their operating report at that same meeting; and
 - b. at the second meeting (which can either be a general meeting of members or, where the rules permit, a meeting of the committee of management), the 'full report' is presented and adopted as required by section 266 of the RAO Schedule (**the second meeting**). As set out above, the 'full report' that is presented to this second meeting must include the auditor's report.
291. The RAO Schedule also allows for preparation and circulation to members of a 'concise report'. A concise report must comply with the requirements of subsection 265(3) of the RAO Schedule and regulation 161 of the RAO Regulations and must be audited by the auditor (in addition to audit of the full report). 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. If it was provided to members, a copy of the concise report must be lodged with the AIR under section 268 of the RAO Schedule.

Financial Report for year ended 30 June 2008

292. Financial documents for the year ended 30 June 2008 were required to be lodged with AIR no later than 14 January 2009. With the exception of the certificate required by paragraph (c) of section 268 of the RAO Schedule, financial documents for the year ended 30 June 2008 were lodged by the Court appointed administrator, Mr John Vines, on 15 October 2009. The certificate under section 268 of the RAO Schedule was lodged by Mr Vines on the following day, namely 16 October 2009. As a result, the financial documents for the year ended 30 June 2008 were lodged with the AIR some nine months late.
293. Having been advised by FWA that the documents had been lodged without the certificate required by paragraph (c) of section 268, Mr Vines advised FWA by letter dated 16 October 2009 as follows:
- (i) the auditor's report and audited financial statements have been presented to a meeting of the Branch Committee of Management held on 10 December 2008, at which the following resolution was adopted
"THAT THE GENERAL PURPOSE FINANCIAL REPORTS FOR FINANCIAL YEAR 2007/2008 BE ADOPTED."
 - (ii) to the best of my knowledge the audited financial statements and auditor's report has not as yet been provided to members.

I propose to advise members in the next issue of the branch's magazine, Pinpoint, of the availability of the full report on the branch's website. The next issue of Pinpoint will be mailed to members in the 3rd week of December 2009. I understand that this will meet the requirements of providing the report to members.
294. Mr Vines has stated that the auditor's report and audited financial statements were presented to a meeting of the Branch Committee on 10 December 2008. The

Lodgement of financial reports

sequence of events surrounding the meeting of the Branch Committee of Management on 10 December 2008 and leading up to the lodgement of financial documents with the AIR on 15 October 2009, however, is unclear. As advised by Mr Vines, minutes of a meeting of the Branch Committee of Management on 10 December 2008 that have been examined by FWA state that the Branch's auditor, Mr Dick, attended that meeting and spoke to the GPFR and that the GPFR for the year ended 30 June 2008 was then adopted at that meeting. Section 260 of the RAO Schedule entitles the auditor to attend, and to be heard at, any part of a meeting of the committee of management at which the GPFR or the auditor's report is to be presented or considered.

295. A Committee of Management Statement that was signed by Mr Jackson on 12 December 2008 states that the Committee passed a resolution as required by the Reporting Guidelines on 10 December 2008. Since one of the documents that must be sighted by an auditor in forming his audit opinion under subsection 257(1) is a signed and dated committee of management statement (which forms part of the GPFR by virtue of subsection 253(2)(c)), any auditor's report that may have been presented to, and adopted by, the meeting on 10 December 2008 cannot have met the requirements of subsection 257(1) as the auditor could not have considered the signed and dated committee of management statement in forming his audit opinion.
296. A letter from Mr Jackson to the Industrial Registrar dated 7 May 2009 states that Mr Jackson brought to the attention of the meeting of the Committee of Management on 10 December 2008 the letter from Mr Dick dated 9 December 2008 regarding transactions between the Branch and Urban Giftware. Mr Jackson then states in his letter that 'The Branch Auditor has informed me that he is not prepared to sign off on the financial documents [for the year ended 30 June 2008] until the question has been resolved. For that reason we have not lodged them'.
297. The financial documents that were lodged with the AIR on 15 October 2009 contained an auditor's report that had been signed by Mr Dick on 9 June 2009, that is, six months after the meeting of 10 December 2008. Mr Dick had lodged a copy of his report (without the accompanying financial documents to which it related) with AIR on 10 June 2009.
298. The Branch Committee of Management meeting of 10 December 2008 could not have considered 'the auditor's report and audited financial statements'. It is likely that the meeting on 10 December 2008 was the 'first meeting' (at which a resolution with respect to the committee of management statement was passed, as required by the Reporting Guidelines). The date of the auditor's report in June 2009 indicates that the meeting on 10 December 2008 could not have been the 'second meeting' at which the full report (including the auditor's report) must be presented.
299. An examination of minutes of Branch Committee of Management meetings from June 2009 onwards shows that the full report for the year ended 30 June 2008 was not presented to any Branch Committee of Management meeting after the date on which the auditor's report was signed. It therefore appears the full report has never been presented to a 'second meeting' as required by section 266 of the RAO Schedule.

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Findings 17 to 19

Findings	
17	By failing to provide, or cause to be provided, to members the full report of the Branch for the year ended 30 June 2008, the Branch has contravened subsection 265(5) of the RAO Schedule.
18	By failing to present, or cause to be presented, the full report of the Branch for the year ended 30 June 2008 to a meeting of either the Branch Committee of Management or a general meeting of members, the Branch has contravened section 266 of the RAO Schedule.
19	By failing to lodge, or cause to be lodged, the full report of the Branch for the year ended 30 June 2008 and certificate under section 268 within the timeframes set out in the legislative scheme, the Branch has contravened section 268 of the RAO Schedule.

Particulars of findings 17 to 19

300. Pursuant to subsection 242(3) of the RAO Schedule, the Branch is a reporting unit for the purposes of Part 3 of Chapter 8 of the RAO Schedule.
301. Rule 36(f) of the HSU Rules provides that 'the financial year of the Union and the Branches shall end on the 30th June in each year'.
302. Financial documents that were lodged with FWA on 15 October 2009 for the financial year ended 30 June 2008 contained an auditor's report dated 9 June 2009.
303. The auditor's report is a constituent part of the 'full report' under paragraph 265(1)(a)(i) of the RAO Schedule.
304. Subsection 265(5) of the RAO Schedule requires that:
 - a. where it is presented to a general meeting of members (which meeting must occur within six months of the end of financial year), the full report must be provided to members of the Branch at least 21 days before the date of that meeting; or
 - b. where it is presented to a Branch Committee of Management meeting, the full report must be provided to members of the Branch in the period of five months starting at the end of the financial year, that is, by 30 November following the end of financial year.
305. As evidenced by the date of the auditor's report, the full report was not provided to members in accordance with the requirements of section 265 of the RAO Schedule.
306. Under section 266 of the RAO Schedule, the full report must be presented to a general meeting of members or to a meeting of the Branch Committee of Management within six months of the end of the financial year.
307. As evidenced by the date of the auditor's report, the full report for the year ended 30 June 2008 was not presented to a meeting of either the Branch Committee of

Disclosures required in financial reports

Management or to a general meeting of members within six months of the end of the financial year (that is, by 31 December 2008).

308. Section 268 of the RAO Schedule requires a reporting unit, within 14 days after the meeting referred to in section 266, to lodge with the AIR a copy of the full report and a certificate in accordance with the requirements of paragraph 268(c).
309. When read together, the legislative scheme that is set out in sections 265 and 266 of the RAO Schedule required the Branch to lodge the full report and certificate under section 268 with the AIR by no later than 14 January immediately following the end of financial year. As a result, those documents for the year ended 30 June 2008 were required to be lodged by no later than 14 January 2009.
310. The full report was lodged with FWA on 15 October 2009. The certificate under section 268 was lodged with FWA on 16 October 2009.

DISCLOSURES REQUIRED IN FINANCIAL REPORTS

Regulatory Framework

311. As set out at paragraph 73 above, subsection 253(1) of the RAO Schedule requires as follows:

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.
312. The Australian Accounting Standards that are most relevant to the financial reports prepared by the Branch for the financial years ended 30 June 2008 and 30 June 2009 are set out immediately below.

Related Party Disclosures

313. As set out at paragraph 244 above, Australian Accounting Standard AASB 124 *Related Party Disclosures* requires a financial entity to disclose transactions and outstanding balances pertaining to related parties of the reporting unit. The objective of AASB 124 is set out in paragraph 1 as follows:
1. The objective of paragraphs 1 to 22 of this Standard is to ensure that an entity's financial report contains the disclosures necessary to draw attention to the possibility that its financial position and profit or loss may have been affected by the existence of related parties and by transactions and outstanding balances with such parties.
314. Paragraph 9 defines 'related party' to include, amongst other things, where:
- (d) the party is a member of the key management personnel of the entity or its parent;
- (e) the party is a close member of the family of an individual referred to in ... (d);

Disclosures required in financial reports

Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.

Close members of the family of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity. They may include:

- (a) the individual's domestic partner ...

315. Paragraph 17 of AASB 124 prescribes the following mandatory requirement:

- 17. If there have been transactions between related parties, an entity shall disclose the nature of the related party relationship as well as information about the transactions and outstanding balances necessary for an understanding of the potential effect of the relationship on the financial statements ... At a minimum, disclosures shall include:
 - (a) the amount of the transactions;
 - (b) the amount of outstanding balances and:
 - (i) their terms and conditions, including whether they were secured, and the nature of the consideration to be provided in settlement; and
 - (ii) details of any guarantees given or received;
 - (c) provisions for doubtful debts related to the amount of outstanding balances; and
 - (d) the expense recognised during the period in respect of bad or doubtful debts due from related parties.

Presentation of Financial Statements

316. The objective of Australian Accounting Standard AASB 101 *Presentation of Financial Statements* is to prescribe the basis for presentation of GPFRs and to ensure comparability both with the reporting unit's financial reports of previous periods and with the financial reports of other entities. The Standard sets out overall requirements for the presentation of financial reports, guidelines for their structure and minimum requirements for their content.

317. Paragraph 8 of AASB 101 (as reissued on 4 October 2006 and which applies to annual reporting periods beginning on or after 1 January 2007) imposes the mandatory requirement that a financial report comprise:

- (a) a balance sheet;
- (b) an income statement;
- (c) a statement of changes in equity showing either:
 - (i) all changes in equity; or
 - (ii) changes in equity other than those arising from transactions with equity holders acting in their capacity as equity holders;

Disclosures required in financial reports

- (d) a cash flow statement; and
- (e) notes, comprising a summary of significant accounting policies and other explanatory notes.

318. Paragraph 15 provides the following explanatory guidance:

- 15. A fair presentation requires an entity:
 - (a) to select and apply accounting policies in accordance with AASB 108 *Accounting Policies, Changes in Accounting Estimates and Errors*. AASB 108 sets out a hierarchy of authoritative guidance that management considers in the absence of an Australian Accounting Standard that specifically applies to an item;
 - (b) to present information, including accounting policies, in a manner that provides relevant, reliable, comparable and understandable information; and
 - (c) to provide additional disclosures when compliance with the specific requirements in Australian Accounting Standards is insufficient to enable users to understand the impact of particular transactions, other events and conditions on the entity's financial position and financial performance.

319. Paragraph 23 (which is mandatory) and paragraph 24 (which provides explanatory guidance) state as follows:

Going Concern

- 23. When preparing financial reports, management shall make an assessment of an entity's ability to continue as a going concern. Financial reports shall be prepared on a going concern basis unless management either intends to liquidate the entity or to cease trading, or has no realistic alternative but to do so. When management is aware, in making its assessment, of material uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern, those uncertainties shall be disclosed. When the financial report is not prepared on a going concern basis, that fact shall be disclosed, together with the basis on which the financial report is prepared and the reason why the entity is not regarded as a going concern.
- 24. In assessing whether the going concern assumption is appropriate, management takes into account all available information about the future, which is at least, but is not limited to, twelve months from the reporting date. The degree of consideration depends on the facts in each case. When an entity has a history of profitable operations and ready access to financial resources, a conclusion that the going concern basis of accounting is appropriate may be reached without detailed analysis. In other cases, management may need to consider a wide range of factors relating to current and expected profitability, debt repayment schedules and potential sources of replacement financing before it can satisfy itself that the going concern basis is appropriate.

Disclosures required in financial reports

320. Mandatory requirements regarding disclosure of significant accounting policies are set out in paragraphs 108 and 113:

108. An entity shall disclose in the summary of significant accounting policies:

- (a) the measurement basis (or bases) used in preparing the financial report; and
- (b) the other accounting policies used that are relevant to an understanding of the financial report.

113. An entity shall disclose, in the summary of significant accounting policies or other notes, the judgements, apart from those involving estimations (see paragraph 116), that management has made in the process of applying the entity's accounting policies and that have the most significant effect on the amounts recognised in the financial report.

Events after the Balance Sheet Date

321. Australian Accounting Standard AASB 110 *Events after the Balance Sheet Date* prescribes when an entity should adjust its financial statement for events after the reporting date. It also prescribes disclosures that an entity should give about the date when the financial report was authorised for issue and disclosures that are required regarding events after the reporting date.

322. Paragraph 3 provides the following definition:

Events after the reporting date are those events, favourable and unfavourable, that occur between the reporting date and the date when the financial report is authorised for issue. Two types of events can be identified:

- (a) those that provide evidence of conditions that existed at the reporting date (*adjusting events after the reporting date*); and
- (b) those that are indicative of conditions that arose after the reporting date (*non-adjusting events after the reporting date*).

323. Paragraph 8 (which is mandatory) and paragraph 9 (which provides explanatory guidance) state as follows:

Adjusting Events after the Reporting Date

8. An entity shall adjust the amounts recognised in its financial statements to reflect *adjusting events after the reporting date*.

9. The following are examples of adjusting events after the reporting date that require an entity to adjust the amounts recognised in its financial statements, or to recognise items that were not previously recognised:

- (a) the settlement after the reporting date of a court case that confirms that the entity had a present obligation at the reporting date. The entity adjusts any previously recognised provision related to this court case in accordance with AASB 137 *Provisions, Contingent Liabilities and Contingent Assets* or recognises a new provision. The entity does not merely disclose a contingent liability because the settlement provide additional evidence that would be considered in accordance with paragraph 16 of AASB 137;

Disclosures required in financial reports

Revenue

324. The objective of Australian Accounting Standard AASB 118 *Revenue* is to prescribe the accounting treatment of revenue arising from certain types of transactions and events. The primary issue in accounting for revenue is determining when to recognise revenue. Revenue is recognised when it is probable that future economic benefits will flow to the entity and these benefits can be measured reliably. AASB 118 identifies the circumstances in which these criteria will be met and, therefore, revenue will be recognised.

325. Paragraph 35 of AASB 118 prescribes the following mandatory requirement:

Disclosure

35. An entity shall disclose:

- (a) the accounting policies adopted for the recognition of revenue including the methods adopted to determine the stage of completion of transactions involving the rendering of services;

Contingent Liabilities and Contingent Assets

326. The objective of Australian Accounting Standard AASB 137 *Contingent Liabilities and Contingent Assets* is to ensure that appropriate recognition criteria and measurement bases are applied to provisions, contingent liabilities and contingent assets and that sufficient information is disclosed in the notes to financial statements to enable users to understand their nature, timing and amount.

327. The following definition is provided in paragraph 10:

A contingent liability is:

- (a) a possible obligation that arises from past events or whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity; or
- (b) a present obligation that arises from past events but that is not recognised because:
 - (i) it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation; or
 - (ii) the amount of the obligation cannot be measured with sufficient reliability.

328. Paragraph 86 prescribes the following mandatory requirement:

86. Unless the possibility of any outflow in settlement is remote, an entity shall disclose for each class of contingent liability at the reporting date a brief description of the nature of the contingent liability and, where practicable:

- (a) an estimate of its financial effect, measured under paragraphs 36-52;
- (b) an indication of the uncertainties relating to the amount or timing of any outflow; and
- (c) the possibility of any reimbursement.

Cash Flow Statements

329. The objective of AASB 107 *Cash Flow Statements* is to require the provision of information about the historical changes in cash and cash equivalents in an entity by means of a cash flow statement which classifies cash flows during the period from operating, investing and financing activities. Information about the cash flows of an entity is useful in providing users of financial reports with a basis to assess the ability of the entity to generate cash and cash equivalents and the needs of the entity to utilise those cash flows. The economic decisions that are taken by users require an evaluation of the ability of an entity to generate cash and cash equivalents and the timing and certainty of their generation.

330. Paragraph Aus20.1 prescribes the following mandatory requirement:

Aus20.1 A reconciliation of cash flows arising from operating activities to profit or loss shall be disclosed in the financial report.

Property, Plant and Equipment

331. The objective of AASB 116 *Property, Plant and Equipment* is to prescribe the accounting treatment for property, plant and equipment so that users of the financial report can discern information about an entity's investment in its property, plant and equipment and the changes in such investment.

332. Definitions that are included in paragraph 6 include:

Carrying amount is the amount at which an asset is recognised after deducting any accumulated depreciation and accumulated impairment losses.

Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life.

An impairment loss is the amount by which the carrying amount of an asset exceeds its recoverable amount.

Property, plant and equipment are tangible items that:

- (a) are held for use in the production or supply of goods or services, for rental to others, or for administrative purposes; and
- (b) are expected to be used during more than one period.

Recoverable amount is the higher of an asset's net selling price and its value in use.

Useful life is:

- (a) the period over which an asset is expected to be available for use by an entity; or
- (b) the number of production or similar units expected to be obtained from an asset by an entity.

Disclosures required in financial reports

333. Paragraph 73 imposes the following mandatory requirement:

73. The financial report shall disclose, for each class of property, plant and equipment:
- (a) the measurement bases used for determining the gross carrying amount;
 - (b) the depreciation methods used;
 - (c) the useful lives or the depreciation rates used;
 - (d) the gross carrying amount and the accumulated depreciation (aggregated with accumulated impairment losses) at the beginning and end of the period; and
 - (e) a reconciliation of the carrying amount at the beginning and end of the period showing:
 - (i) additions;
 - (ii) assets classified as held for sale or included in a disposal group classified as held for sale in accordance with AASB 5 and other disposals;
 - (iii) acquisitions through business combinations;
 - (iv) increases or decreases resulting from revaluations under paragraphs 31, 39 and Aus39.1, 40, Aus40.1 and Aus40.2 and from impairment losses recognised or reversed directly in equity in accordance with AASB 136;
 - (v) impairment losses recognised in profit or loss in accordance with AASB 136;
 - (vi) impairment losses reversed in profit or loss in accordance with AASB 136;
 - (vii) depreciation;
 - (viii) the net exchange differences arising on the translation of the financial statements from the functional currency into a different presentation currency, including the translation of a foreign operation into the presentation currency of the reporting entity; and
 - (ix) other changes.

Leases

334. The objective of AASB 117 *Leases* is to prescribe for lessors and lessees the appropriate accounting policies and disclosure to apply in relation to leases.

335. The following mandatory requirements are imposed by paragraphs 31 and 35:

31. Lessees shall, in addition to meeting the requirements of AASB 7 *Financial Instruments: Disclosures*, make the following disclosures for finance leases:

- (a) for each class of asset, the net carrying amount at the end of the reporting period;

Disclosures required in financial reports

- (b) a reconciliation between the total of future minimum lease payments at the end of the reporting period, and their present value. In addition, an entity shall disclose the total of future minimum lease payments at the end of the reporting period, and their present value, for each of the following periods:
 - (i) not later than one year;
 - (ii) later than one year and not later than five years; and
 - (iii) later than five years;
 - (c) contingent rents recognised as an expense in the period;
 - (d) the total of future minimum sublease payments expected to be received under non-cancellable subleases at the end of the reporting period; and
 - (e) a general description of the lessee's material leasing arrangements including, but not limited to, the following:
 - (i) the basis on which contingent rent payable is determined;
 - (ii) the existence and terms of renewal or purchase options and escalation clauses; and
 - (iii) restrictions imposed by lease arrangements, such as those concerning dividends, additional debt, and further leasing.
35. Lessees shall, in addition to meeting the requirements of AASB 7, make the following disclosure for operating leases:
- (a) the total of future minimum lease payments under non-cancellable leases for each of the following periods:
 - (i) not later than one year;
 - (ii) later than one year and not later than five years; and
 - (iii) later than five years;
 - (b) the total of future minimum sublease payments expected to be received under non-cancellable subleases at the end of the reporting period;
 - (c) lease and sublease payments recognised as an expense in the period, with separate amounts for minimum lease payments, contingent rents, and sublease payments;
 - (d) a general description of the lessee's significant leasing arrangements including, but not limited to, the following:
 - (i) the basis on which contingent rent payable is determined;
 - (ii) the existence and terms of renewal or purchase options and escalation clauses; and
 - (iii) restrictions imposed by lease arrangements, such as those concerning dividends, additional debt, and further leasing.

DEFICIENCIES IN FINANCIAL REPORT FOR YEAR ENDED 30 JUNE 2007

Finding 20

	Finding
20	By lodging with the AIR a financial report for the year ended 30 June 2007 that did not contain related party disclosures regarding transactions between the Branch and Urban Giftware in accordance with AASB 124, the Branch has contravened subsection 253(1) of the RAO Schedule, which requires the Branch to cause a general purpose financial report to be prepared in accordance with Australian Accounting Standards.

Particulars of Finding 20

336. Detailed information regarding transactions between the Branch and Urban Giftware are set out at paragraphs 248 to 274 above.

337. In summary:

- a. The Branch acquired promotional material from Urban Giftware between 10 July 2006 and 30 June 2008.
- b. During the financial year ended 30 June 2007 there was a related party relationship between the Branch and Urban Giftware arising from the fact that the proprietor of Urban Giftware, Mr Phillip Grima, was the domestic partner of one of the key management personnel of the Branch, namely Ms Pauline Fegan, the Branch President.
- c. All transactions that occurred between Urban Giftware and the Branch between 10 July 2006 and 30 June 2007 were related party transactions.
- d. Under subsection 253(1) of the Act, related party transactions between the Branch and Urban Giftware were required to be disclosed in the financial report of the Branch for the year ended 30 June 2007, in accordance with paragraph 17 of Australian Accounting Standard AASB 124 *Related Party Disclosures*.
- e. The financial report for the financial years ended 30 June 2007 that was lodged with the AIR on 4 January 2008 did not disclose related party transactions between the Branch and Urban Giftware in accordance with paragraph 17 of AASB 124 *Related Party Disclosures*.

DEFICIENCIES IN FINANCIAL REPORT FOR YEAR ENDED 30 JUNE 2008

338. The financial report for the year ended 30 June 2008 was lodged with FWA by the court appointed Administrator, Mr Vines, on 15 October 2009. While the documents were lodged by Mr Vines, the Committee of Management Statement, the Operating Report and the designated officer's certificate prepared under section 268 of the RAO

Deficiencies in financial report for year ended 30 June 2008

Schedule were all dated 12 December 2008 and had all been signed by Mr Jackson as the then Branch Secretary.

339. The financial report contained an Audit Report that was signed by Mr Ian Dick of Dick & Smith (Elsternwick) Pty Ltd on 9 June 2009 (that is, six months after the date on which the Committee of Management Statement was signed). The audit opinion stated as follows:

In our opinion,

- (i) there were kept by the Branch, in respect of the year, satisfactory accounting records detailing the source and nature of income of the Branch (including income from members) and the nature and purpose of the expenditure except for

Qualifications

- (a) Subsequent to the preparation of the financial reports, an Expert Report commissioned by the Branch concluded that related party transactions occurred and were not disclosed in the reports. These transactions were quantified by the Expert Report as \$108,936.
 - (b) Subsequent to the preparation of the financial reports, an Expert Report commissioned by the Branch concluded that there was no documentation substantiating some expenditure. As the Export (sic) Report does not isolate the amount for the period for the year we are unable to quantify this expenditure.
- (ii) the attached financial report, prepared in accordance with applicable Accounting Standards and other mandatory professional reporting requirements and in accordance with Section 253 of the RAO Schedule, are properly drawn up so as to give a true and fair view of:
 - (a) the financial affairs of the Branch as at June 30, 2008; and
 - (b) the income and expenditure, results and cash flows of the Branch for the year then ended,apart from our qualifications detailed in (1)(a) and (b) above
 - (iii) all information and explanations required for the purpose of the audit under Section 276(2), were provided by the officers or employees of the Branch.

340. On 24 December 2009 I wrote to the Branch Secretary, Mr Bolano, seeking his comments or explanation regarding various matters relating to the financial report for the year ended 30 June 2008. A response was sought from Mr Bolano regarding the following:

- A. The financial report made no disclosures regarding related parties as required by Australian Accounting Standard AASB 124 *Related Party Disclosures*. For example, the Statement of Financial Performance discloses expenditure on legal fees of \$33,652 during the financial year yet there were no disclosures of related party transactions that relate to legal fees incurred by members of the Branch Committee of Management, despite the fact that Note 12 Contingent Liability states that the Branch has indemnified its officers for such legal fees. There were also no disclosures of

Deficiencies in financial report for year ended 30 June 2008

related party transactions that may have occurred with respect to the former President, Ms Fegan, regarding the purchase of merchandise from Urban Giftware.

- B. The Branch has recently been involved in extensive legal proceedings. Note 12 to the accounts stated that the Branch had a contingent liability with respect to legal proceedings but no further details were provided regarding the number (or type) of proceedings or any estimates of the possible financial effect of such proceedings. The Branch was therefore requested to explain its compliance with Australian Accounting Standard AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*;
 - C. The Branch was requested to explain its compliance with Australian Accounting Standard AASB 110 *Events after the Balance Sheet Date*, which requires disclosure of (and accounting for) events that occur between the end of the financial year and the date of the Committee of Management resolution concerning the financial report (which occurred on 12 December 2008);
 - D. The financial report did not contain a Statement of Changes in Equity, as required by paragraph 8(c) of Australian Accounting Standard AASB 101 *Presentation of Financial Statements*;
 - E. The financial report did not disclose the policies adopted for recognition of income as required by paragraph 35(a) of Australian Accounting Standard AASB 118 *Revenue*;
 - F. When staff of FWA accessed the Branch's website on 22 December 2009 in order to view the full report – as advised by Mr Vines in his letter of 16 October 2009 – they were only able to view a concise financial report. The Branch was requested to explain its compliance with sections 265(2) and 268(b) given that the committee of management resolution that was passed on 10 December 2008 did not resolve to provide a concise report to members and a concise report has not been lodged with FWA, as would be required by section 268(b); and
 - G. In light of the qualification contained in paragraph (b) of the audit report, what action (if any) has been taken, or will be taken, by the Branch to ensure that the monies of the Branch have been, are, and will be, expended in accordance with the Act and the Rules of the HSU.
341. A letter in response dated 12 February 2010 was received from the Branch Secretary, Mr Bolano. That letter stated that:

- A. Mr Dick had no knowledge of legal fees incurred by the Branch on behalf of officers of the Committee of Management at the time of signing the audit report. In November 2008 Mr Dick told Mr Jackson that he was "out of the information loop". Note 12 to the accounts referred to legal proceedings of a general nature to do with the normal conduct of the Branch's business. In reference to the related party transactions with Urban Giftware, Mr Dick considered his reference in the audit report to the expert's report covered the requirements of AASB 124.
- B. The Branch has been involved in extensive legal proceedings. Mr Dick was unaware of the Branch's liability for any legal proceedings instituted by members of the Committee of Management. Mr Jackson was party to the proceedings. Mr Bolano cannot ascertain if the liability was quantifiable at the time of presentation of the financial statements. Liability of the Branch for much of the legal proceedings arises

Deficiencies in financial report for year ended 30 June 2008

- from a Deed entered into on 30 June 2009 and the amount of that liability is under challenge.
- C. A statement of changes in equity was not specifically included in the financial statements provided by the auditor. The changes are represented solely by the operating surplus for the year. Mr Dick has advised the Branch that he was of the opinion that AASB 101 was only compulsory for financial statements with a reporting period after 1 January 2009.
 - D. It was acknowledged that failure to disclose policies for recognition of revenue was an omission in the reporting requirements. Mr Dick has advised the Branch that he was of the opinion that the Statement of Cash Flows and Statement of Financial Performance illustrated the recognition of revenue policy. This was an historical approach adopted in prior years.
 - E. The concise report was posted on the website on the instructions of the Administrator. The Branch has now posted the full financial report on the website.
 - F. Mr Bolano has actioned new procedures to ensure full compliance regarding authorisation and substantiation of expenditure. Further, the Branch has commissioned a full review of the Branch's internal controls and procedures and the review will document the Branch's procedures. Full compliance will be ensured.

342. No response was provided regarding events after the balance sheet date.

Findings 21 and 22

Findings	
21	<p>The Branch has contravened subsection 253(1) of the RAO Schedule, which requires the Branch to cause a general purpose financial report to be prepared in accordance with Australian Accounting Standards, by lodging with the AIR a financial report for the year ended 30 June 2008 that:</p> <ul style="list-style-type: none"> 21.1 did not contain related party disclosures in accordance with AASB 124 regarding transactions with Urban Giftware; 21.2 did not contain related party disclosures in accordance with AASB 124 regarding indemnification of legal fees as set out in Note 12; 21.3 did not make disclosures regarding contingent liabilities in accordance with AASB 137; 21.4 did not make disclosures regarding accounting policies in accordance with the requirements of paragraph 35(a) of AASB 118 and paragraphs 108 and 113 of AASB 101; and 21.5 did not contain a Statement of Changes in Equity in accordance with the requirements of paragraph 8(c) of AASB 101.

Deficiencies in financial report for year ended 30 June 2008

Findings	
22	<p>Mr Jackson, as Branch Secretary, has contravened Rule 56(l) of the HSU Rules by failing to prepare, or cause to be prepared, a general purpose financial report for the year ended 30 June 2008 in accordance with the requirements of subsection 253(1) of the RAO Schedule and Australian Accounting Standards in that the GPFR did not:</p> <p>22.1 disclose related party transactions between the Branch and Urban Giftware in accordance with AASB 124;</p> <p>22.2 disclose related party transactions in accordance with AASB 124 regarding indemnification of legal fees as set out in Note 12;</p> <p>22.3 disclose contingent liabilities in accordance with AASB 137;</p> <p>22.4 disclose accounting policies in accordance with the requirements of paragraph 35(a) of AASB 118 and paragraphs 108 and 113 of AASB 101; and</p> <p>22.5 contain a Statement of Changes in Equity in accordance with the requirements of paragraph 8(c) of AASB 101.</p>

Particulars of findings 21 and 22

343. Pursuant to subsection 242(3) of the RAO Schedule, the Branch is a reporting unit for the purposes of Part 3 of Chapter 8 of the RAO Schedule.
344. Rule 56 of the HSU Rules provides in paragraph (c) that the Branch Secretary shall have charge of the financial books and statements of his/her Branch. Rule 56(l) further provides that the Branch Secretary shall prepare returns required by the *Industrial Relations Act 1988*².
345. Mr Jackson held the office of Branch Secretary until 17 August 2009, being the date upon which Mr Vines was appointed Administrator.
346. The Branch's financial report for the year ended 30 June 2008 that was lodged by the Administrator with FWA on 15 October 2009 contained a Committee of Management Statement, an Operating Report and a designated officer's certificate all of which were signed by Mr Jackson and dated 12 December 2008.
347. Subsection 253(1) of the RAO Schedule requires a reporting unit, as soon as practicable after the end of each financial year, to cause a general purpose financial report to be prepared in accordance with Australian Accounting Standards from the financial records that are kept under subsection 252(1) of the RAO Schedule in relation to the financial year.

²I take the requirement in Rule 56(l) to mean that the Branch Secretary is required to prepare returns as required by corresponding provisions of the *Industrial Relations Act 1988* as re-enacted in the WR Act and RAO Schedule.

Deficiencies in financial report for year ended 30 June 2008

Related Party Transactions - Urban Giftware

348. Detailed information regarding transactions between the Branch and Urban Giftware are set out at paragraphs 248 to 274 above.
349. In summary:
- a. The Branch acquired promotional material from Urban Giftware between 10 July 2006 and 30 June 2008.
 - b. During the financial year ended 30 June 2008 there was a related party relationship between the Branch and Urban Giftware arising from the fact that the proprietor of Urban Giftware, Mr Phillip Grima, was the domestic partner of one of the key management personnel of the Branch, namely Ms Pauline Fegan, the Branch President.
 - c. All transactions that occurred between Urban Giftware and the Branch in the financial year ended 30 June 2008 were related party transactions.
 - d. Under subsection 253(1) of the Act, related party transactions between the Branch and Urban Giftware were required to be disclosed in the financial report of the Branch for the year ended 30 June 2008, in accordance with paragraph 17 of Australian Accounting Standard AASB 124 *Related Party Disclosures*.
 - e. The financial report for the financial years ended 30 June 2008 that was lodged with the AIR on 15 October 2009 did not disclose related party transactions between the Branch and Urban Giftware in accordance with paragraph 17 of AASB 124 *Related Party Disclosures*.

Related Party Transactions - Legal Fees

350. The Statement of Financial Performance discloses expenditure by the Branch on legal fees of \$33,652 for the year ended 30 June 2008.
351. Included in the notes to the report was the following:

Note 12: CONTINGENT LIABILITY

Legal proceedings have been instituted for and against the Branch and its representatives in respect to various matters. The Branch has agreed to indemnify its representatives and members against any liability arising from these actions, Should the decision in these actions be awarded against the Branch by any Court, damages and costs as determined by the Court would have to be paid by the Branch.

352. During the financial year ended 30 June 2008 there was a related party relationship between the Branch and those members of the Branch Committee of Management, being key management personnel of the Branch, whose legal fees were indemnified by the Branch.
353. All transactions that occurred during the financial year ended 30 June 2008 that were incurred as a result of the indemnification that is identified in Note 12 were related party transactions which were required to be disclosed in the financial reports of the Branch, in accordance with Australian Accounting Standard AASB 124 *Related Party Disclosures*

Deficiencies in financial report for year ended 30 June 2008

354. The financial report did not contain any disclosure of related party transactions of any kind, including related party transactions with respect to payment by the Branch of legal fees incurred by Branch officers and members as set out in Note 12.

Contingent Liabilities

355. Note 12 to the financial report for the year ended 30 June 2008 sets out a contingent liability of the Branch for legal fees incurred by members and officers of the Branch.
356. Paragraph 86 of Australian Accounting Standard AASB 137 *Contingent Liabilities and Contingent Assets* requires the Branch to disclose in its financial report for each class of contingent liability an estimate of the financial effect of the contingent liability, an indication of uncertainties relating to the amount or timing of the liability and information regarding the possibility of any reimbursement.
357. Disclosures that are required by paragraph 86 of AASB 137 were not made by the Branch in its financial report for the year ended 30 June 2008.

Disclosure of Accounting Policies

358. Paragraph 35(a) of Australian Accounting Standard AASB 118 *Revenue* requires an entity to disclose the accounting policies adopted for the recognition of revenue, including the methods adopted to determine the stage of completion of transactions involving the rendering of services. Further, paragraph 108 of Australian Accounting Standard AASB 101 *Presentation of Financial Statements* requires disclosure by the Branch in the summary of significant accounting policies of the accounting policies that were used and that are relevant to an understanding of the financial report.
359. Paragraph 113 of AASB 101 requires the Branch to disclose, in the summary of significant accounting policies or other notes, the judgements, apart from those involving estimations, that management has made in the process of applying the entity's accounting policies and that have the most significant effect on the amounts recognised in the financial report.
360. The financial report that was prepared by the Branch for the year ended 30 June 2008 did not disclose either the policies adopted for recognition of revenue or the judgements that management had made in the process of applying the Branch's accounting policies and that had the most significant effect upon the amounts recognised in the financial report.

Statement of Changes in Equity

361. Paragraph 8(c) of Australian Accounting Standard AASB 101 *Presentation of Financial Statements*, which applies to annual reporting periods beginning on or after 1 January 2007, requires a financial report to provide a statement of changes in equity showing either all changes in equity or changes in equity other than those arising from transactions with equity holders acting in their capacity as equity holders.
362. The financial report that was prepared by the Branch for the year ended 30 June 2008 did not contain a Statement of Changes in Equity.

DEFICIENCIES IN FINANCIAL REPORT FOR THE YEAR ENDED 30 JUNE 2009

363. The financial report for the year ended 30 June 2009 was lodged with FWA by the Administrator, Mr Vines, on 23 November 2009.

364. The financial report disclosed current assets of \$1,036,580 and current liabilities of \$2,843,769. The Operating Report (which does not form part of the GPFR but is required by section 254 of the RO Act) contained the following:

Operating Result

The operating result of the organisation for the year ended 30 June 2009 was a loss of \$1,306,350. This mainly arose from significant legal fees incurred by the organisation.

Significant Changes

The financial affairs of the organisation during the year were impacted by abnormal expenditure on legal fees. The Committee of Management is aware that there was continued abnormally high legal expenditure for the period to 17 August 2009 at which time an Administrator appointed by the Federal Court to manage the affairs of the union took up his appointment.

365. Notes to the GPFR did not include information regarding abnormally high legal expenditure for the period to 17 August 2009 or the appointment of an Administrator. The Income Statement discloses expenditure on legal fees during the financial year of \$1,274,133.

366. The following notes were contained in the GPFR:

10. CONTINGENT LIABILITY

Legal proceedings have been instituted for and against the Branch and its representatives in respect to various matters. The Branch has agreed to indemnify its representatives and members against any liability arising from these actions. Should the decision in these actions be awarded against the Branch by any Court, damages and costs as determined by the Court would have to be paid by the Branch.

13. RELATED PARTIES

The Operating Report contains the names of all Branch Committee members.

No member of the Branch Committee recovered (sic) remuneration for services rendered.

During the year, transactions amount (sic) to \$34,812 (2008: \$108,936) were incurred with an entity related to Ms P Fegan.

Deficiencies in financial report for the year ended 30 June 2009

367. The financial report contained an Audit Report that was signed by Mr Michael B Shulman of Stannards Accountants and Advisors on 16 November 2009. The audit opinion stated as follows:

AUDIT OPINION

In our opinion:-

i. there were kept by the Branch in respect of the year satisfactory accounting records detailing the sources and nature of the income (including income from members) and the nature and purposes of the expenditure of the Branch (except as set out below in the "Qualification Paragraphs") (a) and (b));

ii. the general purpose financial report is prepared under the historical cost convention and is presented fairly in accordance with applicable Australian Accounting Standards and the requirements imposed by Part 3 of Chapter 8 of Schedule 1 of the Workplace Relations Act 1996. Except for the comments contained in the "Qualifications Paragraph" (c), the financial report is properly drawn up so as to give a true and fair view of:

- (a) the financial affairs of the Branch as at 30 June, 2009;
- (b) the income and expenditure and net result of the Branch for the period ended on that date; and

iii. in relation to recovery of wages activity, there has been no recovery of wages activity during the year.

Qualifications

a. Subsequent to the completion of the 2008 financial report, an Expert Report commissioned by the Branch concluded that related party transactions had occurred. These transactions were quantified by the Expert Report as amounting to \$38,412 (2009 financial year) and \$108,936 (2008 financial year). We cannot confirm the veracity of these transactions (ie. whether they were appropriately authorised and whether they were commercial in nature).

b. Subsequent to the completion of the 2008 financial report, an Expert Report commissioned by the Branch concluded that there was no documentation substantiating some expenditure (in particular, certain wage payments to staff, expense reimbursements to staff and travel reimbursements). We cannot quantify the total, not the veracity of such expenditure in 2008 and 2009, given the absence of appropriate internal controls operating at the Branch over those years.

c. We were appointed auditors of the Branch for the 2009 financial year. We cannot confirm the veracity of the financial position report by the Branch as at 30 June, 2008. To the extent that the financial position was misstated at 30 June 2008, the financial performance (surplus/(deficit)) of the Branch would be misstated in the 2009 financial year.

368. On 7 January 2010 I wrote to the Branch Secretary, Mr Bolano, seeking his comments or explanation regarding various matters regarding the financial report for the year ended 30 June 2009. A response was sought from Mr Bolano regarding the following:

Deficiencies in financial report for the year ended 30 June 2009

1. There is no mention in the financial report of any matters in respect of going concern or the ability of the Branch to meet its obligations. Australian Accounting Standard AASB 101 *Presentation of Financial Statements* requires the committee of management to make an assessment of an entity's ability to continue as a going concern. A review of the financial report reveals an operating loss of \$1,306,350, which mainly arose from significant legal fees incurred by the Branch;
2. The reporting guidelines require disclosure of any financial dependency of the Branch upon any other reporting unit of the HSU. An explanation of compliance with the reporting guidelines was sought;
3. Australian Accounting Standard AASB 124 *Related Party Transactions* requires disclosure of related party transactions. Explanation was sought regarding three matters that appear to be related party transactions:
 - i. transactions to the value of \$34,812 with 'an entity related to Ms P Fegan' that were disclosed in Note 13 of the GPFR. The report provides no information other than the value of those transactions or the nature of the related party relationship;
 - ii. there is no disclosure in the GPFR of any related party transactions regarding legal fees incurred by members of the Branch Committee of Management that are described in Note 10 and that are indemnified by the Branch;
 - iii. there is no disclosure of any transaction or outstanding balance regarding \$15,000 that Mr Jackson had agreed to repay to the Branch in a Deed of Agreement that was executed on 30 June 2009 between the HSU and various members of the Branch Committee of Management;
4. Australian Accounting Standard AASB 137 *Contingent Liabilities and Contingent Assets* requires disclosure of identified contingent liabilities. Explanation was sought regarding Note 10 to the report which identifies that a contingent liability exists with respect to legal fees but that gives no description of the nature of each class of contingent liability or an estimate of any financial effect;
5. Australian Accounting Standard AASB 110 *Events after the Balance Sheet Date* requires disclosure of events and the accounting for events that occur between the balance sheet date (30 June 2009) and the date upon which the committee of management passed a resolution as required by paragraph 25 of the reporting guidelines (16 November 2009). Explanation was sought as to why there are no such matters disclosed in the financial report, particularly in light of the continued abnormally high legal expenditure for the period to the date of appointment of the administrator. Further, there was no disclosure of the appointment of the Administrator;
6. Lodgement of a statement of loans, grants and donations was sought in the event that any of the individual donations that had been made by the Branch exceeded the \$1,000 threshold in subsection 237(1) of the RAO Schedule.

Deficiencies in financial report for the year ended 30 June 2009

369. A letter in response dated 12 February 2010 was received from the Branch Secretary, Mr Bolano. That letter stated that:

1. At the time of presentation and adoption of the financial statements both the auditor and Administrator signed the financial statements on the basis of a going concern. Whilst there was comment in regard to the going concern and in particular the operating loss, the issue of going concern was addressed by the Administrator and Committee of Management. The Branch has addressed the asset to liability ratio in two ways, being (1) the abnormal situation of having a deficit for the year has been addressed largely with the reduction in legal fees and administration costs; and (2) banking finance has been sourced and is in the process of being secured and is expected to be finalised by 15 March 2010. The Branch has positive net assets in excess of \$4 million and operating cash flows for the year were positive. The auditors believed that the HSU was a going concern and could meet its liabilities as and when they fell due;
2. The Branch is not aware of any financial dependency upon any other reporting unit;
3. With respect to related party disclosures:
 - (i) the related party transaction of \$34,812 with an entity related to Ms P Fegan was for the purchases of goods and services. The goods and services purchased were for merchandise products used by the Branch. The Branch is advised that Ms Fegan's partner owns the business and that Ms Fegan is not involved.
 - (ii) The matter of legal fees incurred by the Branch on behalf of the related party being Mr Jackson was noted. It was acknowledged that the amount owing by Mr Jackson should have been disclosed separately in the financial statements to comply with AASB124. It was stated that the Branch has referred this matter to its auditors. Advice was sought regarding whether any further disclosure to Branch members or to Fair Work Australia was required.
4. With respect to contingent liabilities, it was acknowledged that the extent of legal proceedings and the financial effect were substantial, however at the time of preparation of the 2008 financial statements these were not able to be quantified. It was advised that the Branch is now in a position where the impact is known and can be reported directly to members. The Branch undertook to ensure that full disclosure would be given to members as soon as possible;
5. With respect to events after the balance sheet date, it was considered that, given disclosure of the appointment of an administrator in the State of Affairs [in the Operating Report], it was deemed that no further disclosure was necessary on the face of, or in the notes to, the financial report. In addition, 'further particulars could have been advised but was outside the timeframe and abilities of the various parties at the time'.
6. A statement of loans, grants and donations was being prepared and would be lodged immediately.

370. Further information that is relevant to the 'going concern' assumption upon which the financial report was prepared was also provided by the Branch's auditor, Mr Michael Shulman, in his letter of 6 April 2010 (refer below for a fuller discussion of this matter). Mr Shulman stated that the auditors noted during their audit that:

Deficiencies in financial report for the year ended 30 June 2009

- a. For the four months to 31 October 2009, [the Victoria No.1 Branch of the] HSU generated a small trading loss which accorded with budget;
- b. HSU was in the process (now complete) of renegotiating its finances with the National Australia Bank based upon the market value of its property, to enhance operating cashflows;
- c. The Administrator (at the date of our Audit Report) confirmed that he had completed his engagement, and 'management' of the entity was to return to its employees and the Committee of Management of the HSU.

Observations

371. In considering the findings that I should make about possible contraventions of the requirements of Part 3 of Chapter 8 of the RAO Schedule in the financial report for the year ended 30 June 2009, I am mindful of the circumstances surrounding preparation and lodgment of that financial report with FWA.
372. The Federal Court of Australia appointed Mr Vines as Administrator of the Branch on 17 August 2009 as the result of an application that had been made by the National Office of the Health Services Union under section 323 of the Act. Section 323 allows the Court to make orders for the reconstitution of a branch where it has 'ceased to exist or function effectively'.
373. I have referred earlier in this Report in some detail to the decision of his Honour Justice Tracey on 4 August 2009 in the section 323 proceedings, where he described the Branch as having become 'progressively more dysfunctional' due to antagonism between two groups within the Branch Committee of Management. One group coalesced around the Branch President, Ms Fegan, and the other was led by the Branch Secretary, Mr Jackson. Disputes between these two groups led to a series of events which 'severely undermined the functioning of the Branch. The result has been that Branch officers have been deflected and distracted from the pursuit of the industrial interests of members.'
374. I would also add to his Honour's comments that the descent of the Branch's Committee of Management into dysfunction and disarray adversely affected the proper administration and management of the Branch. I am unable to put a precise date upon when this decline into dysfunction began, but it is clear from the evidence I have gathered during my Inquiry and subsequent Investigation that by April 2008 relations between the two 'camps' within the Branch Committee of Management had deteriorated to such an extent that Ms Wills was instructed to cease presenting paid invoices to monthly meetings of the Branch Committee of Management for authorisation. As I have found earlier, this was a serious failure in the proper administration of the Branch as its consequence was that the Branch's expenditure could not be scrutinised, or authorised, by the collective body whose task was to do just that. This was in addition to other systemic weaknesses in processes and internal controls that have been identified elsewhere in this Report and in the Pitcher Partners Report, including the keeping of records regarding such matters as remuneration of officers and employees and the taking of leave, the signing of cheques in contravention of Branch Rules and the provision by officers of PINs and passwords for electronic banking to the office manager, thereby enabling her to process electronic transactions without authorisation or supervision.

Lodgement of Statement of Loans, Grants and Donations

375. It was another 16 months after April 2008 before Mr Vines was appointed as Administrator in August 2009. Mr Vines held the position of Administrator of the Branch from 17 August 2009 until declaration of elections on 9 December 2009, being a period of less than three months. Even though the circumstances were not of his making, Mr Vines found himself administering a Branch that had serious weaknesses in its administrative procedures and internal financial controls.
376. In the short period in which he was Administrator, Mr Vines lodged the outstanding financial report for the year ended 30 June 2008 (on 15 October 2009) and the financial report for the year ended 30 June 2009 (on 23 November 2009). Much of the financial report for the year ended 30 June 2008 had already been prepared prior to Mr Vines' appointment, as evidenced by the fact that Mr Jackson signed the Committee of Management Statement and Operating Report on 10 December 2008 and Mr Dick's auditor's report was dated 9 June 2009. It fell to Mr Vines to lodge the 30 June 2008 financial report and to prepare and lodge the 30 June 2009 report.
377. In preparing the Branch's financial report for the year ended 30 June 2009, Mr Vines engaged the services of Mr Michael Shulman of Stannards Accountants and Advisors Pty Ltd as auditor. Mr Shulman identifies himself as a partner of that firm and as holding a current public practice certificate. In such circumstances Mr Vines was entitled to rely upon the auditor as a professional adviser with relevant expertise who was capable of identifying contraventions of the RAO Schedule and of Australian Accounting Standards. Mr Vines acted in good faith and, in my view, it was reasonable for him to rely upon Mr Shulman in the circumstances.
378. While I corresponded with the Branch and with Mr Shulman regarding deficiencies in the Branch's financial report for the year ended 30 June 2009, in these circumstances I make no adverse findings against Mr Vines as the Administrator who prepared and lodged the financial report for the year ended 30 June 2009.

LODGEMENT OF STATEMENT OF LOANS, GRANTS AND DONATIONS

379. The provisions of subsection 237(1) of the RAO Schedule are set out at paragraph 80 above.
380. Subsection 237(1) of the RAO Schedule requires a branch to lodge with the AIR a statement showing relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made during the financial year. In the absence of the granting by a Registrar of an application for an extension of time, the statement must be lodged within 90 days of the end of each financial year.
381. Rule 36(f) of the HSU Rules provides that 'the financial year of the Union and the Branches shall end on the 30th June in each year'. In the absence of the granting of an application for an extension of time by a Registrar, the RAO Schedule therefore requires the Branch to lodge its statement of loans, grants and donations by 28 September immediately following the end of each financial year.
382. The statement of loans, grants and donations for the year ended 30 June 2007, which was required to be lodged no later than 28 September 2007, was lodged with AIR on 5 March 2008.

Requirements of Australian Auditing Standards

383. No statement of loans, grants and donations for the year ended 30 June 2008 has been lodged. Although the financial report for the year ended 30 June 2008 discloses in its Statement of Financial Performance that donations totalling \$11,800 were made, I am unable to make a finding regarding whether this constitutes a contravention of section 237 of the RAO Schedule. There is no information suggesting that any of the individual amounts paid as donations in the year ended 30 June 2008 exceeded the \$1,000 threshold set out in subsection 237(1) of the RAO Schedule. Moreover the Branch did lodge statements of loans' grants and donations for the years ended 30 June 2007 and 20 June 2009, which indicates that the Branch was cognisant of its obligations under section 237 of the RAO Schedule.

Finding 23

Finding	
23	By failing to lodge a statement of loans, grants and donations for the financial year ended 30 June 2007 within 90 days of the end of the financial year, the Branch has contravened subsection 237(1) of the RAO Schedule.

Particulars of Finding 23

384. Subsection 237(1) of the RAO Schedule requires a registered organisation, within 90 days of the end of each financial year (or such longer period as the Industrial Registrar allows) to lodge with the AIR a statement showing particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year. Subsection 237(7) provides that, where an organisation is divided into branches, the section applies in relation to the branches as if the branch were itself an organisation.
385. Given that the Branch's financial year ends on 30 June, in the absence of the granting of an application for an extension of time by the Registrar, the RAO Schedule requires the Branch to lodge its statement of loans, grants and donations by 28 September immediately following the end of each financial year.
386. The statement of loans, grants and donations for the year ended 30 June 2007 was required to be lodged by 28 September 2007. The statement was not lodged with the AIR until 5 March 2008.
387. The Industrial Registrar did not allow a longer period for lodgement of a statement of loans, grants and donations for the year ended 30 June 2007.

REQUIREMENTS OF AUSTRALIAN AUDITING STANDARDS

Regulatory Framework

388. 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

...

- (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.

389. The Australian Auditing Standards which are most relevant to the auditor's reports that were prepared for financial years ended 30 June 2007 to 30 June 2009 are set out below.

Audit Documentation

390. The purpose of Australian Auditing Standard ASA 230 *Audit Documentation* is to establish mandatory requirements and to provide explanatory guidance on audit documentation.

391. The following mandatory requirement is contained in paragraph 5:

5. The auditor shall prepare, on a timely basis, audit documentation that provides:
- (a) a sufficient and appropriate record of the basis for the auditor's report; and
 - (b) evidence that the audit was performed in accordance with Auditing Standards and applicable legal and regulatory requirements.

392. Paragraph 11 set out a further mandatory requirement regarding the form, content and extent of audit documentation:

11. The auditor shall prepare the audit documentation so as to enable an experienced auditor, having no previous connection with the audit, to understand:
- (a) the nature, timing, and extent of the audit procedures performed to comply with Auditing Standards and applicable legal and regulatory requirements;
 - (b) the results of the audit procedures and the audit evidence obtained; and

Requirements of Australian Auditing Standards

- (c) significant matters arising during the audit and the conclusions reached thereon.

393. Explanatory guidance is set out in paragraphs 8 to 10 as follows:

Definitions

8. In this Auditing Standard the following terms have the meanings attributed below:

- (a) "Audit documentation" means the record of audit procedures performed, relevant audit evidence obtained, and conclusions the auditor reached (terms such as "working papers" or "workpapers" are also sometimes used).
- (b) "Experienced auditor" means an individual (whether internal or external to the firm) who has a reasonable understanding of:
 - (i) audit processes;
 - (ii) Auditing Standards and applicable legal and regulatory requirements;
 - (iii) the business environment in which the entity operates; and
 - (iv) auditing and financial reporting issues relevant to the entity's industry.

Nature of Audit Documentation

- 9. Audit documentation may be recorded on paper or on electronic or other media. It includes, for example, audit programs, analyses, issues memoranda, summaries of significant matters, letters of confirmation and representation, checklists, and correspondence (including e-mail) concerning significant matters. Abstracts or copies of the entity's records, for example, significant and specific contracts and agreements, may be included as part of audit documentation if considered appropriate. Audit documentation, however, is not a substitute for the entity's accounting records. The audit documentation for a specific audit engagement is assembled in an audit file.
- 10. The auditor ordinarily excludes from audit documentation superseded drafts of working papers and financial reports, notes that reflect incomplete or preliminary thinking, previous copies of documents corrected for typographical or other errors, and duplicates of documents.

Going Concern

394. The purpose of Australian Auditing Standard ASA 570 *Going Concern* is to establish mandatory requirements and to provide explanatory guidance on the auditor's responsibility in the audit of a financial report with respect to the going concern assumption used in the preparation of a financial report, including considering management's assessment of an entity's ability to continue as a going concern.

395. The following definitions are provided in ASA 570:

- 6. "Going concern basis" means the accounting basis whereby in the preparation of the financial report the reporting entity is viewed as a going concern, that is, the entity is expected to:

Requirements of Australian Auditing Standards

- (a) be able to pay its debts as and when they fall due; and
 - (b) continue in operation without any intention or necessity to liquidate or otherwise wind up its operations.
7. "Relevant period" means the period of approximately 12 months from the date of the auditor's current report to the expected date of the auditor's report for:
- (a) the next annual reporting period in the case of an annual financial report; or
 - (b) the corresponding reporting period for the following year in the case of an interim reporting period.
396. Paragraph 36 of ASA 570 imposes the following mandatory requirement regarding audit conclusions and reporting:
36. When consideration of mitigating factors, in particular management's plans, have had a significant effect upon the auditor in forming the opinion that the going concern basis is appropriate, the auditor shall specifically consider the adequacy of the disclosure of the following matters in the financial report:
- (a) the principal conditions which caused the auditor to question the going concern basis, including as appropriate, management's evaluation of their significance and possible effects; and
 - (b) management's plans and other mitigating factors, including as appropriate, relevant prospective financial information.
- If the disclosures considered necessary by the auditor are not made, the auditor shall express a qualified opinion on the basis of the lack of disclosure in accordance with ASA 701 *Modifications to the Auditor's Report*.

Related Parties

397. The purpose of Australian Auditing Standard ASA 550 *Related Parties* is to establish mandatory requirements and to provide explanatory guidance on the auditor's responsibilities and audit procedures regarding related parties and transactions where Australian Accounting Standard AASB 124 *Related Party Disclosures* applies.
398. ASA 550 includes the following mandatory requirements:
5. The auditor shall perform audit procedures designed to:
- (a) obtain sufficient appropriate audit evidence regarding the:
 - (i) identification and
 - (ii) disclosure in accordance with the applicable financial reporting framework,
- by those charged with governance and management of related parties and the effect of related party transactions that are material to the financial report; and

Requirements of Australian Auditing Standards

- (b) reduce to an acceptably low level the risks of material misstatement in the financial report resulting from the existence of related parties and related party transactions.

399. The following mandatory requirements are set out in paragraphs 18 and 24 regarding the existence and disclosure of related parties and transactions with such related parties:

18. The auditor shall review information provided by those charged with governance and management identifying the names of all known related parties and shall perform the following audit procedures to reduce the risk of related parties remaining undetected to an acceptably low level:

- (a) Review prior year working papers for names of known related parties.
- (b) Review the entity's procedures for identification of related parties.
- (c) Enquire as to the affiliation of those charged with governance and officers with other entities.

...

- (e) Review minutes of the meetings of shareholders and those charged with governance and other relevant statutory records such as the register of directors' interests.

...

If, in the auditor's judgement, there is a lower risk of significant related parties remaining undetected, these procedures may be modified as appropriate.

24. The auditor shall review information provided by those charged with governance and management identifying related party transactions and shall be alert for other material related party transactions.

400. Explanatory guidance is also found in paragraph 28 regarding transactions with related parties:

28. Where during the audit, the auditor identifies related parties or related party transactions not previously identified, the auditor ordinarily considers:

- (a) the reason for this, and the need to reassess risk of material misstatement concerning the identification of related parties and related party transactions; and
- (b) the impact on other aspects of the audit when there is a reassessment of these risks.

Enquiry Regarding Litigation and Claims

401. The purpose of Australian Auditing Standard ASA 508 *Enquiry Regarding Litigation and Claims* is to establish mandatory requirements and provide explanatory guidance on obtaining sufficient audit evidence regarding legal matters affecting the entity.

Requirements of Australian Auditing Standards

402. Explanatory guidance is provided by paragraph 8:

8. To identify legal matters affecting the entity, the auditor ordinarily performs the following procedures:
 - obtains and discusses with management:
 - (i) a list of legal matters, including a description of matters and an estimate of their likely financial consequences; and
 - (ii) an analysis identifying legal expenses;
 - reviews relevant documents, for example correspondence with the entity's lawyers; and
 - obtains from management an assurance that the information obtained regarding material outstanding legal matters is complete.

403. The following mandatory requirements are set out in paragraphs 11, 13 and 33:

11. When legal matters have been identified or when the auditor believes they may exist, the auditor shall endeavour to obtain written representations from all lawyers with whom management has consulted on material legal matters.
13. The auditor shall request management to prepare the representation letter to the entity's lawyers, with a request that the lawyers respond directly to the auditor. The auditor shall send the representation to the entity's lawyers.
33. The auditor shall enquire of management about new legal matters referred to the entity's lawyers subsequent to the date of the request for a representation letter to the entity's lawyers and prior to signing the auditor's report.

Subsequent Events

404. The purpose of Australian Auditing Standard ASA 560 *Subsequent Events* is to establish mandatory requirements and to provide explanatory guidance on the auditor's responsibility regarding subsequent events.

405. The following terms are defined in paragraph 7:

- (a) "Reporting date" means the date of the end of the latest period covered by the financial report, which is normally the date of the most recent balance sheet in the financial report subject to audit.
- (b) "Date of approval of the financial report" means the date on which those with the recognised authority assert that they have prepared the entity's complete financial report, including the related notes, and that they have taken responsibility for the financial report.
...
- (c) "Date of the auditor's report" means the date the auditor signs the auditor's report on the financial report. The auditor's report is not dated 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 includes evidence that the entity's complete financial report has been

Requirements of Australian Auditing Standards

prepared and that those with the recognised authority have asserted that they have taken responsibility for them.

- (d) "Date the financial report is issued" means the date that the auditor's report and audited financial report are made available to third parties, which may be, in many circumstances, the date that they are filed with a regulatory authority.

406. The following mandatory requirements are imposed by ASA 560 regarding events occurring up to the date of the auditor's report:

8. The auditor shall perform audit procedures designed to obtain sufficient appropriate audit evidence that all events up to the date of the auditor's report that may require adjustment of, or disclosure in, the financial report have been identified.
12. When the auditor becomes aware of events which materially affect the financial report, the auditor shall consider whether such events are properly accounted for and adequately disclosed in the financial report.

407. Paragraph 10 provides the following explanatory guidance regarding the requirement imposed by paragraph 8:

10. The audit procedures to identify events that may require adjustment of, or disclosure in, the financial report would ordinarily be performed as near as practicable to the date of the auditor's report and ordinarily include the following:

...

- reading minutes of meetings of ... those charged with governance, audit and executive committees held after the reporting date and enquiring about matters discussed at meetings for which minutes are not yet available;

....

- enquiring, or extending previous oral or written enquiries, of the entity's lawyers concerning litigation and claims; and
- enquiring of management as to whether any subsequent events have occurred which might affect the financial report.

Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement

408. The purpose of Australian Auditing Standard ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* is to establish mandatory requirements, and to provide explanatory guidance, on obtaining an understanding of the entity and its environment, including its internal control, and on assessing the risks of material misstatement in a financial report audit.

409. The following mandatory requirements are among those imposed by ASA 315:

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.

Requirements of Australian Auditing Standards

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.
52. The auditor shall obtain an understanding of internal control relevant to the audit.
117. The auditor shall identify and assess the risks of material misstatement at the financial report level, and at the assertion level for classes of transactions, account balances, and disclosures.
132. For significant risks, to the extent the auditor has not already done so, the auditor shall evaluate the design of the entity's related controls, including relevant control activities, and determine whether they have been implemented.
135. As part of the risk assessment as described in paragraph 117, the auditor shall evaluate the design and determine the implementation of the entity's controls, including relevant control activities, over those risks for which, in the auditor's judgement, it is not possible or practicable to reduce the risks of material misstatement at the assertion level to an acceptably low level with audit evidence obtained only from substantive procedures.
143. The auditor shall document:
 - (a) the discussion among the engagement team regarding the susceptibility of the entity's financial report to material misstatement due to error or fraud, and the significant decisions reached;
 - (b) key elements of the understanding obtained regarding each of the aspects of the entity and its environment, including each of the internal control components, to assess the risks of material misstatement of the financial report; the sources of information from which the understanding was obtained; and the risk assessment procedures;
 - (c) the identified and assessed risks of material misstatement at the financial report level and at the assertion level as required by paragraph 117; and
 - (d) the risks identified and related controls evaluated as a result of the requirements in paragraph 132 and 135.

The Auditor's Procedures in Response to Assessed Risks

410. The purpose of Australian Auditing Standard ASA 330 *The Auditor's Procedures in Response to Assessed Risks* is to establish mandatory requirements and to provide explanatory guidance on determining overall responses and designing and performing further audit procedures to respond to the assessed risks of material misstatement at the financial report and assertion levels in a financial report audit.
411. The following mandatory requirements are among those imposed by ASA 330:

Requirements of Australian Auditing Standards

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.

Modifications to the Auditor's Report

412. The purpose of Australian Auditing Standard ASA 701 *Modifications to the Auditor's Report* is to establish mandatory requirements and provide explanatory guidance on the circumstances when the auditor's report is modified and the form and content of such modifications. When matters do affect an auditor's opinion, the auditor's report may be modified by the giving of a qualified opinion, disclaimer of opinion or adverse opinion.
413. Guidance as to the circumstances in which a modified opinion may be appropriate is provided as follows:
 - 21 An auditor may not be able to express an unqualified opinion when any of the following circumstances exist and, in the auditor's judgement, the effect of the matter is or may be material to the financial report:
 - (a) there is a limitation on the scope of the auditor's work;
 - (b) there is a disagreement with those charged with governance regarding the acceptability of the accounting policies selected, the method of their application or the adequacy of the financial report disclosures; or
 - (c) there is a conflict between applicable financial reporting frameworks.

The circumstances described in (a) could lead to a qualified opinion or a disclaimer of opinion. The circumstances described in (b) could lead to a qualified opinion or an adverse opinion. The circumstances described in (c) could lead to a qualified opinion or an adverse opinion.
 30. A scope limitation may be imposed by circumstances (for example, when the timing of the auditor's appointment is such that the auditor is unable to observe the counting of physical inventories). It may also arise when, in the opinion of the auditor, the entity's accounting records are inadequate or when the auditor is unable to carry out an audit procedure believed to be desirable. In these circumstances, under ASA 330 *The Auditor's Procedures in Response to Assessed Risks*, the auditor needs to carry out reasonable alternative audit

Deficiencies in auditor's report for year ended 30 June 2007

procedures in an attempt to obtain sufficient appropriate audit evidence to support an unqualified opinion.

414. Mandatory requirements regarding matters that affect the auditor's opinion include those set out in the following paragraphs:

22. A qualified opinion shall be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with those charged with governance, a conflict between applicable financial reporting frameworks or a limitation on scope is not so material and pervasive as to require an adverse opinion or a disclaimer of opinion. A qualified opinion shall be expressed as being "except for" the effects of the matter to which the qualification relates.

The opinion paragraph shall be headed "Qualified Auditor's Opinion".

23. A disclaimer of opinion shall be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and accordingly is unable to express an opinion on the financial report. The opinion paragraph shall be headed "Disclaimer of Auditor's Opinion".

24. An adverse opinion shall be expressed when the effect of a disagreement or a conflict between applicable financial reporting frameworks is so material and pervasive to the financial report that the auditor concludes that a qualification of the auditor's report is not adequate to disclose the misleading or incomplete nature of the financial report. The opinion paragraph shall be headed "Adverse Auditor's Opinion".

25. Whenever the auditor expresses an opinion that is other than unqualified, a clear description of all the substantive reasons shall be included in the auditor's report and, unless impracticable, a quantification of the possible effect(s) on the financial report. If the effects or possible effects are incapable of being measured reliably, a statement to that effect and the reasons therefore shall be included in the basis for modification paragraph of the auditor's report.

33. If disagreements between the auditor and those charged with governance about the acceptability, selection, application or adequacy of disclosure in the financial report are material to the financial report, the auditor shall express qualified or an adverse opinion.

DEFICIENCIES IN AUDITOR'S REPORT FOR YEAR ENDED 30 JUNE 2007

415. The financial report for the year ended 30 June 2007 contained an Audit Report that was signed by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd and dated 25 September 2007.

416. FWA has examined Mr Dick's audit file for the year ended 30 June 2007 which Mr Dick provided to FWA in response to a Notice under paragraph 335(2)(b) of the Act that was issued on 23 July 2010.

Finding 24

	Finding
24	<p>In his audit report for the year ended 30 June 2007 Mr Dick has contravened 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, in that:</p> <p>24.1 he has failed to perform and appropriately document audit procedures that enabled him to obtain sufficient audit evidence to identify and disclose related party transactions between the Branch and Urban Giftware as required by ASA 550 and ASA 230;</p> <p>24.2 he has failed to meet the requirements of ASA 315 regarding understanding the entity and its environment;</p> <p>24.3 he has failed to meet the requirements of ASA 330 regarding procedures in response to assessed risks;</p> <p>24.4 he has failed to maintain appropriate audit documentation in accordance with the requirements of ASA 230.</p>

Particulars of Finding 24

417. I note that subsection 257(8) of the RAO Schedule is not a civil penalty provision.

Related Party Transactions - Urban Giftware

418. The Branch acquired promotional material from Urban Giftware between 10 July 2006 and 30 June 2008.

419. During the financial year ended 30 June 2007 there was a related party relationship between the Branch and Urban Giftware arising from the fact that the proprietor of Urban Giftware, Mr Phillip Grima, was the domestic partner of one of the key management personnel of the Branch, namely Ms Pauline Fegan, the Branch President.

420. All transactions that occurred between Urban Giftware and the Branch between 10 July 2006 and 30 June 2007 were related party transactions which were required to be disclosed in the financial reports of the Branch, in accordance with Australian Accounting Standard AASB 124 *Related Party Disclosures*.

421. The auditor was required by Australian Auditing Standard ASA 550 *Related Party Disclosures* to perform audit procedures that enabled him to obtain sufficient audit evidence to identify and disclose related party transactions. As part of the documentation that an auditor must prepare under paragraphs 8-11 of Australian Auditing Standard ASA 230 *Audit Documentation*, paragraph 28 of ASA 550 also required Mr Dick to include in the audit documentation the names of the identified related parties and the nature of the related party relationships.

422. On 4 January 2008 the Branch lodged with the AIR its financial report for the year ended 30 June 2007. The financial report did not disclose related party transactions

Deficiencies in auditor's report for year ended 30 June 2007

between the Branch and Urban Giftware in accordance with paragraph 17 of AASB 124.

423. Despite its lack of disclosures regarding related party transactions, the financial report that was lodged with the AIR on 4 January 2008 included an audit report that was signed by Mr Dick and dated on 25 September 2007 in which he stated that the financial report had been prepared in accordance with applicable Accounting Standards and in accordance with section 253 of the RAO Schedule.
424. Mr Dick's audit file for the year ended 30 June 2007 did not contain any appropriate audit documentation regarding related party transactions in accordance with the requirements of ASA 550 or ASA 230.

Understanding the Entity and its Environment

425. Paragraph 5 of Australian Auditing Standard ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* requires an auditor to 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. As a minimum, paragraph 11 requires the auditor to perform risk assessment procedures by making enquiries of those charged with governance, management and others within the entity, analytical procedures and observation and inspection. Paragraph 52 requires the auditor to obtain an understanding of internal control relevant to the audit. Paragraph 143 requires the auditor to document key elements of the understanding obtained regarding each of the aspects of the entity and its environment, the sources of information from which the understanding was obtained and the risk of assessment procedures.
426. There is no documentation in the audit file for the financial year ended 30 June 2007 evidencing that Mr Dick has undertaken the mandatory procedures prescribed by ASA 315.

Procedures in Response to Assessed Risks

427. Paragraph 88 of Australian Auditing Standard ASA 330 *The Auditor's Procedures in Response to Assessed Risks* requires an auditor to perform audit procedures to evaluate whether the overall presentation of the financial report is in accordance with the applicable financial reporting framework. Based on the audit procedures performed and the audit evidence obtained, paragraph 90 requires the auditor to evaluate whether the assessments of the risks of material misstatement at the assertion level remain appropriate. The auditor is required by paragraph 99 to document the overall responses to address the assessed risks of material misstatement at the financial report level and the nature, timing and extent of further audit procedures, the linkage of those procedures with the assessed risks at the assertion level, and the results of the audit procedures.
428. There is no documentation in the audit file for the financial year ended 30 June 2007 evidencing that Mr Dick has undertaken the mandatory procedures prescribed by ASA 330.

Audit Documentation

429. Australian Auditing Standard ASA 230 *Audit Documentation* requires an auditor to prepare, on a timely basis, audit documentation that provides a sufficient and appropriate record of the basis for the auditor's report and evidence that the audit was performed in accordance with Auditing Standards and applicable legal and regulatory requirements.
430. There is no appropriate audit documentation in the audit file for the financial year ended 30 June 2007 in accordance with the requirements of ASA 230 to support the audit opinion rendered in the audit report or to evidence that the audit was performed in accordance with Australian Auditing Standards and the applicable regulatory requirements set out in the RAO Schedule.

DEFICIENCIES IN AUDITOR'S REPORT FOR YEAR ENDED 30 JUNE 2008

431. The financial report for the year ended 30 June 2008 contained an Audit Report that was signed by Mr Iaan Dick of Dick & Smith (Elsternwick) Pty Ltd on 9 June 2009. The audit opinion stated as follows:

In our opinion,

- (i) there were kept by the Branch, in respect of the year, satisfactory accounting records detailing the source and nature of income of the Branch (including income from members) and the nature and purpose of the expenditure except for

Qualifications

- (a) Subsequent to the preparation of the financial reports, an Expert Report commissioned by the Branch concluded that related party transactions occurred and were not disclosed in the reports. These transactions were quantified by the Expert Report as \$108,936.
- (b) Subsequent to the preparation of the financial reports, an Expert Report commissioned by the Branch concluded that there was no documentation substantiating some expenditure. As the Expert (sic) Report does not isolate the amount for the period for the year we are unable to quantify this expenditure.
- (ii) the attached financial report, prepared in accordance with applicable Accounting Standards and other mandatory professional reporting requirements and in accordance with Section 253 of the RAO Schedule, are properly drawn up so as to give a true and fair view of:
- (a) the financial affairs of the Branch as at June 30, 2008; and
- (b) the income and expenditure, results and cash flows of the Branch for the year then ended,

apart from our qualifications detailed in (1)(a) and (b) above

- (iii) all information and explanations required for the purpose of the audit under Section 276(2), were provided by the officers or employees of the Branch.

432. On 24 December 2009 I wrote to Mr Dick seeking his comments or explanation regarding various matters regarding the financial report for the year ended 30 June 2008. A response was sought from Mr Dick regarding the following:

1. The audit report states that the GPFR was prepared in accordance with Australian Accounting Standards. Mr Dick was therefore provided with a copy of my letter to the Branch Secretary, Mr Bolano, dated 24 December 2009 (discussed above) and asked to advise whether each of issues A to E raised in that letter were considered by him in forming his audit opinion and to advise of his rationale in not expressing a qualified opinion as would be required by Australian Auditing Standard ASA 701 at paragraph 22 in respect of each of those five issues;
2. Mr Dick was requested to explain his compliance with Australian Auditing Standard ASA 560 *Subsequent Events*. The audit report was dated almost a full year after the balance date of 30 June 2008 but provided almost no information regarding two significant subsequent events, namely the Pitcher Partners Report and the substantial legal expenses that were incurred by the Branch after 30 June 2008. The financial report that was issued for the year ended 30 June 2009 revealed legal expenses of \$1,274,133 and a trading loss of \$1,306,350.
3. Mr Dick was requested to explain his compliance with Australian Auditing Standard ASA 700 *The Auditor's Report on a General Purpose Financial Report*. The second paragraph of the audit opinion stated that the audit report had been prepared in accordance with Australian Accounting Standards rather than Australian Auditing Standards.
4. Mr Dick was requested to explain his compliance with Australian Auditing Standard ASA 701 *Modifications to the Auditor's Report*. The two qualifications made in the audit opinion do not appear to comply with ASA 701 – the first qualification did not specify that the Branch had breached Australian Accounting Standard AASB 124 nor did it provide details of the relevant related party as required by ASA 701. The second qualification refers to a lack of reliable information upon which an audit report could be based. In such circumstances an auditor would often consider issuing a qualified report based upon a 'limitation of scope' or a 'disclaimer' type opinion as stipulated by ASA 701. It is not clear why a 'subject to' opinion was issued or how the auditor was able to determine that a limitation of scope or a disclaimer was unnecessary.
5. In light of the findings of the Pitcher Partners Report regarding lack of internal controls within the Branch, Mr Dick was requested to explain his compliance with Australian Auditing Standard ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* and ASA 330 – *The Auditor's Procedures in Response to Assessed Risks*.

433. A letter in response from Mr Dick was received on 21 January 2010. That letter stated with respect to paragraphs A to E that were set out in the letter to Mr Bolano dated 24 December 2009 that:

Deficiencies in auditor's report for year ended 30 June 2008

- A. With regard to legal fees incurred by the Branch on behalf of officers, Mr Dick had no knowledge of these at the time of signing the audit report. With reference to the related party transactions with Urban Giftware, Mr Dick was of the opinion that his reference in the audit report to the expert's report covered the requirements of AASB 124.
 - B. Note 12 to the accounts was referring to legal proceedings of a general nature to do with normal conduct of the union's business. At the time of signing the audit report, Mr Dick was not aware that the union was liable for any of the legal proceedings being instituted by members of the Branch Committee.
 - C. Mr Dick was not aware of any events after 30 June 2008 that required reporting under AASB 110 apart from those referred to in the expert's report.
 - D. Mr Dick was of the opinion that AASB 101 was only compulsory for financial statements with a reporting period after 1 January 2009.
 - E. Although not specifically referred to in the Notes, Mr Dick was of the opinion that the Statement of Cash Flows and Statement of Financial Performance illustrated the recognition of revenue policy. This occurred not only for the 2008 audit report but was an historical approach that was adopted in prior years' audit reports.
434. With respect to paragraphs 2 to 5 of my letter to the auditor dated 24 December 2009, Mr Dick responded that:
- 2. He was not aware of any events that materially affected the financial report at the date of signing the audit report apart from the matters referred to in the audit report with relation to the Experts Report. Mr Dick was not aware of legal happenings referred to in FWA's letter. Mr Dick had advised Mr Jackson in November 2008 that he was no longer available to audit the Branch's accounts after the completion of the 2008 audit. As a consequence, he was out of the information loop.
 - 3. The reference in the audit opinion to Australian Accounting Standards was an error.
 - 4. It was Mr Dick's intention to comply with ASA 701. If he has not done so then it was an unintentional error on his part.
 - 5. Mr Dick was of the opinion that the qualification covered matters required by ASA 315 and ASA 330.
435. FWA has examined Mr Dick's audit file for the year ended 30 June 2008 which Mr Dick provided to FWA in response to a Notice under paragraph 335(2)(b) of the Act that was issued on 23 July 2010.

Finding 25

Finding	
25	<p>In his audit report for the year ended 30 June 2008 Mr Dick has contravened 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, in that:</p> <p>25.1 he has failed to perform and appropriately document audit procedures</p>

	Finding
	<p>that enabled him to obtain sufficient audit evidence to identify and disclose related party transactions between the Branch and Urban Giftware as required by ASA 550 and ASA 230. To the extent that he qualified the audit report regarding related party transactions between the Branch and Urban Giftware, Mr Dick has done so on the basis of information provided in an Expert Report and not as a result of evidence that he had obtained in performing his audit;</p> <p>25.2 he has failed to perform and appropriately document audit procedures that enabled him to obtain sufficient audit evidence to identify and disclose related party transactions between the Branch and its officers with respect to indemnification of legal fees as required by ASA 550 and ASA 230;</p> <p>25.3 he has failed to perform audit procedures designed to obtain sufficient appropriate audit evidence that all events up to the date of the auditor's report that may require adjustment of, or disclosure in, the financial report have been identified as required by ASA 560. Mr Dick has failed to identify substantial legal expenses that were incurred by the Branch between the end of the financial year and the date of signing the audit report. Further, to the extent that he qualified the audit report regarding lack of documentation substantiating some expenditure of the Branch, Mr Dick has done so on the basis of information provided in an Expert Report and not as a result of evidence that he had obtained in performing his audit;</p> <p>25.4 he has failed to perform audit procedures that enabled him to obtain sufficient audit evidence regarding legal matters affecting the Branch as required by ASA 508;</p> <p>25.5 he has failed to meet the requirements of ASA 315 regarding understanding the entity and its environment;</p> <p>25.6 he has failed to meet the requirements of ASA 330 regarding procedures in response to assessed risks;</p> <p>25.7 he has failed to maintain appropriate audit documentation in accordance with the requirements of ASA 230; and</p> <p>25.8 he has failed to issue a disclaimer of opinion under paragraph 23 of ASA 701 on the basis of:</p> <ul style="list-style-type: none"> a. weaknesses in the Branch's internal controls; and b. repeated failures by the Branch in its financial report to make disclosures as required by Australian Accounting Standards.

Particulars of Finding 25

436. I note that subsection 257(8) of the RAO Schedule is not a civil penalty provision.

Related Party Transactions - Urban Giftware

437. The Branch acquired promotional material from Urban Giftware between 10 July 2006 and 30 June 2008.

438. During the financial year ended 30 June 2008 there was a related party relationship between the Branch and Urban Giftware arising from the fact that the proprietor of Urban Giftware, Mr Phillip Grima, was the domestic partner of one of the key management personnel of the Branch, namely Ms Pauline Fegan, the Branch President.

439. All transactions that occurred between Urban Giftware and the Branch in the financial year ended 30 June 2008 were related party transactions which were required to be disclosed in the financial reports of the Branch, in accordance with Australian Accounting Standard AASB 124 *Related Party Disclosures*.

440. The auditor was required by Australian Auditing Standard ASA 550 *Related Party Disclosures* to perform audit procedures that enabled him to obtain sufficient audit evidence to identify and disclose related party transactions. As part of the documentation that an auditor must prepare under paragraphs 8-11 of Australian Auditing Standard ASA 230 *Audit Documentation*, paragraph 28 of ASA 550 also required Mr Dick to include in the audit documentation the names of the identified related parties and the nature of the related party relationships.

441. On 15 October 2009 the Branch lodged its financial report for the year ended 30 June 2008 with FWA. The financial report did not disclose related party transactions between the Branch and Urban Giftware in accordance with AASB 124. The financial report included an audit report that was signed by Mr Dick and dated on 9 June 2009 which contained an 'except for' qualification in paragraph (a) stating that 'Subsequent to the preparation of the financial reports, an Expert Report commissioned by the Branch concluded that related party transactions occurred and were not disclosed in the reports. These transactions were quantified by the Expert Report as \$108,936.'

442. Mr Dick's audit file for the year ended 30 June 2008 did not contain any appropriate audit documentation regarding related party transactions in accordance with the requirements of ASA 550 or ASA 230.

Related Party Transactions - Legal Fees

443. The financial report for the year ended 30 June 2008 disclosed expenditure on legal fees of \$33,652 during the financial year. Note 12 to the financial report stated that the Branch has agreed to indemnify its representatives and members against any liability arising from legal proceedings that have been instituted for and against the Branch and its representatives in respect to various matters. The financial report did not contain any disclosure of related party transactions of any kind, including related party transactions with respect to payment by the Branch of legal fees incurred by Branch officers.

Deficiencies in auditor's report for year ended 30 June 2008

444. During the financial year ended 30 June 2008 there was a related party relationship between the Branch and those members of the Branch Committee of Management, being key management personnel of the Branch, whose legal fees were indemnified by the Branch.
445. All transactions that occurred during the financial year ended 30 June 2008 that were incurred as a result of the indemnification that is identified in Note 12 were related party transactions which were required to be disclosed in the financial reports of the Branch, in accordance with Australian Accounting Standard AASB 124 *Related Party Disclosures*.
446. Australian Auditing Standard ASA 550 *Related Party Disclosures* required Mr Dick to perform audit procedures to obtain sufficient audit evidence to identify and disclose related party transactions. As part of the documentation that an auditor must prepare under paragraphs 8-11 of Australian Auditing Standard ASA 230 *Audit Documentation*, paragraph 28 of ASA 550 also required Mr Dick to include in the audit documentation the names of the identified related parties and the nature of the related party relationships.
447. Mr Dick has stated in his letter to me dated 21 January 2010 that he had no knowledge of legal fees incurred by the Branch on behalf of officers at the time he signed the audit report for the year ended 30 June 2008.

Subsequent Events

448. Mr Dick's audit report for the year ended 30 June 2008 was signed and dated on 9 June 2009, being almost a full year after the reporting date and six months after the date of approval of the financial report by the Branch Committee of Management in the statement that was signed by the Committee of Management on 12 December 2008.
449. In the six months between the date of approval of the financial report by the Committee of Management on 12 December 2008 and the date upon which Mr Dick signed the audit report on 9 June 2009, the 'Expert Report' by Pitcher Partners was both commissioned by, and delivered to, the Branch and a number of court proceedings surrounding those events were commenced. The financial report for the year ended 30 June 2009 discloses expenditure by the Branch on legal fees in that financial year of \$1,274,133 (as compared with \$33,652 in the financial year ended 30 June 2008).
450. The audit report that Mr Dick signed on 9 June 2009 makes no reference to substantial legal expenses that were incurred by the Branch between the end of the financial year and the date of signing the audit report. Mr Dick has stated in his letter to me dated 21 January 2010 that he was not aware of 'legal happenings referred to in your query' and that he had advised the then Branch Secretary in November 2008 that he was no longer available to audit the Branch's accounts after completion of the 2008 audit. As a result, Mr Dick was 'out of the information loop'.
451. The audit report that Mr Dick signed on 9 June 2009 contained qualification (b) that 'subsequent to the preparation of the financial reports, an Expert Report commissioned by the Branch concluded that there was no documentation substantiating some expenditure. As the Export (sic) Report does not isolate the amount for the period for the year we are unable to quantify this expenditure.' Mr Dick stated to me in his letter

Deficiencies in auditor's report for year ended 30 June 2008

dated 21 January 2010 that he was not aware of any events that materially affected the financial report at the date of signing the audit report apart from the matters referred to in the audit report with relation to the Expert Report.

452. Mr Dick was required by Australian Auditing Standard ASA 560 *Subsequent Events* to perform audit procedures designed to obtain sufficient appropriate audit evidence that all events up to the date of the auditor's report that may require adjustment of, or disclosure in, the financial report have been identified. When an auditor becomes aware of events which materially affect the financial report, the auditor is required to consider whether such events are properly accounted for and adequately disclosed in the financial report. Audit procedures to identify such events would ordinarily be performed as near as practicable to the date of the auditor's report and ordinarily include enquiring of the entity's lawyers and of the entity's management regarding subsequent events that may affect the financial report.

Contingent Liabilities

453. Note 12 to the financial report for the year ended 30 June 2008 sets out a contingent liability of the Branch for legal fees incurred by members and officers of the Branch.
454. Mr Dick has stated in his letter to me dated 21 January 2010 that note 12 was referring to 'legal proceedings of a general nature to do with the normal conduct of the union's business.' He also stated that, at the time of signing the audit report, he was not aware that the union was liable for any of the legal proceedings being instituted by members of the Branch Committee of Management in the Federal Court of Australia that were set out in my letter to the Branch Secretary, Mr Bolano, dated 24 December 2009.
455. Paragraph 86 of Australian Accounting Standard AASB 137 *Contingent Liabilities and Contingent Assets* requires the Branch to disclose in its financial report for each class of contingent liability an estimate of the financial effect of the contingent liability, an indication of uncertainties relating to the amount or timing of the liability and information regarding the possibility of any reimbursement.
456. Disclosures that are required by paragraph 86 of AASB 137 were not made by the Branch in its financial report for the year ended 30 June 2008.
457. Mr Dick was required by Australian Auditing Standard ASA 508 *Enquiry Regarding Litigation and Claims* to perform audit procedures that enabled him to obtain sufficient audit evidence regarding legal matters affecting the Branch, including obtaining written representations from all lawyers with whom management has consulted on material legal matters.
458. Mr Dick's audit file for the financial year ended 30 June 2008 does not contain any appropriate audit documentation evidencing his compliance with the requirements of ASA 508.

Understanding the Entity and its Environment

459. Paragraph 5 of Australian Auditing Standard ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* requires an auditor to 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

Deficiencies in auditor's report for year ended 30 June 2008

report whether due to fraud or error, and sufficient to design and perform further audit procedures. As a minimum, paragraph 11 requires the auditor to perform risk assessment procedures by making enquiries of those charged with governance, management and others within the entity, analytical procedures and observation and inspection. Paragraph 52 requires the auditor to obtain an understanding of internal control relevant to the audit. Paragraph 143 requires the auditor to document key elements of the understanding obtained regarding each of the aspects of the entity and its environment, the sources of information from which the understanding was obtained and the risk of assessment procedures.

460. In his letter to me dated 21 January 2010 regarding the audit report for the financial year ended 30 June 2008 Mr Dick has stated that it was his opinion that the qualifications to his audit report 'covered these matters' and that he had therefore complied with ASA 315.
461. There is no documentation in the audit file for the year ended 30 June 2008 evidencing that Mr Dick has undertaken the mandatory procedures prescribed by ASA 315.

Procedures in Response to Assessed Risks

462. Paragraph 88 of Australian Auditing Standard ASA 330 *The Auditor's Procedures in Response to Assessed Risks* requires an auditor to perform audit procedures to evaluate whether the overall presentation of the financial report is in accordance with the applicable financial reporting framework. Based on the audit procedures performed and the audit evidence obtained, paragraph 90 requires the auditor to evaluate whether the assessments of the risks of material misstatement at the assertion level remain appropriate. The auditor is required by paragraph 99 to document the overall responses to address the assessed risks of material misstatement at the financial report level and the nature, timing and extent of further audit procedures, the linkage of those procedures with the assessed risks at the assertion level, and the results of the audit procedures.
463. In his letter to me dated 21 January 2010 regarding his audit report for the financial year ended 30 June 2008 Mr Dick has stated that it was his opinion that the qualifications to his audit report 'covered these matters' and that he had therefore complied with ASA 330.
464. There is no documentation in the audit file for the year ended 30 June 2008 evidencing that Mr Dick has undertaken the mandatory procedures prescribed by ASA 330.

Audit Documentation

465. Australian Auditing Standard ASA 230 *Audit Documentation* requires an auditor to prepare, on a timely basis, audit documentation that provides a sufficient and appropriate record of the basis for the auditor's report and evidence that the audit was performed in accordance with Auditing Standards and applicable legal and regulatory requirements.
466. Mr Dick's audit files for the financial year ended 30 June 2008 did not contain any appropriate audit documentation in accordance with the requirements of ASA 230 to support the audit opinion rendered in the audit report or to evidence that the audit was

performed in accordance with Australian Auditing Standards and the applicable regulatory requirements set out in the RAO Schedule.

Modifications to the Auditor's Report

467. Qualification (b) to Mr Dick's audit report for the financial year ended 30 June 2008 concerned lack of documentation substantiating some expenditure. The brief description in the qualification that there was 'no documentation substantiating some expenditure' belies the extent of the weaknesses in internal controls that were found by the Pitcher Partners Report (that is, the 'Expert Report'), which sets out failures including:
- a. Authorisation procedures in general – the Branch does not raise written purchase orders and no formal quote is kept on file or reconciled to delivery dockets or invoices; no authorisation documentation is created or kept as evidence of approval of any expenditure; expense forms and receipts for reimbursement are often not completed or only partially completed; there are no formal approval processes for travel and accommodation expenses; on numerous occasions credit card payments were made without appropriate documentation being completed and in the absence of supporting invoices; payments by cheque and electronic funds transfer are not formally approved;
 - b. Urban Giftware – no purchase orders were raised, no delivery dockets were kept and no goods inwards book was kept;
 - c. Payment of Additional Salary to Jeff Jackson – no evidence of Mr Jackson's salary as set by the Branch Committee of Management was available; no documentation exists to support the instruction to Ms Wills to make the 3 payments of \$5,000 each;
 - d. Leave Taken by Jeff Jackson – there was a variance of 30 days of leave between entries in the leave register and the number of days of leave that was paid out to Mr Jackson; there were no formal leave forms completed by Mr Jackson;
 - e. Mr Hudson's credit card – Mr Hudson was reimbursed for purchases on his credit card where no substantiating documentation was found;
 - f. Ms Wills' credit card – there was no evidence of authorisation of expenses on Ms Wills' credit card;
 - g. Mr Jackson's credit card – Mr Jackson was reimbursed for purchases on his credit card where there was no substantiating documentation or evidence of authorisation; and
 - h. Travel Expenses – authorisation of travel could not be confirmed as purchase orders are not raised and no other documentary evidence was kept.
468. Paragraph 30 of Australian Auditing Standard ASA 701 *Modifications to the Auditor's Report* provides guidance that a limitation upon the scope of an auditor's report may be imposed by circumstances such as the entity's accounting records being inadequate. Paragraph 21 of ASA 701 provides that such circumstances could lead to a qualified opinion or a disclaimer of opinion. Paragraph 23 requires that a disclaimer of opinion be expressed when the possible effect of a limitation on scope is so material

Deficiencies in auditor's report for year ended 30 June 2008

- and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and accordingly is unable to express an opinion on the financial report.
469. Mr Dick has stated in his letter to me dated 21 January 2010 that it was his intention to comply with ASA 701 and that any failure to comply was an unintentional error on his part.
470. Weaknesses in the Branch's internal controls during the year ended 30 June 2008 as described in qualification (b) to Mr Dick's audit report and as set out in the Pitcher Partners Report imposed such a limitation upon the scope of the audit report as to require a disclaimer of opinion to be issued under paragraph 23 of ASA 701 rather than a qualification of opinion under paragraph 22 of ASA 701.
471. Mr Dick's audit report for the year ended 30 June 2008 also contained qualification (a) regarding related party transactions between the Branch and Urban Giftware. This Report, however, evidences numerous other departures by the Branch from Australian Accounting Standards in preparing the financial report for the year ended 30 June 2008. Those findings concern failure by the Branch to make appropriate disclosures concerning related party transactions with respect to legal fees, contingent liabilities, going concern, accounting policies, presentation of information, Cash Flow Statement, property, plant and equipment and leases as well as failure to provide a Statement of Changes in Equity.
472. Paragraph 21 of ASA 701 provides that an auditor may not be able to express an unqualified opinion where there is a disagreement with those charged with governance regarding the adequacy of the financial report disclosures. Such circumstances could lead to a qualified opinion or an adverse opinion. Paragraph 22 requires that a qualified opinion be expressed when the auditor concludes that an unqualified opinion cannot be expressed but that the effect of any disagreement with those charged with governance is not so material and pervasive as to require an adverse opinion or disclaimer of opinion. Paragraph 23 requires that a disclaimer of opinion be expressed when the possible effect of a limitation on scope is so material and pervasive that the auditor has not been able to obtain sufficient appropriate audit evidence and accordingly is unable to express an opinion on the financial report. Paragraph 24 of ASA 701 requires an adverse opinion to be expressed when the effect of a disagreement is so material and pervasive to the financial report that the auditor concludes that a qualification of the auditor's report is not adequate to disclose the misleading or incomplete nature of the financial report.
473. The inadequacy of disclosures in the financial report that was prepared by the Branch for the financial year ended 30 June 2008 was so material and pervasive as to require an auditor to express, at the very least, a disclaimer of opinion under paragraph 23 of ASA 701 and possibly an adverse opinion under paragraph 24 of ASA 701.

AUDITOR'S REPORT FOR YEAR ENDED 30 JUNE 2009

474. The financial report for the year ended 30 June 2009 contained an Audit Report that was signed by Mr Michael B Shulman of Stannards Accountants and Advisors on 16 November 2009. The audit opinion stated as follows:

AUDIT OPINION

In our opinion:-

- i. there were kept by the Branch in respect of the year satisfactory accounting records detailing the sources and nature of the income (including income from members) and the nature and purposes of the expenditure of the Branch (except as set out below in the "Qualification Paragraphs") (a) and (b));
- ii. the general purpose financial report is prepared under the historical cost convention and is presented fairly in accordance with applicable Australian Accounting Standards and the requirements imposed by Part 3 of Chapter 8 of Schedule 1 of the Workplace Relations Act 1996. Except for the comments contained in the "Qualifications Paragraph" (c), the financial report is properly drawn up so as to give a true and fair view of:
 - (a) the financial affairs of the Branch as at 30 June, 2009;
 - (b) the income and expenditure and net result of the Branch for the period ended on that date; and
- iii. in relation to recovery of wages activity, there has been no recovery of wages activity during the year.

Qualifications

- a. Subsequent to the completion of the 2008 financial report, an Expert Report commissioned by the Branch concluded that related party transactions had occurred. These transactions were quantified by the Expert Report as amounting to \$38,412 (2009 financial year) and \$108,936 (2008 financial year). We cannot confirm the veracity of these transactions (ie. whether they were appropriately authorised and whether they were commercial in nature).
- b. Subsequent to the completion of the 2008 financial report, an Expert Report commissioned by the Branch concluded that there was no documentation substantiating some expenditure (in particular, certain wage payments to staff, expense reimbursements to staff and travel reimbursements). We cannot quantify the total, nor the veracity of such expenditure in 2008 and 2009, given the absence of appropriate internal controls operating at the Branch over those years.
- c. We were appointed auditors of the Branch for the 2009 financial year. We cannot confirm the veracity of the financial position report by the Branch as at 30 June, 2008. To the extent that the financial position was misstated at 30 June 2008, the financial performance (surplus/(deficit)) of the Branch would be misstated in the 2009 financial year.

475. On 12 March 2010 I wrote to Mr Shulman seeking his comments or explanation regarding various matters regarding the financial report for the year ended 30 June 2009. A response was sought from Mr Shulman regarding the following:

1. Mr Shulman was asked to explain his compliance with Australian Auditing Standard ASA 570 *Going Concern*. There are no disclosures in the financial report in respect of going concern, although it discloses a loss for the year and the balance sheet indicates that the current liabilities are significantly in excess of current assets. While not forming part of the GPFR, the operating report appears to indicate that uncertainties existed in respect of the application of the going concern principle, especially with respect to the loss of \$1,306,350, significant legal fees incurred by the organisation and continued abnormally high legal fees for the period to the appointment of the Administrator;
2. Mr Shulman was asked to explain his compliance with Australian Auditing Standard ASA 550 *Related Parties* in light of the three matters raised with the Branch in my letter of 7 January 2010, namely:
 - i. transactions to the value of \$34,812 with 'an entity related to Ms P Fegan' that was disclosed in Note 12 of the GPFR. The report provides no information other than the value of those transactions or the nature of the related party relationship;
 - ii. there is no disclosure in the GPFR of any related party transactions regarding legal fees incurred by members of the Branch Committee of Management that are described in Note 10 and that are indemnified by the Branch;
 - iii. there is no disclosure of any transaction or outstanding balance regarding \$15,000 that Mr Jackson had agreed to repay to the Branch in a Deed of Agreement that was executed on 30 June 2009 between the HSU and various members of the Branch Committee of Management.
3. Mr Shulman was asked to explain his compliance with Australian Auditing Standard ASA 508 *Enquiries Regarding Litigation and Claims*. While Note 10 identifies a contingent liability with respect to legal proceedings, there is no description of the nature of each class of contingent liability or an estimate of any financial effect. Given the extent of legal proceedings with which the Branch is involved, such disclosures could reasonably have been expected.
4. Mr Shulman was asked to explain his compliance with Australian Auditing Standard ASA 560 *Subsequent Events*. No subsequent events are disclosed in the financial report, yet the Operating Report mentions continued abnormally high legal expenditure. There was no disclosure on the face of, or in the notes to, the financial report of the appointment of an Administrator.
5. Mr Shulman was asked to explain his compliance with Australian Auditing Standard ASA 701 *Modifications to the Auditor's Report*. The qualifications do not appear to fully comply with the requirements of ASA 701. For example, the first qualification did not specify that the Branch had breached AASB 124. The second and third qualification paragraphs refer to a lack of reliable information. In such circumstances, an auditor would often consider issuing a qualified audit report based upon a 'limitation of scope' or a 'disclaimer' type opinion and it is not clear why Mr Shulman was able to determine that a limitation of scope or a disclaimer was unnecessary.
6. Mr Shulman was asked to explain his compliance with Australian Auditing Standards ASA 315 *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement* and ASA 330 – *The Auditor's Procedures in Response to*

Assessed Risks in light of the findings of the Pitcher Partners Report regarding lack of substantiating documentation.

476. A letter in response was received from Mr Shulman on 6 April 2010. In that letter Mr Shulman states:

1. He performed risk assessment procedures to determine whether any event or conditions existed casting doubt about the HSU's ability to continue as a going concern for the foreseeable future, in particular its capacity to realise its assets and pay its debts in the normal course of business. The loss excluding legal fees was \$0.03m. Despite that loss, HSU had a positive net asset position at 30 June 2009 of \$4.42m, generated positive cashflows and had in the past been profitable. Up to the date of the audit it continued to pay its debts as and when they fell due. Stannards noted during their audit that for the four months to 31 October 2009 HSU generated a small trading loss which accorded with budget, HSU was in the process of renegotiating its finances with the National Australia Bank based on the market value of its property to enhance operating cashflows and management of the Branch was to return to the employees and Committee of Management of the HSU. On this basis it was concluded that there was sufficient appropriate audit evidence to support 'Management's' use of the going concern assumption. Mr Shulman believed that he had complied with ASA 570 in that he obtained the necessary audit evidence for his conclusions, which also included evaluating cash flows and operating budget, obtaining representations from the Administrator and from legal advisors. It was also noted that the financial report discloses clearly the loss of HSU, the appointment of the Administrator and the abnormality of legal fees. While acknowledging that disclosure of these matters in a specific note may have been 'better' disclosure, they were all disclosed clearly and separately in the financial report. "...we reasonably believe that at the date of our audit report in respect of 'going concern' assumption and that the issue of an unmodified audit report in respect of 'going concern' complied with ASA570. The financial strength of HSU and the Administrator's actions at the date of our audit report, precluded (in Stannards' view) any further disclosure being necessary in HSU's financial report (albeit, they understand that 'going concern' analysis and disclosure thereto is subjective in nature)."
2. With respect to related parties, procedures included discussions with the Administrator, management and legal advisors of HSU, review of accounting documentation of the organisation, review of the Pitcher Partners Report and review of minutes of the Committee of Management. The financial report discloses the names of all Committee members and details of all related parties transactions of which Mr Schulman became aware. It was specifically noted that Ms Teagan (sic) is disclosed in the operating report as a committee member and the quantum of transactions in which she had an interest is set out in the financial report. The audit report noted that Stannards could not confirm whether the transactions were authorised and/or commercial in nature. The disclosure regarding legal proceedings in Note 10 was to their knowledge accurate and further details would have been provided had they been known at the date of the report. The nature of legal proceedings was known by all relevant parties and professional advice was sought in relation to necessary disclosures. The \$15,000 owing by Mr Jackson was not recorded as a debit balance as at 30 June 2009. Disclosures were reviewed by the Administrator and HSU management. Mr Shulman was not aware of the Deed of

- Agreement and, had he been, it would have been disclosed in Note 12. Nevertheless, the qualification in paragraph (b) does in fact cover this and other matters that could not be identified from the audit. On this basis, ASA 550 has been complied with and it is not believed that there was any intentional non-disclosure of parties or transactions by the Administrator or management.
3. With respect to litigation and claims, all known legal matters were discussed with the Administrator and management and Stannards conducted a detailed review of legal invoices, correspondence and representations of HSU lawyers. All legal fees owing at the reporting date were accrued for by HSU. At the date of the financial report, the financial impact of contingencies disclosed in Note 10 could not be accurately assessed and any estimate of the same may in fact have been misleading. Given the complexity of counterclaims, disclosure of such matters collectively (as set out in Note 10) was considered most appropriate. All possible information regarding litigation was incorporated into the financial report. Operating performance of the organisation was also qualified in respect of the 2009 year.
 4. With respect to subsequent events, on the basis that the committee of management statement refers to the appointment of the Administrator, as does the operating report, disclosure of this event was sufficient. It was acknowledged that a separate disclosure in a note would have been 'better' disclosure.
 5. With respect to modifications to the auditor's report, paragraph (a) of the qualification is satisfactory given its reference to related party transactions. It was agreed that reference to AASB 124 would have been better disclosure. The key reason for the qualification was that Stannards could not confirm the commerciality and authorisation of the transactions, which was clearly disclosed. To their knowledge, the Pitcher Partners Report was made available to the committee of management and its contents was communicated to HSU members. Qualification paragraphs (b) and (c) represent 'scope limitations', hence an 'exception' opinion was issued in accordance with paragraph 22 of ASA 701.
 6. With respect to the Pitcher Partners Report, qualification paragraph (a) made reference to being unable to confirm the veracity of certain transactions. Qualification paragraph (b) made reference to Stannards' inability to quantify and confirm veracity of classes of expenditure. Again, at qualification paragraph (c) a 'limitation of scope' paragraph was issued. Risk assessment procedures undertaken as part of the audit including obtaining and documenting the HSU control environment including its internal controls (including staff competence, management philosophies, human resource procedures and management participation in financial reporting), assessing governance and management of the entity, assessing (through observation and enquiry) the effective operation of the internal control environment; and assessing the risks of material misstatement. Factors considered also included the industry and regulatory environment, selection and application of accounting policies by HSU, objectives and business strategies (as promulgated by the Administrator), classes of transactions, communication and enquiries with the Administrator and management, assessing the risks of fraud, assessment of transaction complexity, and review of externally sourced information (eg. from legal advisors). The Pitcher Partners Report (which was re-tested by Stannards) confirmed an inadequate control environment (hence Stannards increased the scope of substantive verification work and utilised

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their most senior staff to minimise 'non-detection' of misstatement at the 'assertion' level). In light of the qualification paragraphs being 'limitation of scope' paragraphs and their adoption of ASA 315 and ASA 330, it is reasonably believed that Stannards complied with both pronouncements in conducting the audit. A management letter was also issued to HSU.

Observations

477. I have referred earlier to the difficult circumstances in which Mr Vines found himself when he was appointed as Administrator of the Branch on 17 August 2009. Those circumstances arose from serious failures in the proper administration of the Branch by the Committee of Management due to antagonism between two opposing 'camps' within the Committee. This resulted in serious systemic weaknesses in processes and internal controls and a failure by the Branch Committee of Management to scrutinise or authorise expenditure by the Branch over a substantial period of time. FWA's records show that Mr Ian Dick had been the Branch auditor since at least October 2001 (when he audited the Branch's financial report for the year ended 30 June 2001) and it was under his watch that these weaknesses were allowed to develop undetected and unchecked.
478. When he was appointed as the new Branch Auditor for the financial year ended 30 June 2009, Mr Shulman was presented with the task of auditing the accounts of a reporting unit that had serious weaknesses in its administrative procedures and internal financial controls that had been allowed to develop over a long period of time.
479. While I have corresponded with Mr Shulman about the financial accounts (including the auditor's report) for the year ended 30 June 2009, I am of the view that despite Mr Shulman's acknowledgement that 'better' disclosure could have been made in the 2009 financial report, compliance with the Australian Auditing Standards was generally met.
480. In the circumstances, I make no adverse findings against Mr Shulman regarding his audit of the financial report for the year ended 30 June 2009.

ACTION FOLLOWING AN INVESTIGATION

Notification to reporting unit under subsection 336(1)

481. Actions that may or must be taken following an investigation are set out in section 336 of the Act:

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- (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

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- (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.
 - (2) In addition to taking action under subsection (1), the General Manager 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 General Manager may also make a determination in accordance with section 247 (determination of reporting units).
- (3) The General Manager 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 General Manager, make such orders as the Court thinks fit to ensure that the reporting unit complies with subsection (4).

482. From 1 July 2009, I have conducted both the Inquiry and the later Investigation under a delegation by the General Manager of FWA of powers and functions conferred by sections 330, 331, 335 and subsection 336(1) of the Act. Those powers were delegated by the General Manager under subsection 343A(1) of the Act.

483. Subsection 343A(2) of the Act provides that certain of the General Manager's functions or powers cannot be delegated. Included in the list of non-delegable powers are those set out in subsection 336(2) of the Act. As a result, it is the General Manager in whom power resides to issue a notice to the reporting unit that it take specified action, to apply to the Federal Court for an order regarding breach of civil penalty provisions or to refer the matter to the Director of Public Prosecutions for action in relation to possible criminal offences.

484. My role under subsection 336(1) of the Act, as delegate of the General Manager, is confined to notifying the reporting unit if, at the end of the investigation, I am satisfied that the reporting unit 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;

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485. Nevertheless, I suggest that the reporting unit be notified of the contraventions that I have found against it at the same time as you may wish to notify the other persons against whom I have found have committed contraventions. Accordingly, I provide you with notices of contravention in respect of each person that I consider has committed a contravention. A copy of each Notice is included as Attachments to this Report.

Recommendations to General Manager

486. Even though the power to act under subsection 336(2) of the Act resides with the General Manager, I am mindful that, having conducted the Investigation, I have intimate knowledge of circumstances surrounding the contraventions that are outlined in this Report and in Attachment A. Given that circumstance, I am making recommendations to the Acting General Manager regarding action she may wish to consider under subsection 336(2), while recognising that it is the Acting General Manager who may take action under that subsection and not her delegate.

Notice to the reporting unit requiring rectification

487. Paragraph 336(2)(a) of the 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. In my view, however, little practical purpose would be served in requiring the reporting unit to take action in rectification for the simple reason that the reporting unit ceased to exist when the Branch merged with the New South Wales Branch of the HSU to form HSU East Branch on 24 May 2010.
488. The merger of the Branch with the New South Wales Branch was the conclusion of a number of steps that were taken by the Health Services Union, at its own initiative, in seeking to address the dysfunction within the Branch that was identified by his Honour Justice Tracey in his decision of 4 August 2009.
489. As His Honour's decision stated, the application under section 323 of the Act to reconstitute the Branch was granted on 4 August 2009 following attempts by the National Office of the HSU to mediate the dispute within the Branch. Following the decision, Mr Vines assumed the position of Administrator of the Branch on 17 August 2009 and all positions that were previously held by members of the Branch Committee of Management were vacated. Fresh elections were conducted by the Australian Electoral Commission and, on 9 December 2009, election results for new members of the Branch Committee of Management were declared.
490. Just over five months later, on 24 May 2010, the Branch ceased to exist as a separate reporting unit under the Act.
491. Nevertheless, in view of the following, I intend to make several recommendations in relation to the HSU East Branch.
492. On 24 December 2010 the HSU East Branch lodged with FWA some of the documents that make up a financial report of the Victoria No.1 Branch for the period from 1 July 2009 to 23 May 2010. HSU East Branch failed, however, to lodge a committee of management statement, operating report or section 268 certificate for the Victoria No.1 Branch at the time other documents were lodged on 24 December 2010. The outstanding documents were subsequently lodged with FWA on 10 February 2011.

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Examination of the financial report reveals continuing serious failures to comply with the legislative requirements regulating registered organisations, as now set out in Part 3 of Chapter 8 of the *Fair Work (Registered Organisations) Act 2009*. In a letter dated 15 April 2011, HSU East Branch was required by FWA to prepare another financial report for the Victoria No.1 Branch for the year ended 30 June 2010 due to deficiencies in that report including:

- a. failure to make adequate disclosure about related party transactions in accordance with the requirements of Australian Accounting Standard AASB 124; and
- b. failure by the auditor to consider the signed committee of management statement before he signed his auditor's report, in contravention of the requirements under subsection 257(8) of the *Fair Work (Registered Organisations) Act 2009* and paragraph 54 of Australian Auditing Standard ASA 700.

493. Further deficiencies in the financial report include:

- a. financial documents were not circulated to members within 5 months of the end of financial year (as required by paragraph 265(5)(b));
- b. the operating report (which is a constituent part of the 'full report') was not presented to the 'second' meeting of the committee of management in contravention of section 266; and
- c. financial documents were not lodged with FWA within 14 days of the second meeting, in contravention of section 268.

494. It is of serious concern that, despite the scrutiny to which the Branch's financial reporting has been exposed as a result of the Inquiry and subsequent Investigation, there appears to be a continuing failure to understand what constitutes proper compliance by a reporting unit with the regulatory framework that is set out in Part 3 of Chapter 8 of the *Fair Work (Registered Organisations) Act 2009*. I therefore recommend to the General Manager that those responsible for financial reporting within the HSU East Branch, including employees and senior officials, be encouraged to undertake a formal training program with an accounting firm knowledgeable of the reporting requirements of registered organisations regarding their compliance with the regulatory framework.

495. Finally, I recommend the HSU East Branch be advised that it consider taking steps to recoup the cost of travel and accommodation that was incurred by Mr Jackson and Mr Hudson in relation to their attendance at Mr Morgan's wedding.

Contravention of civil penalty provisions

496. Paragraph 336(2)(b) of the Act allows the General Manager to apply to the Federal Court for an order under Part 2 of Chapter 10 regarding contravention of civil penalty provisions.

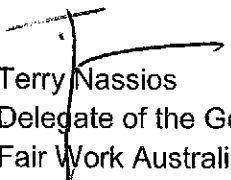
497. This Report has considered a number of occasions on which I have found that there were contraventions by the reporting unit and various officials of civil penalty provisions.

Action following an investigation

498. On the whole, these contraventions are indicative of a reporting unit which simply did not pay sufficient heed of its financial obligations to its members. It was a reporting unit which paid lip service to the proper processes the reasonable person would expect of a group of persons responsible for the upkeep of Branch monies. It was a reporting unit in which its processes and procedures were characterised by their informality, lack of supporting documentation and lack of transparency. In short, it was a reporting unit which gave the unjustified appearance of being properly managed until the internal fallout could no longer disguise the lack of substance behind the façade.
499. The actions of the officials of the reporting unit have been well and truly ventilated in the public arena – initially during the tumultuous meetings of members following the breakdown in relationships, during the subsequent court proceedings and then the resultant elections for the branch. The level of public exposure has been such that, of itself, it ought to act as a deterrence to both the individuals themselves and all other reporting units of engaging in inappropriate financial behavior.
500. In view of the above and given that any financial advantage Mr Jackson may have improperly gained in relation to his salary claim has been repaid, I have reluctantly come to the conclusion that it would not be in the public interest to take further action against the reporting unit or its officials in relation to the various contraventions I have found.
501. In the case of Mr Dick, I have made numerous findings that Mr Dick has contravened Part 3 of Chapter 8 (notably s257(8)) insofar as an auditor is required to produce an auditor's report in accordance with Australian Auditing Standards. None of these contraventions are themselves a contravention of a civil penalty provision of the RAO Schedule.
502. Subsection 257(1) of the RAO Schedule, which is a civil penalty provision, states that an auditor must not, in an auditor's report, make a statement if the auditor knows, or is reckless as to whether, the statement is false or misleading. Mr Dick's failures relate to the inadequate production of an auditor's report in accordance with the Australian Auditing Standards. Despite his actions as an auditor falling short of what is required of a competent auditor, I do not consider that Mr Dick conducted his audit so recklessly such that his auditor's report contravened a civil penalty provision.
503. Nevertheless, I recommend to the Acting General Manager that she refer my findings regarding Mr Dick's contraventions of the RAO Schedule to the professional standards board for any action such a body deems appropriate.

Referral to the Director of Public Prosecutions

504. I am not satisfied that any grounds exist to refer any matter involving any of the officials to the Director of Public Prosecutions.


Terry Nassios
Delegate of the General Manager
Fair Work Australia

23 December 2011