



Memo

To: Bernadette O'Neill, General Manager

Date: 7 October 2013

From: Chris Enright, Director, Regulatory Compliance Branch

Email:

Phone No:

Subject: FR2013/107 - Inquiry under section 330 - CEPU, Electrical Division, NSW Branch

Purpose

1. The purpose of this Memorandum is to advise you about the conduct and outcome of an inquiry s 330 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).
2. I set out below the scope and subsequent findings of an inquiry conducted into the disclosure of trustees of superannuation entities in the operating reports of the Communications, Electrical, Plumbing Union (CEPU), Electrical Division, NSW Branch between 2004 and 2011. The inquiry was commenced pursuant to s 330 of the RO Act by the then Acting Director Regulatory Compliance Branch of the Fair Work Commission (FWC) Ms Ailsa Carruthers (the former delegate) on 11 February 2013, and has now been concluded.

Grounds for inquiry

3. The grounds for the inquiry emerged from a report appearing in "Workforce" on 8 February 2013 (**Annexure 1**) that the President of the CEPU Electrical Division, Victorian Branch (the Victorian Branch) Mr Gary Carruthers had commenced Federal Court action against two officers of the CEPU, Electrical Division, NSW Branch (the NSW Branch). The Federal Court action related to superannuation and industry board director fees allegedly received by two officers of the NSW Branch who were nominated in the report as follows:

- Assistant Secretary Paul Sinclair; and
- Assistant Secretary Neville Betts.

4. The allegation contained in the "Workforce" report was that Mr Paul Sinclair and Mr Neville Betts had received significant superannuation and industry board director fees which according to Mr Carruthers of the Victorian Branch, should have been paid to the CEPU. This allegation however, was not the basis of the inquiry conducted by the FWC which I now set out below.

Preliminary Analysis and Scope of Inquiry

5. A preliminary analysis was conducted of the "Workforce" article dated 8 February 2013 and relevant CEPU operating reports between 2004 and 2011. On the basis of that preliminary analysis, the former delegate concluded that an inquiry should be conducted to determine an appropriate level of compliance and that its scope was limited to:

- (a) whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act; and
 - (b) why disclosures (frequently of the same Board appointees) appeared in operating reports for some years but not for others.
6. The relevant provision of the RO Act is as follows:

‘ 254 - Reporting unit to prepare operating report

254(2) *The operating report must:*

- (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*

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.

Correspondence

7. Following the preliminary analysis of financial returns lodged by the NSW Branch since 2004, and on 11 February 2013, the former delegate wrote to the current Secretary of the NSW Branch, Mr Steve Butler, requesting his advice as to the basis for the various disclosures and non-disclosures in the operating reports over the relevant period.

8. In a formal written response dated 26 March 2013 (**Annexure 2**), Mr Butler summarised the NSW Branch response by providing that;

‘ I can categorically state in summary that the Union has made all disclosures required to be made under the relevant legislative provisions. Further, the actual disclosures made in operational reports filed by the Union were made in error and not required to be made under the relevant legislative provisions. . . . ; and

I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the New South Wales Branch of the Electrical Trades Union of Australia, which is not a registered organisation for the purposes of the RO Act.’

9. Mr Butler specifically advised that in relation to Mr Paul Sinclair, disclosure of him as a superannuation trustee which was reflected in the operating reports between 2004 and 2011 was in error and therefore not a disclosure required under s 254(2)(d). According to Mr Butler, the error was that Mr Sinclair held a position as a superannuation trustee based on his position ‘as an officer of the New South Wales Branch of the Electrical Trades Union of Australia, which is not a registered organisation for the purposes of the RO Act’.

10. In addition and with respect to Mr Neville Betts, Mr Butler advised that the non-disclosure of him as a superannuation trustee was not an error because he (Mr Betts) had not held or been appointed to any superannuation boards required to be reported to meet the requirements of s 254(2)(d).

11. Mr Butler responded that in relation to the other persons named as superannuation trustees in the operating reports between 2004 and 2011, such disclosures were also errors because those persons had each held positions as officers of the state-registered Electrical Trades Union of Australia, New South Wales (the ETU NSW Branch) and therefore they were not disclosures required under s 254(2)(d).¹

12. Mr Butler characterised the disclosures that had been made as going beyond the requirements of the relevant Acts.

Further Information Sought

13. On 15 April 2013, the former delegate wrote to Mr Butler requesting supporting evidence that would confirm his advice that the named officers had been appointed to superannuation boards as representatives of the ETU NSW.

14. On 29 April 2013, Mr Butler provided copies of correspondence from the various boards identified in the financial reports over the relevant period from which a table of evidence has been compiled (see **Table 1. Evidence Matrix**). The range of correspondence provided by Mr Butler confirmed, *inter alia*, that:

- the basis for the appointment(s) of Mr Paul Sinclair was that he was a member of the ETU NSW;
- Mr Neville Betts was not at any relevant time appointed to any of the boards referred to in the operating reports for 2004 to 2011 inclusive;
- the basis for the appointment(s) of other persons referred to in the financial reports as having been appointed to superannuation boards was that they were members of the ETU NSW, and, in the case of the appointments of one of those persons, that he was a member of the ETU NSW or a director of Energy Industries Superannuation Scheme Pty Ltd.

15. On 15 May 2013, the former delegate wrote to Mr Butler seeking further information concerning the basis upon which one of the named persons, a Mr Warwick Tomlins, had held a position as trustee or director of a company that was a trustee, of FuturePlus Financial Services Pty Limited ('FPFS'), one of the entities referred to in the operating reports over the relevant period, in 2004.

16. In her letter, the former delegate also sought clarification in relation to a letter by Mr Alex Hutchinson, the Chief Executive Officer of Energy Industries Superannuation Scheme Pty Limited ('EISS'), one of the superannuation entities referred to in the operating reports. In that letter, Mr Hutchinson had stated that the ETU NSW had never been a shareholder of FPFS and that it did not have an entitlement to appoint members of the FPFS Board. It was not clear whether this was consistent with Mr Butler's previous advice that the named persons had held positions as directors as officers of the ETU NSW.

17. On 28 May 2013, Mr Butler provided information relating to Mr Tomlins' position with FPFS and also further correspondence from Mr Hutchinson and a Mr Elvio Bechelli, Chief Financial Officer of FPFS, relating to the operational character of FPFS.

18. The correspondence made clear that FPFS was not a superannuation entity or a company that was a trustee of a superannuation entity, and that the basis for appointments to its Board did not include the criterion of membership of a federally registered organisation. Moreover, Mr Butler's advice and the correspondence clarified that the appointment to FPFS was not by, or on the basis of being an officer of, ETU NSW.

Analysis & Table 1. Evidence Matrix

19. An internal FWC review of the record of financial returns lodged by the Branch between 2004 and 2011 demonstrated that:

- (a) in relation to Mr Paul Sinclair, disclosures had been made that he had been a superannuation trustee or superannuation board director;
- (b) in relation to Mr Neville Betts, there had been no disclosures that he had been a superannuation board director;
- (c) in relation to the other persons nominated in documents provided in response to this inquiry (for the full list see **Table 1. Evidence Matrix**), disclosures had been made that they had been superannuation trustees or superannuation board directors.

20. Analysis of the relevant financial returns from 2004 to 2011 demonstrated that the disclosures of officers as superannuation trustees or superannuation board directors had not been consistent throughout the reporting period. (each of those officers are individually referred to in **Table 1. Evidence Matrix**).

21. These demonstrable inconsistencies had the *prima facie* potential to corroborate an implied allegation contained within the “Workforce” report of 8 February 2013 that a potential breach of s 254(2) had occurred.

22. However, the further explanatory materials sought and obtained by the former delegate provided the basis upon which findings and conclusions could reasonably be made.

23. In particular, documentary evidence has identified the following list of current and former officers of the CEPU, Electrical Division, NSW Branch who had been appointed as superannuation trustees or superannuation board directors during the reporting period:

- Mr Paul Sinclair
- Mr Bernard Riordan
- Mr Warwick Tomlins
- Mr Michael Doust
- Mr Stephen Butler
- Mr Russell Wilson
- Mr John Thornton

Note: No evidence or other material was identified to indicate that Mr Neville Betts held any relevant Board position while an RO office holder.

24. The Table of Evidence (**Table 1. Evidence Matrix**) sets out the following:

- (i) each individual officer referred to in paragraph 23. (and also includes Mr Neville Betts who did not hold any relevant Board positions while an RO office holder);
- (ii) the potentially inculpatory evidence i.e the reason the person is included in the report;
- (iii) the available exculpatory evidence (material tending to demonstrate that there had not been any breach of the reporting requirements); and
- (v) the conclusion drawn from analysis of all of the available material.

Legal Proceedings

25. I indicated in paragraph 3. above that the grounds for this inquiry emerged from a “Workforce” report on 8 February 2013 referring to the commencement of legal proceedings by the President of the Victorian Branch of the CEPU Electrical Division, Mr Gary Carruthers,

26. As part of the analysis conducted and referred to in paragraph 24. above on 22 July 2013 I wrote to Mr Giri Sivaraman of Maurice Blackburn Lawyers (acting for Mr Carruthers in the proceedings) inviting Mr Carruthers to make further submissions or provide further material which might assist the inquiry. In addition to formally writing to Mr Sivaraman, I provided a copy of the letter by email and subsequently telephoned Mr Sivaraman’s office on a number of occasions requesting a response. Mr Sivaraman elected not to respond to the FWC nor was any response received from or on behalf of Mr Carruthers.

27. An examination of the file details available at the Federal Court of Australia, NSW Registry identify that the application by Mr Carruthers was filed on 5 February 2013 and closed by discontinuance on 28 March 2013. There were no substantive proceedings conducted and therefore no transcripts available.

28. In circumstances that the “Workforce” article (at **Annexure 1**) referred to the commencement of other potentially relevant proceedings, an examination of the file details available at the Federal Court of Australia was conducted. That examination identified that on 8 December 2011 Mr Dean Mighell of the Victorian Branch of the ETU commenced proceedings against Mr Bernard Riordan, Mr Paul Sinclair and Mr Neville Betts relating to superannuation and industry board director fees allegedly received by those officers of the NSW Branch of the ETU.

29. The Federal Court register identified that without substantive hearing, the matter was finalised by discontinuance on 23 February 2012 and therefore no transcripts are available.

30. It is important to note that the purpose of the proceedings referred to above was not consistent with the purpose of this FWC inquiry. As I have previously indicated, the purpose of

this inquiry was to establish whether there had been demonstrable compliance with the requisite regulatory reporting requirements while the Federal Court proceedings related to an entirely different issue.

Conclusions

31. Having regard to the scope of this inquiry as indicated in paragraph 5. above and on the basis of all of the available facts and circumstances, I have concluded the following:

- (a) whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act;

The inquiry has not identified any failure to make disclosures required either by s 254 (2)(d) or more broadly by the Act and on that basis, no breach of the Act has been substantiated.

- (b) why disclosures (frequently of the same Board appointees) appeared in operating reports for some years but not for others.

The inquiry has determined that the information which the Branch disclosed in various operating reports during the period 2004 to 2011 was disclosed in error and was therefore not required to have been disclosed.ⁱⁱ No regulatory breach has been substantiated although the requirement for remedial action is addressed below.

Remedial Action

32. In his letter of 26 March 2013, Mr Butler undertook, on behalf of the Branch and in response to the former delegate's request, to ensure that future disclosures made under s 254(2)(d) would be strictly in accordance with legislative requirements to ensure future operating reports would not provide potentially misleading information.

33. While Mr Butler's undertaking is laudable and seeks to enhance compliance on behalf of the CEPU, any further potential for ambiguity has been subsequently addressed by the inclusion of additional reporting requirements contained within new financial reporting guidelines for the purposes of s 253 of the RO Act issued on 26 June 2013.

34. These reporting guidelines apply to each financial year of a reporting unit that ends on or after 30 June 2013 and in particular, provide the following:

' Operating report

36. *A reporting unit must disclose in its operating report:*

- (a) *the name of each officer and/or employee of the reporting unit who is either:*
- (i) *a trustee of a superannuation scheme 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*
- (b) *whether, with respect to each such officer and/or employee, the officer or employee holds the positions set out in paragraph a) because a criterion for being a trustee or director is that the officer or employee is an officer or employee of an organisation.*

37. *Unless already disclosed under paragraph 36. a reporting unit must disclose in its operating report the name of each officer and/or employee of the reporting unit who is a director of a company or a member of a board and, with respect to each such officer and/or employee:*

- (a) *the name of the company or board;*
- (b) *the principal activities of the company or board; and*

- (c) *whether the officer or employee holds the position because they are an officer or employee of the reporting unit or were nominated for the position by the reporting unit or by a peak council.*'

Written Advice to Mr Stephen Butler

35. Having reached the conclusions I have referred to in paragraph 31. above, on 29 August 2013 I wrote to the Secretary of the Electrical Division, NSW Branch of the CEPU, Mr Stephen Butler, advising him about those conclusions.

36. I specifically referred Mr Butler to the new reporting requirements referred to above in paragraph 34. I further advised Mr Butler that I proposed to report my findings to you and that subject to any further requirements you may have in relation to the matter, I proposed to publish the outcome of the inquiry on the web site of the Fair Work Commission.

Inquiry Finalisation

37. As I indicated in paragraph 1. above, the purpose of this Memorandum is to advise you about the conduct and outcome of this inquiry. Subject to any further requirements you may have, I propose to:

- (a) Arrange for the publishing of the outcome of this inquiry on the Commission website;
- (b) Formally close the inquiry; and
- (c) Take no further action.

Chris Enright
Director, Regulatory Compliance Branch

ⁱ A complete list of relevant and identified persons is provided in Table 1.

ⁱⁱ In a letter dated 15 April 2013 the former delegate acknowledged that the statements were made in error.

ANNEXURE 1

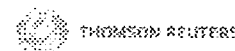
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News and Current Awareness



ETU infighting restarts – Vic branch targets board fees as council meets

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Jurisdiction: General

Article

ETU infighting restarts – Vic branch targets board fees as council meets

Rajiv Maharaj

08/02/2013

The Victorian Electrical Trades Union (ETU) has launched Federal Court action against NSW branch officials, re-opening its attack on their receipt of industry board director fees.

On Wednesday (Feb 6), ETU Vic president Gary Carruthers, represented by Maurice Blackburn principal Giri Sivaraman, lodged action against ETU NSW assistant secretaries Paul Sinclair and Neville Betts. Workforce understands the application relates to superannuation and industry board director fees of \$991,839 and \$595,374 that the Vic branch alleges the pair received respectively since 1998. WF understands the Vic branch claims the officials breached a 1997 divisional council decision saying that sitting fees must be reimbursed to the union.

Case could affect other union bosses

In July 2011, Vic branch secretary Dean Mighell filed a similar application against Sinclair and Betts, as well as then-NSW secretary Bernie Riordan, over an alleged \$3.92m in fees the three had received since 1998 (WF17835).

In a February 2012 hearing, Federal Court Justice Dennis Cowdroy noted if Mighell succeeded, the decision could force other union officials who sat on similar boards to return money earned since 1997. Mighell ultimately withdrew the application on February 23, 2012, a day before Riordan was appointed a Fair Work Australia commissioner. WF understands the application was withdrawn on condition parties would not seek costs.

This week both Betts and Sinclair told WF they were not aware of the recent court action and did not wish to comment until they knew more about the claim. ETU law firm New Law is representing the NSW officials. A directions hearing before Justice Buchanan is listed for March 8. Vic secretary Dean Mighell did not return requests for comment before presstime.

Court action filed while council addresses auditor into Vic branch

The latest Federal Court action – and particularly its timing – appears to show the inter-branch warfare that plagued the union throughout last year has not gone away. The application was filed while the ETU state branches were meeting at a divisional council meeting held from Monday to Wednesday this week in Brisbane. The council meeting was delayed last year due to

an interlocutory decision in April by Justice Nye Perram that decided the NSW branch should not have voting rights because it did not pay its membership fees directly to the national union. In November 2012, a Full Court quashed that decision. At the time, ETU national assistant secretary Allen Hicks told WF the upcoming divisional council would seek to have an independent auditor inspect the Vic branch's books over alleged financial irregularities in the sale of Southern Alliance Financial Services (WF18475). This week, a national union spokesperson did not respond to questions over whether council had passed such a resolution. Vic branch heads to High Court, continues to seek election inquiry

Meanwhile, the Vic branch is seeking special leave to appeal the Full Court decision to the High Court. The High Court is expected to decide whether to grant the application within the next few weeks. The case has the potential to affect other unions with similar arrangements with national branches. The original matter before Justice Perram has been deferred to April 2, 2013. The Vic branch has also appealed Justice Geoffrey Flick's decision against holding an inquiry into the election of Hicks and ETU national secretary Peter Tighe. The Vic branch is arguing that once Justice Flick decided there were grounds for an inquiry – on the basis of Justice Perram's now-quashed interim decision – he was obligated to fix a place and time for it. On Feb 7, Justice Nicholas referred the appeal to a Full Court of the Federal Court.

People Mentioned: Paul Sinclair; Geoffrey Flick; Justice Flick; Bernie Riordan; Allen Hicks; Maurice Blackburn; Justice Nicholas; Justice Perram; Justice Nye Perram; Dean Mighell; Giri Sivaraman; Justice Dennis Cowdroy

Organisations Mentioned: Federal Court; High Court; Electrical Trades Union; Alliance; Fair Work Australia; Rio; Maurice Blackburn

Reference No: 130208CA-3466



ELECTRICAL TRADES UNION OF AUSTRALIA, NSW BRANCH

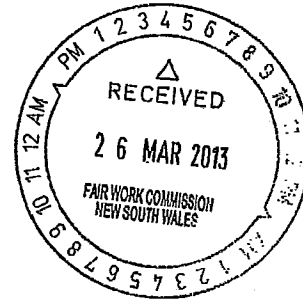
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SECRETARY: Steve Butler

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26 March 2013

Ailsa Carruthers
Delegate of the General Manager
Fair Work Commission
80 William Street
East Sydney NSW 2011



Dear Ms Carruthers,

RE: FR2013/107

Disclosure of Trustees in Superannuation entities in operating reports between 2004 and 2011

I write to you in response to your correspondence dated 11 February 2013 and received by the NSW Divisional Branch of the Electrical Electronic and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (the "Union") on 15 February 2013.

In your correspondence you identify that on delegation from the General Manager of the Fair Work Commission, you have commenced an inquiry under section 330 of the Fair Work (Registered Organisations) Act 2009 (the "RO Act"). This inquiry has regard to whether the necessary disclosures have been made under paragraph 254 (2) d) of the RO Act in operating reports that have been lodged with the Australian Industrial Relations Commission and Fair Work Australia from 2005 to 2011.

I can categorically state in summary that the Union has made all disclosures required to be made under the relevant legislative provisions. Further, the actual disclosures made in operational reports filed by the Union were made in error and not required to be made



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DIVISIONAL BRANCH

under the relevant legislative provisions. This issue was the subject of discussion between Mr. Bernie Riordan, the previous Secretary of the Union and Mr. Kellett of the Fair Work Commission in 2011.

I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the New South Wales Branch of the Electrical Trades Union of Australia, which is not a registered organisation for the purposes of the RO Act.

Your correspondence also requests that the Union provide responses to seven questions in relation to this Inquiry to the Fair Work Commission. Please find attached the response of the Union to the seven requests for information as "Annexure A".

Should you require any further information on the enclosed responses, please do not hesitate to contact me on

Yours faithfully.

Steve Butler
Secretary

Responses of the CEPU to the FWC Inquiry Questions in Matter FR2013/107

1. On what basis were disclosures made under paragraph 254(2)d) of the RO Act in 2004 for each of the persons named in the operating report?

In 2004 the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Electrical Energy and Services Division, NSW Divisional Branch (the "CEPU NSW Branch") reported 4 officers or members for the purposes of s.254 2) d) of Schedule 1B of the Workplace Relations Act 1996 (the WR Act).

These disclosures were made based on an incorrect understanding of the reporting requirements, as s.254 2) d) of Schedule 1B of the WR Act only required reporting of the names of any officer or member who holds a position *"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"*.

In 2004 there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

2. On what basis were no disclosures made under paragraph 254(2)d) of the RO Act in the operating report 2005?

In 2005, the CEPU NSW Branch made no disclosure of officers or members for the purposes of s.254 2) d) of Schedule 1B of the WR Act 1996.

In 2005, there were no officers or members of the CEPU NSW Branch who held a position that was required to be disclosed to meet the requirements of s.254 2) d) based on those criterion and as such none were disclosed.

3. On what basis were disclosures made under paragraph 254(2)d) of the RO Act in of each of the operating reports for 2006 to 2009 inclusive for each of the persons named in the operating reports?

- a. **2006 Operational Report**

In 2006, the CEPU NSW Branch reported 4 officers or members of CEPU Electrical Division, NSW Divisional Branch and the ETU NSW Branch for the purposes of s.254 2) d) of Schedule 1 of the WR Act 1996.

Upon review it appears that these disclosures were made based on an incorrect understanding of the reporting requirements, as s.254 2) d) of Schedule 1 of the WR Act only required reporting of the names of any officer or member who holds a position *"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"*.

It is believed that this error arose from the internal records used in the production of the Operational Report.

In 2006, there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

b. 2007 Operational Report

In 2007, the CEPU NSW Branch reported 2 officers or members for the purposes of s.254 2) d) of Schedule 1 of the WR Act.

Upon review it appears that these disclosures were made based on an incorrect understanding of the reporting requirements at that time, as s.254 2) d) of Schedule 1 of the WR Act only required reporting of the names of any officer or member who holds a position *"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"*.

In 2007, there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

c. 2008 Operational Report

In 2008, the CEPU NSW Branch reported 2 officers or members for the purposes of s.254 2) d) of Schedule 1 of the WR Act.

Upon review it appears that these disclosures were made based on an incorrect understanding of the reporting requirements at that time, as s.254 2) d) of Schedule 1 of the WR Act only required reporting of the names of any officer or member who holds a position *"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"*.

In 2008, there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

d. 2009 Operational Report

In 2009, the CEPU NSW Branch reported 2 officers or members for the purposes of s.254 2) d) of the *Fair Work (Registered Organisation) Act 2009* (the "FW (RO) Act") at the time.

Upon review it appears that these disclosures were made based on an incorrect understanding of the reporting requirements at that time as reporting of these officers/members was not necessary under the requirements of the s.254 2) d) of the FW (RO) Act at the time.

s.254 2) d) of the FW (RO) Act only required reporting of the names of any officer or member who holds a position, *"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"*.

In 2009, there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

4. On what basis were no disclosures made under paragraph 254(2)d) of the RO Act in the operating report 2010?

In 2010 the CEPU NSW Branch made no disclosure of officers or members for the purposes of s.254 2) d) of the of the FW (RO) Act at the time.

The disclosure of officers or members was not necessary under the requirements of the s.254 2) d) of the FW (RO) Act at the time.

S.254 2) d) of the FW (RO) Act only required reporting of the names of any officer or member who holds a position, *"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"*.

In 2010 there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

The misunderstanding in relation to this issue of reporting by CEPU NSW Branch on board position holders was the subject of correspondence and discussion between Mr Riordan, then Secretary of the CEPU NSW Branch and Mr Stephen Kellett and was settled in 2011 as was reflected in the 2010 Operational Report as filed.

5. On what basis were disclosures made under paragraph 254(2)d) of the RO Act in the 2011 operating report for each of the persons named?

In 2011 the CEPU NSW Branch reported 4 officers or members for the purposes of s.254 2) d) of the of the FW (RO) Act at the time.

Upon review it appears that these disclosures were made based on an incorrect understanding of the reporting requirements at that time, as reporting of these officers/members was not necessary under the requirements of the s.254 2) d) of the FW (RO) Act at the time.

s.254 2) d) of the FW (RO) Act only required reporting of the names of any officer or member who holds a position, *"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"*.

In 2011 there were no officers or members of the CEPU NSW Branch who held a position that was required to be reported to meet the requirements of s.254 2) d) based on those criterion.

Mr Riordan resigned as Secretary of the CEPU NSW Branch of 2012. This was prior to the 2011 Operational Report being prepared and unfortunately the financial controller at the time repeated the mistake from earlier years and did not reflect the agreement reached between Mr Riordan and Mr Kellett in 2011.

6. Have all disclosures that are required by paragraph 254(2)d) of the RO Act been made for each of 2004 to 2011 inclusive including, in particular disclosures regarding Mr Neville Betts?

All disclosures that are required by paragraph 254(2)d) of the RO Act been made for each of 2004 to 2011 inclusive, including any disclosures that were required in regards to Mr Neville Betts.

Upon review it appears that for the Operational Reporting periods from 2004 and up to 2011, there have been disclosures made by CEPU NSW Branch that go beyond the requirements of:

- s.254 2) d) of Schedule 1B of the WR Act;
- s.254 2) d) of Schedule 1 of the WR Act; and
- s.254 2) d) of the FW (RO) Act 2009

as in effect on the relevant Operational Report date.

Disclosures made by the CEPU NSW Branch in Operational Reports have been based on incorrect understanding of the reporting requirements at each of those times as reporting of these officers or members was not necessary under the requirements of the legislative provisions at the time.

In the reporting periods from 2004 to today, Mr Neville Betts has not held a position of:

1. a trustee of a superannuation entity or an exempt public sector superannuation scheme; or
2. a director of a company that is a trustee of a superannuation entity or an exempt public sector superannuation scheme.

7. If all disclosures referred to in paragraph 6 have not been made, why not?

All disclosures that are referred to in paragraph 6 and required by s. 254 2) d) of the relevant legislation, as in effect at the date of each Operation Report for each of the years 2004 to 2011 inclusive, have been made by the CEPU NSW Branch.

Upon review it appears that for the Operational Report periods of 2004 and up to 2011, there have been disclosures made by CEPU NSW Branch that go beyond the requirements of the legislative provisions.

Further, it is currently the intention of the CEPU NSW Branch that the Operational Report for 2012 will not disclose the name of any officer or member for the purposes of s. 254 2) d) of the RO Act as there are currently no officers or members who meet these criterion. Should this situation change during the 2012 reporting period, the CEPU NSW Branch will disclose fully the names and positions held as is required to satisfy s. 254 2) d) of the RO Act.

Table 1.
Evidence Matrix

Registered Organisation Act 254 REPORTING UNIT TO PREPARE OPERATING REPORT	
(2) The operating report must:	
(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 or a superannuation entity or an exempt public sector superannuation scheme; and	
Where a criterion for the officer or member being the trustee or director is that the office or member is an officer or member of a registered organisation.	

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
1. Paul Sinclair			
<p>a. Whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act</p>	<p>(i) 'Workforce' article dated 8 February 2013 - Reports that Victorian ETU 'has launched Federal Court action' against Paul Sinclair relating to Superannuation and industry board director fees that the ETU allege Paul Sinclair received since 1998.</p> <p>Report also states that in July 2011, Vic branch sec. Dean Mighell of ETU filed similar</p>	<ul style="list-style-type: none"> • Initial Federal Court action by Dean Mighell of ETU withdrawn on February 23, 2012 • Subsequent Federal Court action commenced by Gary Carruthers on 5 February 2013 - Notice of Discontinuance on 28 March 2013 • Statement of current 	<p>The evidence demonstrates that Mr Paul Sinclair held a board position on NESS on the basis of being a member of the ETU.</p> <p>No evidence has been identified to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
	<p>application against Paul Sinclair although application withdrawn on February 23, 2012.</p>	<p>secretary Steve Butler in letter of 26 March 2013 that:</p> <p><i>' I can categorically state in summary that the Union has made all disclosures required to be made...'</i></p> <p>and</p> <p><i>' I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'</i></p>	
	<p>(ii) Board position (s) held while Paul Sinclair an RO office holder:</p> <p>NESS (NSW Electrical Superannuation Scheme)</p>	<ul style="list-style-type: none"> • Statement of Angie Matrippolito (Fund Sec/CEO NESS Super) in letter of 4 March 2013 that: <p>Paul Sinclair was a Nominated Director of NESS Super on the basis of him being a 'Member of the ETU' and</p> <p><i>'Eligibility to be a Director of NESS arises from Clause 16 of the constitution of NESS... and from the articles of association which lists the ETU as a shareholder of NESS'.</i></p>	
<p>2. Neville Betts</p>			

Table 1.
Evidence Matrix

Allegation/Breach against <i>specific person</i>	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
<p>a. Whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act</p>	<p>(i) 'Workforce' article dated 8 February 2013 - Reports that Victorian ETU 'has launched Federal Court action' against Neville Betts relating to Superannuation and industry board director fees that the ETU allege Neville Betts received since 1998.</p> <p>Report also states that in July 2011, Vic branch sec. Dean Mighell of ETU filed similar application against Neville Betts although application withdrawn on February 23, 2012.</p>	<ul style="list-style-type: none"> • Initial Federal Court action by Dean Mighell of ETU withdrawn on February 23, 2012 • Subsequent Federal Court action commenced by Gary Carruthers on 5 February 2013 - Notice of Discontinuance on 28 March 2013 • Statement of current secretary Steve Butler in letter of 26 March 2013 that: ' I can categorically state in summary that the Union has made all disclosures required to be made... ' and ' I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'. <p>No Entity appointments</p>	<p>There is no evidence or other material to indicate that Neville Betts held any relevant Board position while an RO office holder.</p> <p>No breach identified.</p>
	<p>(ii) Board position (s) Neville Betts held while an RO office holder:</p>		

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
	<ul style="list-style-type: none"> No entity appointments 		
3. Bernard Riordan			
<p>a. Whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act.</p>	<p>(i) 'Workforce' article dated 8 February 2013 - Reports that Victorian ETU 'has launched Federal Court action' against Paul Sinclair and Neville Betts relating to Superannuation and industry board director fees that the ETU allege Paul Sinclair and Neville Betts received since 1998.</p> <p>Report also states that in July 2011, Vic branch sec. Dean Mighell of ETU filed similar application against Sinclair and Betts, as well as then-NSW Secretary 'Bernie Riordan.'</p> <p>Report also states that 'Mighell ultimately withdrew the application on February 23, 2012 a day before Riordan was appointed a FW Australia Commissioner'.</p>	<ul style="list-style-type: none"> 'Workforce' article dated 8 February 2013 - Reports that; <p><i>'Mighell ultimately withdrew the application on February 23, 2012 a day before Riordan was appointed a FW Australia Commissioner'.</i></p> <ul style="list-style-type: none"> Statement of current secretary Steve Butler in letter of 26 March 2013 that: <p><i>'I can categorically state in summary that the Union has made all disclosures required to be made...'</i></p> <p>and</p> <p><i>'I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'.</i></p>	<p>The evidence demonstrates that Mr Bernard Riordan held board positions on EISS, FuturePlus and Chifley Financial Services although no evidence has been identified to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>
	<p>(ii) Board position (s) Bernard Riordan held while an RO</p>		

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
	<p>office holder:</p> <ul style="list-style-type: none"> Director & Chair EISS (Energy Industries Superannuation Scheme); 	<ul style="list-style-type: none"> Statement of Alex Hutchison (CEO EISS) in letter of 27 February 2013 that; <p>Bernard Riordan held a position on the Board of EISS by virtue of his appointment and membership of the ETU in accordance with section 58.1 of EISS Constitution; and</p> <p>'As the ETU holds two Member Class shares they are entitled to appoint two Directors to hold these positions'.</p>	
	<ul style="list-style-type: none"> Director FuturePlus Financial Services (FPFS) 	<ul style="list-style-type: none"> Further statement of Alex Hutchison (CEO EISS) in separate letter of 27 February 2013 that: <p>'The ETU is not nor has it previously been a shareholder of FPFS. Accordingly there has been no entitlement of the ETU to appoint members to the FPFS Board'.</p> <ul style="list-style-type: none"> Statement of Elvio Bechelli (CFO of FPFS) that; <p>'FPFS is not a Superannuation fund or</p>	

Table 1.
Evidence Matrix

Allegation/Breach against <i>specific person</i>	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
		entity a company acting as a trustee for a superannuation entity.'	
	<ul style="list-style-type: none"> Board member of Chifley Financial Services 	<ul style="list-style-type: none"> Statement of Brad Storey (CEO Chifley FS) in letter of 18 March 2013 that; <p>Bernard Riordan was a Board member of Chifley FS because he was nominated as a representative of the shareholder EISS</p>	
		<ul style="list-style-type: none"> Statutory Declaration by Bernard Riordan declared on 29 April 2013; that <p>His eligibility for and appointment to the Board of Directors of FPFS was on the basis of being nominated by the Board of Directors of EISS; and</p> <p>'at no point in time was a criterion for appointment... that I was to be an officer or member of a [sic] organisation for the purposes of the FW RO Act'</p>	
4. Warwick Tomlins			
a. Whether relevant operating reports between 2004 and 2011	(i) While not referred to in any media reports, a	<ul style="list-style-type: none"> Statement of current secretary Steve Butler in letter of 26 March 2013 	The evidence demonstrates that Mr Warwick Tomlins held board positions on EISS and FuturePlus

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
included any necessary disclosures required by the RO Act	<p>written letter of response to FWC by current secretary of ETU Steve Butler dated 27 February 2013 identified Warwick Tomlins as a person who had been both an official of the CEPU (and ETU) as well as a director of EISS & PFPS.</p>	<p>that:</p> <p>' I can categorically state in summary that the Union has made all disclosures required to be made...! and</p> <p>' I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'.</p>	<p>although no evidence has been identified to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>
	<p>(ii) Board position (s) Warwick Tomlins held while an RO office holder:</p>		
	<ul style="list-style-type: none"> Director Energy Industries Superannuation Scheme (EISS) 	<ul style="list-style-type: none"> Statement of Alex Hutchison (CEO EISS) in letter of 27 February 2013 that; <p>Warwick Tomlins held a position on the Board of EISS by virtue of his appointment and membership of the ETU in accordance with s 58.1 of EISS Constitution; and</p> <p>'As the ETU holds two Member Class shares they are entitled to appoint</p>	

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
	<ul style="list-style-type: none"> • Director FuturePlus Financial Services (FPFS) 	<p>two Directors to hold these positions’.</p> <ul style="list-style-type: none"> • Further statement of Alex Hutchison (CEO EISS) in separate letter of 27 February 2013 that: ‘The ETU is not nor has it previously been a shareholder of FPFS. Accordingly there has been no entitlement of the ETU to appoint members to the FPFS Board’. • Statement of Elvio Bechelli (CFO of FPFS) that; ‘FPFS is not a Superannuation fund or entity a company acting as a trustee for a superannuation entity.’ • Statutory declaration of Warwick Tomlins declared on 21 May 2013 that; He was previously a Director of FPFS (although it was not a superannuation entity or trustee of a superannuation entity) and that eligibility for and appointment to the Board was on the basis of being nominated by EISS. Further, being an officer or member 	

Table 1.
Evidence Matrix

Allegation/Breach against <i>specific person</i>	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
5. Michael Doust			
a. Whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act	<p>(i) While not referred to in any media reports or court actions, a written letter of response to FWC by current secretary of ETU Steve Butler dated 27 February 2013 identified Michael Doust as a person who currently is both an official of the CEPU (and ETU) as well as a director of EISS.</p>	<ul style="list-style-type: none"> • Statement of current secretary Steve Butler in letter of 26 March 2013 that: ' I can categorically state in summary that the Union has made all disclosures required to be made...' and ' I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'. 	<p>The evidence demonstrates that Mr Michael Doust held a board position on EISS on the basis of being a member of the ETU.</p> <p>No evidence has been identified to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>
	<p>(ii) Board position (s) Michael Doust holds while an RO office holder: Director Energy Industries Superannuation Scheme (EISS)</p>	<ul style="list-style-type: none"> • Statement of Alex Hutchison (CEO EISS) in letter of 27 February 2013 that; Michael Doust holds a position on the Board of EISS by virtue of his appointment and membership of the ETU in accordance with s 58.1 of EISS Constitution; and 	

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
		'As the ETU holds two Member Class shares they are entitled to appoint two Directors to hold these positions.'	
6. Stephen Butler			
a. Whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act	(i) While not referred to in any media reports or court actions, in a written letter of response to FWC dated 27 February 2013 current secretary of ETU Stephen Butler identified himself as a person who is an official of the CEPU (and ETU) and held a position as a Board director of NESS.	<ul style="list-style-type: none"> Statement of current secretary Steve Butler in letter of 26 March 2013 that: 'I can categorically state in summary that the Union has made all disclosures required to be made... and 'I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'. 	<p>The evidence demonstrates that Mr Stephen Butler held board positions on EISS and NESS on the basis of being a member of the ETU.</p> <p>No evidence has been identified to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>
	(ii) Board position (s) Stephen Butler held while an RO office holder:	<ul style="list-style-type: none"> Director of Energy Industries Superannuation Scheme (EISS) 	
		<ul style="list-style-type: none"> Statement of Alex Hutchison (CEO EISS) in letter of 27 February 2013 that; <p>Stephen Butler holds a position on the</p>	

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
		<p>Board of EISS by virtue of his appointment and membership of the ETU in accordance with s 58.1 of EISS Constitution; and</p> <p>'As the ETU holds two Member Class shares they are entitled to appoint two Directors to hold these positions.'</p> <ul style="list-style-type: none"> • Statement of Angie Matrippolito (Fund Sec/CEO NESS Super) in letter of 4 March 2013 that: <p>Stephen Butler was a Nominated Director of NESS Super on the basis of him being a 'Member of the ETU' and</p> <p>'Eligibility to be a Director of NESS arises from Clause 16 of the constitution of NESS... and from the articles of association which lists the ETU as a shareholder of NESS'</p>	
	<ul style="list-style-type: none"> • Director NSW Electrical Superannuation Scheme (NESS) 		
7. Russell Wilson			
a. Whether relevant operating reports between 2004 and 2011 included any necessary disclosures required by the RO Act	(i) While not referred to in any media reports or court actions, a written letter of response to FWC by current secretary of ETU Steve Butler dated 27 February 2013	<ul style="list-style-type: none"> • Statement of current secretary Steve Butler in letter of 26 March 2013 that: <p>' I can categorically state in summary</p>	<p>The evidence demonstrates that Mr Russell Wilson held a board position on NESS on the basis of being a member of the ETU.</p> <p>No evidence has been identified</p>

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
	<p>identified Russell Wilson as a person who currently is both an official of the CEPU (and ETU) as well as a director of NESS.</p>	<p>that the Union has made all disclosures required to be made... and</p> <p>'I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO'</p>	<p>to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>
	<p>(ii) Board position (s) Russell Wilson holds while an RO office holder:</p> <ul style="list-style-type: none"> Director NSW Electrical Superannuation Scheme (NESS) 	<ul style="list-style-type: none"> Statement of Angie Mastrippolito (Fund Sec/CEO NESS Super) in letter of 4 March 2013 that: <p>Russell Wilson was a Nominated Director of NESS Super on the basis of him being a 'Member of the ETU' and</p> <p>'Eligibility to be a Director of NESS arises from...the constitution of NESS... and from the articles of association which lists the ETU as a shareholder of NESS'.</p>	
<p>8. John Thornton</p>			
<p>a. Whether relevant operating reports between 2004 and 2011 included any necessary</p>	<p>(i) While not referred to in any media reports or court actions, a written letter of response prepared by Paul Cleary – General</p>	<ul style="list-style-type: none"> Statement of current secretary Steve Butler in letter of 26 March 2013 that: 	<p>The evidence demonstrates that Mr John Thornton held a board position on Chiefley Financial Services on the basis of being a</p>

Table 1.
Evidence Matrix

Allegation/Breach against specific person	Potentially Inculpatory Evidence	Potentially Exculpatory Evidence	Comments/Conclusion
disclosures required by the RO Act	Counsel and Company Secretary of Chifley Financial Services dated 26 February 2013 identified ETU office holder John Thornton as a current director of Chifley Financial Services.	<p>' I can categorically state in summary that the Union has made all disclosures required to be made... ' and</p> <p>' I can confirm that Officers or members, whose names were disclosed in operational reports as holding positions, did so as Officers of the NSW Branch of the ETU, which is not a RO '.</p>	<p>member of the ETU.</p> <p>No evidence has been identified to demonstrate any failure to make disclosures required by ss 254 (2) (d) or the Act.</p> <p>No breach identified.</p>
	<p>(ii) Board position (s) John Thornton holds while an RO office holder:</p> <ul style="list-style-type: none"> • Director Chifley Financial Services (A superannuation trustee) 	<ul style="list-style-type: none"> • Statement of Paul Cleary (General Counsel and Co. Sec. Chifley) in letter dated 26 February 2013 that; <p>John Thornton was appointed as a Director of Chifley on the basis of his membership of ETU in accordance with Clause 5.2 of the Chifley Constitution and Clause 9 of the Shareholders Agreement.</p>	