

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000224

Senator McKenzie provided in writing.

Question

FWC - Royal Commission Referrals – Electrical Trades Union

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

Former Electrical Trades union officials Dean Mighell and Garry Carruthers have been referred for investigation of alleged breaches of ss 268 and 287 of the Registered Organisations Legislation both in respect of utilising union resources to further their own personal political campaigns and prosecuting court cases using members' money for their own political benefit rather than in the best interests the union branch.

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

Answer

1. In a letter dated 22 December 2015 the Trade Union Royal Commission (TURC) advised the Fair Work Commission (FWC) that it was proposing to refer matters relating to the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU), Electrical Division to the FWC including:

- Whether proceedings should be commenced against Dean Mighell for possible contraventions of sections(s) 286 and/or 287 of the Fair Work (Registered Organisations) Act 2009; and
- Whether proceedings should be commenced against Gary Carruthers for possible contraventions of section 286 and/or 287 of the Fair Work (Registered Organisations) Act 2009 (the RO Act).

The letter was not received by the FWC until 1 February 2016 because it had been incorrectly addressed.

The supporting material in relation to the two former office holders of the CEPU (more than 5,400 pages) was received on 9 February 2016. Planning, scoping, document management and increasing resources to deal with all the referrals is under way. This is a very significant undertaking. As of 1 March 2016, more than 60,000 pages have been provided to the FWC. Each document that may evidence contraventions of the RO Act and fall within the FWC's

jurisdiction to investigate or otherwise bring proceedings in respect of, needs to be examined. This includes identifying how the material was obtained by the TURC. This is because any evidence (oral or documentary) obtained compulsorily by the TURC from a person may not be used in evidence in civil proceedings against that person. Any such material could not be used by the FWC to decide whether, for example, to commence proceedings in respect of any contraventions.

2. It is not presently possible to anticipate when this matter will be finalised.

3. Since receiving the supporting materials on 9 February 2016, the FWC has conducted a preliminary overview of some of the more than 5,400 pages of supporting materials in relation to the Dean Mighell and Gary Carruthers referral. Having conducted that overview, the FWC was not aware of the allegations which appear to form the substance of this referral. However, the FWC was aware that while he was an office holder in the CEPU, Dean Mighell commenced Federal Court proceedings on 8 December 2011 and discontinued those proceedings on 23 February 2012. The FWC was also aware that while an office holder in the CEPU, Gary Carruthers commenced Federal Court proceedings on 5 February 2013 and discontinued those proceedings on 28 March 2013. The FWC conducted an inquiry FR2013/107 which focused on the disclosure of trustees of superannuation entities in the operation reports of the CEPU, NSW Branch between 2004 and 2011. Details concerning the Mighell and Carruthers Federal Court proceedings emerged in that inquiry which did not identify any failure to make disclosures required by the relevant legislative framework. That inquiry did not examine the motivation either from Dean Mighell or Gary Carruthers to commence or discontinue proceedings in the Federal Court which appears to be the basis of this referral by the TURC.

4. See response to 3.

5. See response to 3.

6. The legislative scheme of the RO Act is directed at ensuring that organisations discharge their obligations of accountability to their members in relation to the financial affairs of the organization through proper and regular disclosure of financial information. Inquiries are conducted under section 330 of the RO Act into whether Part 3 of "chapter 8 of the RO Act, the reporting guidelines made under that Part, regulations made for the purposes of that Part, or the rules of an organization relating to its finances or financial administration have been, or are being complied with.

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

Although the FWC was aware of various proceedings which had been commenced and discontinued in the Federal Court by Dean Mighell and later by Gary Carruthers, the FWC did not have information about the motivations behind the commencement or discontinuance of those proceedings. The FWC is not aware of any fact or circumstance which indicates that it should or could have been aware of that information.