

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Budget Estimates 2017 - 2018

Agency - Fair Work Commission

Department of Employment Question No. EMSQ17-004110

Senator Abetz asked on 30 May 2017 on proof Hansard page 15

Question

FWC - Right of entry application cases

Senator ABETZ:..... Then, finally, on the last occasion I asked questions about the seriousness of providing false or misleading sworn evidence to the Fair Work Commission in relation to right-of-entry applications.

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Senator ABETZ: In 2015, the commission rejected evidence provided on oath that an official had not carried out right of entry tests for other HSU officials and found that the official had, in fact, filled out the forms. I note that in October 2016 Ms O'Neill—and I hope I do you justice—told the Senate estimates that this is the kind of situation where the Fair Work Commission would refer the matter to the DPP because false evidence had been provided to the commission. And so can I ask: has the Fair Work Commission referred this matter?

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Senator ABETZ: If you could, please take it on notice. If it has been referred, that is the end of the story. If it has not been referred, could you take on notice the reasons why it has not been referred, because I would have thought that, for the integrity of the Fair Work Commission, the right of entry system et cetera, one does need to treat these matters very seriously. I would be very interested to hear, on notice, how you have dealt with this matter.

Answer

Allegations that Health Services Union Victoria No 1 Branch (HSU) officials made false statements to the Fair Work Commission (Commission) relating to Right of Entry Permits have not been referred to the Commonwealth Director of Public Prosecutions by the Commission.

In September 2013 the then Director of the Commission's Regulatory Compliance Branch, Mr Chris Enright, commenced inquiries into the circumstances in which certain HSU officials had obtained a Right of Entry Permit.

In May 2014 President Ross directed the transfer of those enquiries from Mr Enright to Vice President Watson.

The material in the Vice President's enquiry was provided to the Royal Commission into Trade Union Governance and Corruption (TURC) pursuant to a Notice to Produce.

On 15 December 2014 the Royal Commissioner issued his Interim Report.

In paragraphs 100(a) (iv) and (v) the Royal Commissioner referred the Interim Report and other relevant materials to the Commonwealth Director of Public Prosecutions so consideration could be given to whether various HSU officials should be prosecuted for either making a false statement in an application or recklessly making a false statement contrary to ss 136 and 137 of the Criminal Code (Cth), or aiding and abetting others in those contraventions.

On 5 January 2015 a police taskforce commenced operations to assist the TURC. Taskforce Heracles was independent of the TURC and autonomous. It made its own operational decisions. Amongst other things the Taskforce took a number of referrals from the Commission and thereafter investigated those matters on its own account; assisted the Commission in some of the Commission's investigations; and conducted investigations entirely separately from the Royal Commission. Taskforce Heracles comprised members of the Australian Federal Police and the State Police Forces from Victoria, New South Wales and Queensland.

In May 2015 Taskforce Heracles commenced engaging with the Commission. The Commission provided assistance and information to Taskforce Heracles, including in relation to the HSU matters before Watson VP. All material provided to the TURC under the Notice to produce in relation to the HSU matters before Watson VP was given to Taskforce Heracles investigators. The Heracles Task Force attended at the Commission and the Commission, in turn, attended at Taskforce Heracles in order to actively assist the task force in its investigations.

When the matter was determined by Watson VP in late June 2015, the outcome was provided to Taskforce Heracles. The Taskforce was also updated about the appeal of the Vice President's decision to a Full Bench of the Commission. The Full Bench granted permission to appeal and dismissed the appeal on 2 December 2015. None of the relevant findings of fact made by the Vice President were disturbed on appeal. The outcome of the appeal was provided to Taskforce Heracles.

In these circumstances there was no requirement to refer any further matters because Taskforce Heracles had been actively investigating the matter since 2015 while being assisted by the Commission. It was a matter for Taskforce Heracles to determine what action, if any, their investigation warranted.