

Charges against Kathy Jackson

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Charge 1: the Toomey Pegg contract: gross misbehavior

1. On or about 18 January 2012 Kathy Jackson signed a retainer with Toomey Pegg Solicitors committing the union to pay legal fees ('the Toomey Pegg contract'). The Toomey Pegg contract was not authorised by the National Council or National Executive. Entering into the Toomey Pegg contract and not reporting its existence to the National Council or the National Executive was gross misbehavior.

Particulars to charge 1

Particulars of the charge are:

- I. Sub-rules 37 (a) and (b) of the rules of the Union relevantly state:

(a) An Officer of the Union...may be removed from his/her office if the National Council or National Executive by majority resolution of members voting finds him/her guilty, in accordance with these Rules, of misappropriation of the funds of the Union or any Branch thereof, a substantial breach of the Rules of the Union, gross misbehaviour or gross neglect of duty or finds that he/she has ceased, according to these Rules, to be eligible to hold his/her office.

(b) Such person may be charged by any member under this Rule....

- II. Chris Brown is a member of the Union.
- III. Kathy Jackson was an officer of the Union in late 2011, being either the Executive President of the HSUEast Branch or the National Secretary.
- IV. In about March 2008 the Union developed and implemented financial governance policy and procedures. They were amended in September 2011. They were endorsed by the National Council on 30 November 2011. At all relevant times the HSU National Office Financial Management Policy and Procedures state:
- 3.1 The National Secretary is authorised to make expenditure up to \$10,000 on items or services of an extraordinary nature provided it is within the annual budget. Where such expenditures occur, they must be reported to the Finance Committee as soon as practicable and to the National Executive at its next meeting.*
- 3.2 Expenditure over \$10,000 but less than \$50,000 on items or services of an extraordinary nature must be approved by the Finance Committee before being incurred and reported to the next meeting of the National Executive.*
- V. Slater & Gordon had been engaged by the HSU to provide advice in relation to the Fair Work investigation and to assist in drafting responses concerning the alleged contraventions. On about November 14, 2011 Fair Work Australia advised the National Secretary of certain proposed findings of contravention against the Union. Slater & Gordon drafted a response to those allegations.
- VI. The following events then occurred:
- (a) On either 14 November 2011 or 14 December 2011 - Kathy Jackson was advised of proposed findings of contravention by Fair Work Australia against her. She did not then, or at any time in the following 4 months, inform the National Executive of the details of such allegations.
- (b) 15 December 2011 - meeting of the Finance Committee of the Union. Ms Jackson, a member of the Committee, did not advise the committee that she was proposing to expend union funds engaging Toomey Pegg Lawyers.
- (c) 12 January 2012 - National Executive meeting at which Ms Jackson did not indicate that she was proposing to engage solicitors and seek that the union pay for those fees.
- (d) 18 January 2012 - Ms Jackson entered into a retainer with Toomey Pegg. Ms Jackson later advised that she committed the union to

paying Toomey Pegg's fees when she entered into the retainer. Toomey Pegg commenced work providing assistance to Ms Jackson relating to her response to the proposed contraventions against her.

- (e) 24 January 2012 - National Executive meeting at which Ms Jackson did not inform the Executive about her engagement of solicitors on behalf of the union to draft her response.
- (f) 31 January 2012 - Toomey Pegg issued an invoice for \$27,425. After the issuing of this invoice, work continued to be performed by Toomey Pegg.
- (g) 3 February 2012 - Ms Jackson provided her response to Fair Work Australia.
- (h) 7 February 2012 - Toomey Pegg issued a further invoice for \$13,457 addressed to the National Secretary.
- (i) 17 February 2012 - National Executive meeting at which Ms Jackson did not inform the Executive about her engagement of Toomey Pegg Lawyers or the existence of the invoices.
- (j) 17 February 2012 - Finance committee meeting at which Ms Jackson did not advise the finance committee of the expenditure that she had incurred on behalf of the union or the existence of the invoices.
- (k) In about early March 2012 the Union received an invoice from Toomey Pegg Lawyers for an amount of \$40,882.16. This matter was raised at the next meeting of the HSU Finance Committee on 15 March 2012. The Finance Committee resolved that:

Resolution: FC7/2012

Moved Chris Brown/Iris Knight

"This meeting notes the invoice from Toomey Pegg Lawyers for the amount of \$40,882.16 for the preparation of the National Secretary's response to Fair Work Australia (FWA). The Finance Committee notes the following:

That the National Secretary engaged the services of Toomey Pegg Lawyers, incurring a purported liability of \$40,882.16 without authority.

That the National Secretary may have breached 3.1 and 3.2 of the Financial Management Policy and Procedures adopted by the National Council on 30 November 2011.

The Finance Committee resolves:

That the matter of payment of the Toomey Pegg Lawyers invoice be referred to the next meeting of the National Executive.

That the Toomey Pegg Lawyers invoice not be paid until the National Executive has determined whether it should be paid.

Requests that the National Secretary provide the Finance Committee with a copy of any previous invoices from Toomey Pegg Lawyers and a detailed itemised list of services and disbursements provided by Toomey Pegg Lawyers prior to the next National Executive meeting so that the matter can be properly considered at that meeting."

- (1) The matter of the authorisation and payment of the invoice from Toomey Pegg Lawyers was then raised at the next National Executive meeting on 29 March 2012 at which the following resolution was passed:

"The National Executive notes

- the written report read by the National Secretary at today's meeting, which she has undertaken to table;*
- the invoices of Toomey Pegg Lawyers of 31/1/12 for \$27 425.09 and 7/2/12 for \$13 457.07, totalling \$40 882.16, for the preparation of Kathy Jackson's response to FWA in relation to proposed adverse findings against her;*
- resolution FC7/2012 of the Finance Committee;*
- the history of poor governance and a lack of transparency around financial transactions within the National Union under previous administrations, which led to the development of Financial Governance Policy and Procedures in March 2008 (last amended in September 2011) ;*
- in particular, point 3.2 of the policy which provides:*
"3.2 Expenditure over \$10,000 but less than \$50,000 on items or services of an extraordinary nature must be approved by the Finance Committee before being incurred and reported to the next meeting of the National Executive";
- that Kathy Jackson did not seek or obtain the prior approval of the Finance Committee before purporting to incur the expenditure detailed in the Toomey Pegg invoices and did not report the expenditure to the next meeting of the National Executive held on 17 February 2012;*

and the National Executive resolves that:

Given that the National Secretary incurred the liability detailed in the Toomey Pegg invoices of 31/1/12 of \$27 425.09 and 7/2/12 of \$13457.07 without seeking or obtaining the prior approval of the Finance Committee, and without reporting the expenditure to the next meeting of the National Executive, the expenditure is not authorised under the Financial Governance Policy and Procedures and the National Executive resolves that it does not accept liability for the expenditure and resolves not to pay the invoices."

- VII. Entering into the Toomey Pegg contract was extraordinary. The Union had solicitors engaged in the matter. They were preparing a response to the allegations. The Toomey Pegg contract was not part of the systematic, repetitive and continuous business of the union and was not the business of the union for the purposes of rule 32 (n) of the rules of the union. It committed the union to pay for services it had not requested. It was not authorized. It was entered into in breach of the Union's policies. It was kept secret from the decision-making bodies of the Union.

Charge 2: the Rob Elliott contract: a substantial breach of the rules

2. On or about 25 February 2010 Kathy Jackson signed a contract 'on behalf of the HSU' between the Union and Rob Elliott ('the Rob Elliott contract'). The Rob Elliott contract was not authorised by the National Council or National Executive and the National Secretary did not bring the existence of the Rob Elliott contract to the attention of either the National Council or National Executive. Signing the Rob Elliott contract was a substantial breach of the rules of the union, being a breach of sub-rules 21, 21 (e) and 27 (a).

Particulars to charge 2

Particulars of the charge are:

- I. Rob Elliott has been a long-term friend and supporter of Kathy Jackson.
- II. Sub-rules 37 (a) and (b) of the rules of the Union relevantly state:

(a) An Officer of the Union...may be removed from his/her office if the National Council or National Executive by majority resolution of members voting finds him/her guilty, in accordance with these Rules, of misappropriation of the funds of the Union or any Branch thereof, a substantial breach of the Rules of the Union, gross misbehaviour or gross neglect of duty or finds that he/she has ceased, according to these Rules, to be eligible to hold his/her office.

(b) Such person may be charged by any member under this Rule....
- III. Chris Brown is a member of the Union.
- IV. In February 2010 Kathy Jackson was an officer of the Union, being either the National Secretary or the Secretary of the Victorian No 3 Branch or both.

V. Rule 21 and 21(e) of the Union Rules relevantly state:

“The National Council shall...be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, in particular have power:-

(e) to appoint and remove such National Industrial Officers and Research Officers and other types or category of officials as it deems necessary and to fix the remuneration and terms and conditions of employment of the same...”

VI. Rule 27 (a) of the Union Rules relevantly state:

‘The National Executive shall...have power ... to set the wages and conditions of the National Office Staff...’

VII. Kathy Jackson did not report to the National Council or the National Executive the fact that she entered into the Rob Elliott contract. Neither of those bodies appointed Rob Elliott. Neither of those bodies fixed the terms and conditions of employment of Rob Elliott.

VIII. The appointment of Rob Elliott was made by the Rob Elliott contract. The terms and conditions of employment of Rob Elliott were made by the Rob Elliott contract. There were terms of the Rob Elliott contract that:

- (a) Mr Elliott would be paid an initial annual salary of \$150,000 per year;
- (b) The salary would increase with increases in the consumer price index;
- (c) The HSU would pay a sum equivalent to 9% of Rob Elliott’s salary to a superannuation fund;
- (d) Rob Elliott would be credited all unused sick leave and annual leave from August 2002 to February 2010;
- (e) Rob Elliott would be credited with 1.71 weeks of long service leave for every year from August 2002 to February 2010 and would accrue 1.71 weeks of long service leave for every year of the contract;
- (f) The contract would be for a four year period;

(g) The Union agreed to continue to nominate Rob Elliott as one of the Union's nominee directors to the board of HESTA and that Rob Elliott would retain director's fees or associated payments paid in respect of his role as HESTA director; and

(h) The duties of Rob Elliott were to provide advice, counsel and support to HSU East.

IX. The appointment of Rob Elliott was extraordinary. No person had previously filled such a position. The union had previously engaged no unelected officer on such a high salary. The union had previously engaged no unelected officer for such an extended term. The appointment of Rob Elliott was not part of the systematic, repetitive and continuous business of the union and was not the business of the union for the purposes of rule 32 (n) of the rules of the union. The contract was entered into without authority. It committed the union to pay between \$650,000 and \$950,000 to a friend of Kathy Jackson's for work. The contract was kept secret from the National Executive and the National Council. There was no application process for the job Rob Elliot was to perform.

X. The term of the contract that the union agree to continue to nominate Rob Elliott as one of the Union's nominee directors to the board of HESTA was contrary to rule 21 that provides that the National Council shall 'have the management and control of the affairs of the Union'. The result of this nomination was that Rob Elliot gained about \$30,000 - \$50,000 per annum from HESTA.

Charge 3 - holding multiple paid offices

3. Chris Brown seeks that, pursuant to rule 37 (a), it be found that Kathy Jackson ceased from about August 2010 to be eligible to hold the office of National Secretary.

Particulars to charge 3

I. Rule 37 (a) relevantly states that:

An Officer of the Union.... may be removed from his/her office if the National Council or National Executive by majority resolution of members voting ... finds that he/she has ceased, according to these Rules, to be eligible to hold his/her office.

II. Rule 80 (a) of the rules of the Union at all relevant times stated:

No person shall hold more than one full time paid office within the Union or any branch thereof.

- III. In August 2010 Kathy Jackson was elected as National Secretary.
- IV. In August 2010 Kathy Jackson was elected as Executive President of the HSUeast Branch.
- V. In August 2010 the office of National Secretary was a full time paid office: rule 19 (b).
- VI. In August 2010 the office of Executive President of the HSUeast Branch was a full time paid office: rule 50 (b).
- VII. In August 2010 the HSUeast Branch was a branch of the Union.
- VIII. After August 2010:
 - (a) Kathy Jackson received no salary in relation to the performance of her duties as National Secretary;
 - (b) Kathy Jackson performed the duties as Executive President of HSUeast Branch;
 - (c) A small minority of the time that Kathy Jackson worked after August 2010 was dedicated to the performance of the duties of National Secretary and her time was overwhelmingly spent performing duties as Executive President;
 - (d) Kathy Jackson received remuneration as Executive President;
 - (e) The position of National Secretary remained as a full time paid position and the status of that office was not varied pursuant to rule 19(b).
- IX. Chris Brown seeks that a finding be made that after August 2010 Kathy Jackson ceased to hold the office of National Secretary as:
 - (a) She purported to hold more than one full time office; and
 - (b) By her conduct, she elected to hold the office of Executive President rather than the office of National Secretary.

Charge 4 - not remitting HESTA fees - a substantial breach of the Union's rules

4. Between March 2009 and October 2011 Kathy Jackson did not account for amounts paid to her by the H.E.S.T. Australia Ltd ('HESTA') in the course of performing her obligations as an officer of the Union ('the HESTA conduct'). The HESTA conduct was in breach of rule 37 (a) of the rules of the Union in that it was a substantial breach of the rules of the union, being a breach of the implied term.

Particulars to charge 4

Particulars of the charge are:

- I. Sub-rules 37 (a) and (b) of the rules of the Union relevantly state:

(a) An Officer of the Union...may be removed from his/her office if the National Council or National Executive by majority resolution of members voting finds him/her guilty, in accordance with these Rules, of misappropriation of the funds of the Union or any Branch thereof, a substantial breach of the Rules of the Union, gross misbehaviour or gross neglect of duty or finds that he/she has ceased, according to these Rules, to be eligible to hold his/her office.

(b) Such person may be charged by any member under this Rule....

- II. Chris Brown is a member of the Union.
- III. Between March 2009 and October 2011 Kathy Jackson was an officer of the Union, being either the National Secretary or:
- (a) From March 2009 until 23 May 2010, being the Secretary of the Victorian No 3 Branch;
- (b) From 24 May 2010 to October 2011, being the Executive President of HSUEast Branch.
- IV. There is a term implied in the rules that obliges the National Secretary not to improperly use her position to gain an advantage to herself ('the implied term').
- V. Section 287 of the Fair Work (Registered Organisations) Act 2009 obliges the National Secretary not to improperly use her position to gain an advantage for herself ('the statutory obligation').
- VI. Pursuant to the implied term and statutory obligation, the National Secretary was obliged to account to the Union for amounts received in the course of performing her obligations.

VII. Pursuant to the Constitution of HESTA:

(a) The Union was an 'A Guarantor' under clause 2.2 of the HESTA Constitution;

(b) Clause 2.4 relevantly provides:

'A guarantor shall by resolution of its directors or other governing body given to the Company authorise a natural person to act as its representative in respect of the Company and this Constitution.'

(c) Clause 6.3 (a) relevantly provides:

'The Directors must comprise an equal number of people:

(a) Nominated as member representatives by the 'A' Guarantors and on the basis that the following 'A' Guarantors can nominate the number of Directors as listed below:

....HSU 2 Directors'

(d) Clause 7.2 relevantly provides:

'A Director....may be paid remuneration determined by the Company...'

VIII. In about March 2009 the National Executive resolved to appoint the then National Secretary, Kathy Jackson, as a HSU representative to HESTA and she was appointed as a Director of HESTA.

IX. When performing her duties as a HSU representative to HESTA and Director of HESTA Kathy Jackson was in the course of performing her duties as National Secretary.

X. Kathy Jackson received the following amounts ('the amounts') from HESTA as remuneration:

(a) In the financial year ending 30 June 2011, \$26,475.00;

(b) In the financial year ending 30 June 2010, between \$20,000 and \$40,000; and

(c) In the financial year ending 30 June 2009, between \$3,000 and \$10,000.

XI. Kathy Jackson has not at any time accounted to the Union for the amounts or any part of them.

Charge 5 – Gross neglect of duty

5. Between March 2009 and July 2012 Kathy Jackson engaged in conduct that was a gross neglect of her duties as National Secretary in breach of rule 37 (a) of the rules of the Union. The conduct alleged consists of the conduct referred to in any single one of the allegations referred to in paragraphs 5 (a) - (n) or the conduct referred to in two or more of those allegations in combination.
 - (a) Kathy Jackson failed to perform her obligations by writing to the Union Ombudsman and advising him of his appointment: see general particulars and particulars to charge 5 (a) ; and/or
 - (b) Kathy Jackson failed to perform her obligations by informing FWA of the changes in the records required to be kept under the Fair Work (Registered Organisations) Act 2009: see general particulars and particulars to charge 5 (b); and/or
 - (c) Kathy Jackson failed to comply with the direction of the National Executive to provide the National Executive with all the documentation she provided to Police and/or Ian Temby on alleged corruption in the HSU East Branch and HSU East: see general particulars and particulars to charge 5 (c) ; and/or
 - (d) Kathy Jackson failed to present the National Executive with a draft budget in accordance with the National Office Financial Management Policy and Procedures and in accordance with the directions of the Finance Committee and the National Executive: see general particulars and particulars to charge 5 (d) ; and/or
 - (e) Kathy Jackson failed to direct, control and supervise national office staff: see general particulars and particulars to charge 5 (e) ; and/or
 - (f) Kathy Jackson failed to direct, control and supervise the Senior National Assistant Secretary: see general particulars and particulars to charge 5 (f) ; and/or
 - (g) Kathy Jackson failed to promptly take steps ordered by the Court and National Executive concerning the dysfunctional Queensland Branch: see general particulars and particulars to charge 5 (g) ; and/or
 - (h) Kathy Jackson failed to sign any official's or employee's monthly statement as required by the Union's Financial Management Policy

and Procedures: see general particulars and particulars to charge 5 (h) ; and/or

- (i) Kathy Jackson allowed the Financial Controller to prepare EFT's without the prior written approval of the National Secretary in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (i) ; and/or
- (j) Kathy Jackson failed to control the business of the union in that the Financial Controller was allowed to make payments that were different from the amounts authorised and the Financial Controller uploaded for payment on CommBiz ready for authorisation transfers which did not have the prior written approval of the National Secretary in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (j) ; and/or
- (k) Kathy Jackson failed to ensure that all EFT transactions were properly authorised before funds were released to the bank in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (k) ; and/or
- (l) Kathy Jackson failed to examine EFT transaction reports following EFT transactions and initial those as being the same as those approved in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (l) ; and/or
- (m) Kathy Jackson failed to authorise EFT payroll transactions that resulted in national office staff being paid late in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (l); and/or
- (n) Kathy Jackson failed to examine and initial the Payroll Summary and Payroll Advice printouts each week and the EFT receipt as correct in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (n).

General Particulars to charge 5

- I. Sub-rules 37 (a) and (b) of the rules of the Union relevantly state:

(a) An Officer of the Union...may be removed from his/her office if the National Council or National Executive by majority resolution of members voting finds him/her guilty, in accordance with these Rules, ofgross neglect of duty....

(b) Such person may be charged by any member under this Rule....

II. Chris Brown is a member of the Union.

III. Between March 2009 and August 2012 Kathy Jackson was an officer of the Union, being either the National Secretary or:

(c) From March 2009 until 23 May 2010, being the Secretary of the Victorian No 3 Branch;

(d) From 24 May 2010 to June 2012, being the Executive President of HSUEast Branch.

Particulars of charge 5 (a)

IV. On 27 April 2012 the National Executive passed Resolution NE62/2012 that relevantly stated:

"The National Executive notes the declaration of the National Council Ballot, which closed at 5pm on 23 April 2012, appointing Errol Hodder as the Union Ombudsman.

The National Executive directs the National Secretary to write to Mr Hodder advising him of his appointment and congratulating him on his appointment on behalf of the National Executive."

V. On 25 May 2012 at the National Executive meeting Tim Jacobson asked the National Secretary whether the National Ombudsman had been written to as per resolution NE 62/2012. Kathy Jackson replied that she had not written as yet, but would organise a letter to be sent. The following resolution was then carried:

'Resolution: NE82/2012

Moved Tim Jacobson/Jorge Navas

"The National Executive notes Resolution NE62/2012 directing the National Secretary to write to the newly appointed National Ombudsman, Errol Hodder, advising him of his appointment and congratulating him on behalf of the National Executive. The National Executive notes with concern that the National Secretary has failed to comply with this direction from the National Executive and has failed

to act as directed to give effect to the will of the National Council in appointing Mr Hodder.

Given the failure of the National Secretary to perform her role as National Secretary, the Acting National President is requested to write to Mr Hodder consistent with NE62/2012."

CARRIED UNANIMOUSLY'

Particulars of charge 5 (b)

VI. Section 230 (1) (c) provides that:

An organisation must keep the following records:... (c) a list of the names, postal addresses and occupations of the persons holding the offices;

VII. Section 233(2) of the Fair Work (Registered Organisations) Act 2009 relevantly states:

(2) An organisation must, within the prescribed period, lodge with FWA notification of any change made to the records required to be kept under paragraphs 230(1)(b), (c) and (d), certified by declaration signed by the secretary or other prescribed officer of the organisation to be a correct statement of the changes made.

VIII. The prescribed period referred to in section 233 under the Act and regulations is 30 days.

IX. Rule 32 of the rules of the Union relevantly states:

The National Secretary shall:

(e) Keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Workplace Relations Act 1996 or as amended from time to time;

(f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;

X. The failure to keep records in accordance with the Act and notify FWA of changes as required by the Act exposes the Union to a penalty.

XI. In relation to Denise Guppy:

(a) Prior to 17 October 2011 Denise Guppy was the National Assistant Secretary of the Union;

- (b) On 17 October 2011 Denise Guppy resigned as the National Assistant Secretary;
- (c) On 30 Nov 2011 Lloyd Williams was appointed the National Assistant Secretary;
- (d) Prior to 16 August 2012 Kathy Jackson did not notify FWA of the resignation of Denise Guppy or the appointment of Lloyd Williams.

XII. In relation to Natalie Bradbury:

- (a) Prior to 28 June 2012 Natalie Bradbury was the National Senior Assistant Secretary of the Union;
- (b) On 28 June 2012 Natalie Bradbury resigned as the National Senior Assistant Secretary;
- (c) On 28 June 2012 Lloyd Williams was appointed the National Senior Assistant Secretary;
- (d) Prior to 16 August 2012 Kathy Jackson did not notify FWA of the resignation of Natalie Bradbury or the appointment of Lloyd Williams.

XIII. In relation to Lloyd Williams:

- (a) Prior to 28 June 2012 Lloyd Williams was the National Assistant Secretary of the Union;
- (b) On 28 June 2012 Lloyd Williams resigned as the National Assistant Secretary;
- (c) On 28 June 2012 Dr Rosemary Kelly was appointed the National Senior Assistant Secretary;
- (d) Prior to 16 August 2012 Kathy Jackson did not notify FWA of the resignation of Lloyd Williams or the appointment of Dr Rosemary Kelly.

Particulars to 5 (c)

XIV. Rule 32 (t) of the union Rules relevantly states:

'The National Secretary shall:

(t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.'

- XV. In mid – late 2011 the National Secretary provided information to police officers that led to the formation of Strike Force Carnarvon. In late 2011 and in 2012 the National Secretary provided information to Ian Temby and Dennis Robertson to enable them to complete their report ('the Temby Report').
- XVI. Much of the information referred to in XV concerned the conduct of Michael Williamson. In 2011 and until 31 July 2012 Michael Williamson was the National President of the Union.
- XVII. On 27 April 2012 the National Executive passed the following resolution:
- 'National Executive notes the investigations currently underway including the Temby Inquiry, Strikeforce Carnarvon in NSW, the Victorian Fraud Squad and the impending release of the Fair Work Australia report into the National Union.*
- National Executive also notes that no specific facts or evidence have been put before the National Executive by the National Secretary on alleged corruption within the East Branch. To date, such allegations have been made directly to the Police or the media. In order for the National Executive to consider what action it might take in response to such allegations, the National Executive directs that the National Secretary provide it with all documentation she has provided to Police and or Ian Temby on alleged corruption in the East Branch within 7 days.'*
- XVIII. Since that direction there have been National Executive meetings on 14 May 2012, 25 May 2012, 28 June 2012 and 31 July 2012. Kathy Jackson provided none of the information the subject of the direction to any of those meetings or to the National Executive.

Particulars to 5 (d)

- XIX. Rule 32 (t) of the union Rules relevantly states:

'The National Secretary shall:

(t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.'

- XX. In about March 2008 the Union developed and implemented financial governance policy and procedures. They were amended in September 2011. They were endorsed by National Council on 30 November 2011. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

'The National Secretary, in consultation with the Finance Committee, shall be responsible for developing a budget for the HSU National Office which should be submitted to the National Executive for endorsement by May each year.'

- XXI. On 15 March 2012 the Finance Committee passed a resolution that:

"That the National Secretary be directed to develop a draft budget in consultation with the Finance Committee for presentation to the next National Executive in accordance with the Financial Governance Procedures."

- XXII. The National Secretary did not develop a draft budget in accordance with that resolution. Nor was a draft budget presented by Kathy Jackson to the National Executive meetings of 29 March 2012, 27 April 2012, 14 May 2012 or 25 May 2012. On 27 April 2012 the Finance Committee met and passed a resolution:

"That the National Secretary be directed to develop a draft budget in consultation with the Finance Committee for presentation to the next National Executive in accordance with the Financial Governance Procedures."

- XXIII. Later on 27 April 2012 the National Assistant Secretary provided a report to the National Executive on the resolutions passed by the Finance Committee meeting held earlier that day. The National Executive passed a resolution that stated in part:

'National Executive endorses the Finance Committee Report as provided by the National Senior Assistant Secretary...'

- XXIV. On 18 May 2012 the Finance Committee passed a resolution that:

"Finance Committee notes that the National Secretary has not complied with FC17/2012 and has not consulted with the Finance Committee about a draft budget for 2012/13. Finance Committee recommends that the National Executive directs the National Secretary at its next meeting, to prepare a draft budget in accordance with the Financial Governance Procedures.'

XXV. On 25 May 2012 the National Executive passed a resolution that relevantly stated:

2012/13 Budget

*Resolution: NE90/2012
Moved Dan Hill/Iris Knight*

'The National Executive notes the Finance Committee resolution FC23/2012 from its meeting on 18 May 2012 recommending that the National Executive directs the National Secretary to prepare draft budget for 2012/13. The Finance Committee had previously directed the National Secretary (see FC17/2012) at its meeting on 27 April 2012 to prepare a draft budget in consultation with the Finance Committee for presentation to this National Executive meeting. The National Secretary has failed to present such a draft budget.

The National Executive therefore directs the National Secretary to develop a draft budget within 7 days and circulate it to members of the Finance Committee for consideration prior to the next Finance Committee meeting scheduled for 28 June 2012 in Perth and for adoption by the National Executive at its meeting on 28 June 2012 in Perth.'

XXVI. The National Executive was not presented with a draft budget until its meeting on 28 June 2012. The draft budget on 1 June 2012 was adopted, with modifications on 28 June 2012. On 28 June 2012 she was instructed to make the modifications. She failed to do so before the 31 July 2012 Executive meeting. As at 27 August 2012 she has failed to comply with the instruction to present the modified budget.

Particulars to charge 5 (e)

XXVII. Rule 32 (o) of the rules of the Union states:

The National Secretary shall:

(o) Between meetings of the National Executive, control and conduct the business of the Union;

XXVIII. One of the National Secretaries duties is, between the meetings of National Executive, to direct, control and supervise national office staff.

XXIX. Mark McLeay is a National Industrial Officer engaged by the Union. He is a member of the National Office staff.

XXX. On 16 July 2012 Mark McLeay returned from 12 months parental leave. Kathy Jackson made no contact with Mark McLeay immediately before his return or after his return. She first contacted him on 31 July 2012 and has not, as at 26 August 2012, contacted him since. The only contact she made with him during that 6 week period had nothing to do with any direction, control or supervision of Mark McLeay.

Particulars to charge 5 (f)

XXXI. Rule 32 (o) of the rules of the Union states:

The National Secretary shall:

(o) Between meetings of the National Executive, control and conduct the business of the Union;

XXXII. Rule 33 (a) of the rules of the Union states:

The Senior National Assistant Secretary shall:

(i) assist the National Secretary at all times in the execution of his/her duties; and,

(ii) be subject to the direction of the National Secretary and act in his/her stead whenever appointed to do so by the National Executive.

XXXIII. The Senior National Assistant Secretary was from at least 2000 until June 2012 a full time paid office under rule 19 (b) of the rules.

XXXIV. Natalie Bradbury was the Senior National Assistant Secretary from January 2008 until her resignation in June 2012.

XXXV. From about late 2011 until June 2012 Kathy Jackson provided very little direction, control or supervision of Natalie Bradbury in that:

(a) Kathy Jackson rarely spoke to Natalie Bradbury to give any direction, control or supervision;

(b) Kathy Jackson would rarely ever answer her work phone when she was called in her Melbourne office;

(c) Kathy Jackson would rarely ever answer her mobile phone;

- (d) When Natalie Bradbury left messages for Kathy Jackson asking for a return phone call, Kathy Jackson would usually take a few days to return the call, if the call was returned at all;
- (e) Kathy Jackson would rarely respond promptly to email requests for direction, control or supervision.

Particulars to charge 5 (g)

XXXVI. Rules 32 (f), (o) and (t) of the rules of the Union states:

The National Secretary shall:

(f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;

(o) Between meetings of the National Executive, control and conduct the business of the Union;

(t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.'

XXXVII. On 25 June 2010, the Federal Court made orders that the Queensland Branch of the Union had ceased to function effectively and that the offices of the Branch Committee were vacant and that there were no effective means under the rules to fill those offices. The Court then made an order adopting a scheme that made Ms Jackson the administrator of the Branch until elections could be conducted. The scheme required Ms Jackson to, amongst other things, compile a register of members of the Branch to enable the conduct of fresh elections by FWA. The orders required Ms Jackson to request FWA to arrange for the conduct of fresh elections. The Court ordered on 25 June 2010 that 'the elections shall be conducted as quickly as practicable'.

XXXVIII. As the steps ordered by the Court had not been taken by Ms Jackson within 18 months, in January 2012 the National Executive passed a resolution (NE6/2012):

"That the Administrator of the Queensland branch write to members calling a meeting by phone with a view to holding a meeting to reconstitute the BCOM. That this be done before the next National Executive and a report back be provided to the next National Executive."

XXXIX. At the next National Executive meeting of 17 February 2012 the minutes record:

'Kathy Jackson will organize a teleconference to comply with Resolution NE6/2012.'

XL. At the next National Executive meeting of 29 March 2012 the minutes record:

'Kathy Jackson was asked to clarify whether she had called the teleconference as directed by resolution NE6/2012 in January and she said that she had not done so as yet, but had canvassed members about the possibility of a teleconference.'

XLI. It was not until 5 April 2012 that Ms Jackson requested Fair Work Australia to make arrangements for the conduct of the elections in the Queensland Branch.

Particulars to charge 5 (h)

XLII. In about March 2008 the Union developed and implemented financial governance policy and procedures. They were amended in September 2011. They were endorsed by National Council on 30 November 2011. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

1.10 The National Secretary must sign each Officials and employees monthly statement confirming that the expenditure was authorised and made on legitimate business of the Union.

XLIII. Between November 2011 and June 2012 Kathy Jackson did not sign any official's or employee's monthly statement as required.

Particulars to charge 5 (i)

XLIV. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

5.1 Except as provided for in 6 below, Electronic Funds Transfers (EFT's) will only be prepared by the Financial Controller with the prior written approval of the National Secretary.

XLV. On various occasions between November 2011 and June 2012 Kathy Jackson allowed the Financial Controller to prepare EFT's without the prior written approval of the National Secretary.

Particulars to charge 5 (j)

XLVI. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

5.1 Except as provided for in 6 below, Electronic Funds Transfers (EFT's) will only be prepared by the Financial Controller with the prior written approval of the National Secretary.

5.2 Once an EFT transaction is authorised by the National Secretary, it may then be uploaded for payment on CommBiz ready for authorisation.

XLVII. On various occasions between November 2011 and June 2012 there were also failures by the National Secretary to control the business of the union in that:

- (a) the Financial Controller was allowed to make payments that were different from the amounts authorised; and
- (b) the Financial Controller uploaded for payment on CommBiz ready for authorisation which did not have the prior written approval of the National Secretary.

Particulars to charge 5 (k)

XLVIII. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

'5.3 All EFT transactions must be authorised by the National Secretary, and two other officers of the Union, including one Trustee.'

XLIX. On various occasions between November 2011 and June 2012 Kathy Jackson failed to ensure that all EFT transactions were properly authorised before funds were released to the bank.

Particulars to charge 5 (l)

L. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

5.4 EFT transaction reports will be examined by the National Secretary following EFT transactions and initialled as being the same as those approved.

- LI. On various occasions between November 2011 and June 2012 Kathy Jackson failed to examine EFT transaction reports following EFT transactions and initial those as being the same as those approved.

Particulars to charge 5 (l)

- LII. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

6.2 All EFT payroll transactions must be authorised by the National Secretary, and two other officers of the Union, including one Trustee.

- LIII. On various occasions between November 2011 and June 2012 the National Secretary failed to authorise EFT payroll transactions that resulted in national office staff being paid late.

Particulars to charge 5 (n)

- LIV. At all relevant times the HSU National Office Financial Management Policy and Procedures stated:

Following the payment of wages by EFT, the National Secretary will examine and initial the Payroll Summary and Payroll Advice printouts each week, and the EFT receipt, as correct.

- LV. On various occasions between November 2011 and June 2012 the National Secretary failed to examine and initial the Payroll Summary and Payroll Advice printouts each week, and the EFT receipt, as correct.

Charge 6 - Gross misbehavior

6. Between March 2009 and July 2012 Kathy Jackson engaged in conduct that constituted gross misbehavior as National Secretary in breach of rule 37 (a) of the rules of the Union. The conduct alleged consists of the conduct referred to in any single one of the allegations referred to in paragraphs 6 (a) - (n) or the conduct referred to in two or more of those allegations in combination.

- (a) Kathy Jackson failed to perform her obligations by writing to the Union Ombudsman and advising him of his appointment: see general particulars and particulars to charge 5 (a) ; and/or
- (b) Kathy Jackson failed to perform her obligations by informing FWA of the changes in the records required to be kept under the Fair Work (Registered Organisations) Act 2009: see general particulars and particulars to charge 5 (b); and/or
- (c) Kathy Jackson failed to comply with the direction of National Executive to provide National Executive with all the documentation she provided to Police and/or Ian Temby on alleged corruption in the HSU East Branch and HSU East: see general particulars and particulars to charge 5 (c) ; and/or
- (d) Kathy Jackson failed to present National Executive with a draft budget in accordance with the National Office Financial Management Policy and Procedures and in accordance with the directions of the Finance Committee and the National Executive: see general particulars and particulars to charge 5 (d) ; and/or
- (e) Kathy Jackson failed to direct, control and supervise national office staff: see general particulars and particulars to charge 5 (e) ; and/or
- (f) Kathy Jackson failed to direct, control and supervise the Senior National Assistant Secretary: see general particulars and particulars to charge 5 (f) ; and/or
- (g) Kathy Jackson failed to promptly take steps ordered by the Court and National Executive concerning the dysfunctional Queensland Branch: see general particulars and particulars to charge 5 (g) ; and/or
- (h) Kathy Jackson failed to sign any official's or employee's monthly statement as required by the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (h) ; and/or
- (i) Kathy Jackson allowed the Financial Controller to prepare EFT's without the prior written approval of the National Secretary in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (i) ; and/or

- (j) Kathy Jackson failed to control the business of the union in that the Financial Controller was allowed to make payments that were different from the amounts authorised and the Financial Controller uploaded for payment on CommBiz ready for authorisation transfers which did not have the prior written approval of the National Secretary in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (j) ; and/or
- (k) Kathy Jackson failed to ensure that all EFT transactions were properly authorised before funds were released to the bank in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (k); and/or
- (l) Kathy Jackson failed to examine EFT transaction reports following EFT transactions and initial those as being the same as those approved in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (l) ; and/or
- (m) Kathy Jackson failed to authorise EFT payroll transactions that resulted in national office staff being paid late in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (l); and/or
- (n) Kathy Jackson failed to examine and initial the Payroll Summary and Payroll Advice printouts each week and the EFT receipt as correct in contravention of the Union's Financial Management Policy and Procedures: see general particulars and particulars to charge 5 (n).

Particulars to charge 6

- I. Particulars of the charge are set out in the particulars to charge 5.

Charge 7 - the Rob Elliott contract: gross misbehavior

- 7. On or about 25 February 2010 Kathy Jackson signed a contract 'on behalf of the HSU' between the Union and Rob Elliott ('the Rob Elliott contract'). The Rob Elliott contract was not authorised by the National Council or National Executive and the National Secretary did not bring the existence of the Rob Elliott contract to the attention of either the

National Council or National Executive. Signing the Rob Elliott contract was gross misbehavior.

Particulars to charge 7

- I. Particulars of the charge are set out in the particulars to charge 2.

Charge 8: the Rob Elliott contract - misappropriation of funds

8. On or about 25 February 2010 Kathy Jackson signed a contract 'on behalf of the HSU' between the Union and Rob Elliott ('the Rob Elliott contract'). The Rob Elliott contract was not authorised by the National Council or National Executive. The Rob Elliott contract committed the Union to pay at least \$654,000, and possibly as much as \$900,000, to Rob Elliott during the course of the contract. Incurring this expenditure without authorisation was a misappropriation of the funds of the Union.

Particulars to charge 8

- I. Entering into the contract appropriated the union's funds to Rob Elliott. This appropriation was done without authority. Particulars of the charge are set out in the particulars to charge 2.

Charge 9 - not remitting HESTA fees: gross misbehavior

9. Between March 2009 and October 2011 Kathy Jackson did not account for amounts paid to her by the H.E.S.T. Australia Ltd ('HESTA') in the course of performing her obligations as an officer of the Union ('the HESTA conduct'). The HESTA conduct was in breach of rule 37 (a) of the rules of the Union in that it was gross misbehavior.

Particulars to charge 9

Particulars of the charge are set out under the particulars to charge 4.

Charge 10 - not remitting HESTA fees: misappropriation of union funds

10. Between March 2009 and October 2011 Kathy Jackson did not account for amounts paid to her by the H.E.S.T. Australia Ltd ('HESTA') in the course of performing her obligations as an officer of the Union ('the HESTA conduct'). The HESTA conduct was in breach of rule 37 (a) of

the rules of the Union in that it was misappropriation of the funds of the Union.

Particulars to charge 10

Particulars of the charge are set out under the particulars to charge 4.