

WORKPLACE REFORM ASSOCIATION INC

CHAPTER 3.2

1. This chapter of the submissions deals with the Australian Workers' Union – Workplace Reform Association Inc (**Association**).
2. The Association was a relevant entity within the meaning of paragraph (a) of the terms of reference of this Commission. The principals behind the Association were Mr Bruce Wilson and Mr Ralph Blewitt. They used the Association to receive over \$380,000 from Thiess Contractors Pty Limited or one of its related entities (**Thiess**) between 1992 and 1994.
3. The history of the Association is a telling example of what can happen if a union slush fund is allowed to flourish in an environment where proper governance is non-existent or ineffective.
4. On one view the Association was established in order to raise money for election expenses, but it was not used for this purpose. In essence, Mr Wilson and Mr Blewitt used the funds raised by the Association for any purpose they chose. Some of the money raised by the Association was used to purchase a property in Kerr Street, Fitzroy as discussed further below. Other money has been dissipated, and it is unlikely that its fate will ever be known.
5. Despite this, neither Mr Wilson nor Mr Blewitt has ever been called to account. On the contrary when they left the Australian Workers' Union (**AWU**) in 1995 they received substantial payouts by way of redundancies. As is set out below, it is submitted that each of Mr Wilson and Mr Blewitt have engaged in criminal conduct and that the papers should be referred to the Director of Public Prosecutions. There is no submission that Ms Gillard has engaged in criminal conduct. However a number of questions are raised as to the conduct of the matter by her as a solicitor.

6. For its part Thiess did not engage in any tender for the services allegedly provided by the Association. Nor did it carry out any or sufficient checks or audits of the invoices issued to it by the Association. On their face the invoices appear to be inconsistent or in respect of overlapping periods of time. Thiess simply approved and paid the invoices in any event. In other words Thiess did not treat the Association in the way that it might have treated a typical commercial party on an arm's length basis. It is not possible after more than twenty years to identify with any precision why Thiess proceeded on this basis. However it is difficult to escape the impression that Thiess was more accommodating towards the Association than it might otherwise have been because it wished to build up goodwill or improve its relations with the AWU.
7. The events with which this chapter is concerned took place a long time ago – in some cases more than twenty years ago. A lapse of time of this kind gives rise to particular forensic problems. Memories fade. It is no longer possible to locate or retrieve documents. For example, it was not possible for the Commission to obtain account records from the relevant banks. Issues of this kind mean that the process of fact finding involves a greater degree of inference than would otherwise be the case.
8. Before turning to the facts it is appropriate to acknowledge the assistance and co-operation this Commission has received in investigating the Association from the Victorian Police Force.
9. Particular mention should be made of Detective Acting Senior Sergeant Ross Mitchell and his team, who have carried out a detailed investigation into the activities of the Association and generously made available to the Commission the results of those inquiries. The Commission has benefitted greatly from their highly professional.

A THE FINDINGS AS TO FACTS

10. In the early 1990s the AWU included branches in each state. Each state branch was controlled by the President, the Secretary and the branch executives. The Secretary was responsible for the day to day running of the branch. The President's position was

honorary, in the sense that it was a non-paid position. The WA branch had approximately fifteen thousand members at that time.¹

Ralph Blewitt

11. Ralph Edwyn Blewitt was born on 18 October 1945.² He left home at the age of 16, at which time his formal education ceased.³ He worked in various jobs before volunteering for the army in 1966. He later served a tour of duty in Vietnam.⁴ Mr Blewitt then returned to Australia, marrying and settling in Victoria.⁵ He became active in the Australian Labor Party (**ALP**) and ended up working as an organiser for another union.⁶

12. In due course Mr Blewitt moved to Western Australia. In 1987 he obtained a position as an organiser with the AWU.⁷ While living in Perth Mr Blewitt lived with his second wife at 138 Warwick Road, Duncraig.⁸ They were paying off the mortgage on the house. They did not have children.

Bruce Wilson

13. Bruce Morton Wilson was born on 13 November 1956 in Port Hedland, Western Australia. In 1978 he got a job in Port Hedland with Mount Newman Mining Company. In the same year he joined the AWU and the ALP. Shortly after commencing work he was elected as a shop steward. In 1979 he was elected by the AWU members as site convener. In 1983 he began work as an AWU organiser for the Pilbara region.⁹ He was elected to the National Executive of the AWU in about 1984 or 1985.

¹ Ralph Blewitt, 12/5/14, T:7.21.

² Ralph Blewitt, 12/5/14, T:6.46.

³ Ralph Blewitt, 12/5/14, T:98.24-25.

⁴ Ralph Blewitt, 12/5/14, T:98.27.

⁵ Ralph Blewitt, 12/5/14, T:98.27-28.

⁶ Ralph Blewitt, 12/5/14, T:98.34-37.

⁷ Ralph Blewitt, 12/5/14, T:7.1-8;98.38-41.

⁸ Ralph Blewitt, 12/5/14, T:8.24-26.

⁹ Evidence as to Mr Wilson's background see Bruce Wilson, witness statement dated 4/6/14, 12/6/14, paras 2-20.

Mr Wilson takes over the WA Branch of the AWU

14. As organisers, Mr Blewitt and Mr Wilson began working closely together.¹⁰ Their offices were near each other and they saw each other and spoke together on a daily basis.¹¹ Mr Blewitt described himself and Mr Wilson as ‘inseparable’ throughout the period Mr Wilson was in Perth (i.e. from about 1987 through to about 1992).¹²
15. In due course Mr Wilson told Mr Blewitt that he intended to challenge the then Secretary and other officials of the WA branch of the AWU at a forthcoming election. The campaign was successful. Mr Wilson was appointed Secretary of the WA Branch. Mr Blewitt was appointed the Assistant Secretary.
16. Once Mr Wilson took charge as Secretary of the WA branch of the AWU, he instigated a complete overhaul of the branch. Among other things Mr Wilson removed a number of officials and recruited a new team of persons whom he regarded as trustworthy.

The relationship between Blewitt and Wilson

17. Mr Blewitt is eleven years older than Mr Wilson. At the time of the events with which this chapter is concerned, Mr Blewitt was nearing his fifties. Mr Wilson was in his mid-30s: energetic, ambitious and articulate. He was highly regarded by senior members of the AWU. He was described as ‘Ludwig’s protégé’.¹³
18. Mr Blewitt said on a number of occasions that he did whatever Mr Wilson asked him to do and that he was afraid of Mr Wilson in the sense that if he did not comply with Mr Wilson’s directions he would lose his job.
19. This was challenged during Mr Blewitt’s cross-examination. It is of course true that Mr Wilson was not in any literal sense Mr Blewitt’s employer. However some allowance needs to be made for Mr Blewitt’s limitations in expressing himself. Human relationships are often complex and this was no exception. On any view Mr Wilson was

¹⁰ Ralph Blewitt, 12/5/14, T:8.21-22.

¹¹ Ralph Blewitt, 12/5/14, T:29.20-39.

¹² Ralph Blewitt, 12/5/14, T:8.46-47;9.2-7.

¹³ Robert Kernohan, witness statement, 11/6/14, annexure RJK-11. Bill Ludwig was an important figure in the Queensland branch of the AWU.

the dominant partner. Mr Cambridge (as Commissioner Cambridge then was)¹⁴ said of Mr Blewitt that he was:¹⁵

Just Mr Wilson's 'gopher' not particularly intelligent, and was only around the place because of his loyalty to Mr Wilson.

20. Mr Colin Gibson said of Mr Blewitt that 'Ralph was simply Bruce's puppet'¹⁶ Mr Gibson described an incident which illuminates to some extent the relationship between Mr Blewitt and Mr Wilson. Mr Gibson described a meeting in around late 1992 with Mr Wilson and Mr Blewitt and Mr Gibson's boss, Mr Chris Cronin. At the start of the meeting Mr Wilson asked if Mr Gibson or Mr Cronin wanted a coffee and both Mr Gibson and Mr Cronin said they did. According to Mr Gibson, Mr Wilson immediately said to Mr Blewitt words to the effect, 'well fuck off and get the coffees'. After this, according to Mr Gibson, Mr Blewitt left without question and obtained coffees.¹⁷
21. Mr Wilson was not in a position immediately to terminate Mr Blewitt's employment on a whim. However had he so chosen Mr Wilson could have made Mr Blewitt's position extremely uncomfortable, to the point that Mr Blewitt might have felt that he had no realistic option other than to leave. It has already been mentioned that upon Mr Blewitt and Mr Wilson taking over the WA Branch of the AWU Mr Wilson caused to be removed a number of employees who he did not wish to continue in the branch.¹⁸
22. It is submitted that in all the circumstances it is entirely plausible that Mr Blewitt felt a sense of compulsion to do what Mr Wilson directed him to do. At the very least Mr Blewitt found himself in a situation in which he habitually complied with Mr Wilson's instructions without question.

Dawesville channel project

23. In 1991 the Western Australian Department of Harbours advertised for tenders for the Dawesville Channel project. The Dawesville Channel is a man-made channel

¹⁴ In these submissions without any disrespect Commissioner Cambridge will be referred to as Mr Cambridge since this was his title at the time.

¹⁵ Ian Cambridge, witness statement dated 27/5/14, 10/6/14, para 25.

¹⁶ Colin Gibson, witness statement, 23/6/14, para 12.

¹⁷ Colin Gibson, witness statement, 23/6/14, para 13.

¹⁸ Ralph Blewitt, 12/5/14, T:9.13-26.

constructed about 80km south of Perth. It permits seawater from the Indian Ocean to flush into and clean a local estuary system.

24. The tender for the Dawesville Channel Project was won by Thiess. Mr Wilson actively negotiated in support of Thiess's tender with the then Labor government of Western Australia. Mr Blewitt attended some of these meetings.¹⁹

Discussion between Blewitt and Wilson with regard to the Association

25. Once Thiess had been awarded the tender for the Dawesville Channel project there appear to have been discussions between representatives of Thiess, on the one hand, and Mr Wilson and Mr Blewitt, on the other, with regard to Thiess engaging or receiving certain services related to training. These discussions culminated in a letter of 16 March 1992, as discussed further below. In approximately early 1992 Mr Wilson and Mr Blewitt began to discuss the setting up of the Association. The evidence of both Mr Blewitt and Mr Wilson is to the effect that they were the only ones involved in these early discussions.

26. Mr Wilson was the driving force behind the establishment of the Association.²⁰ Mr Wilson says further:²¹

It was my strong position that there was no way that I would be raising these funds and allowing the national office [*National Construction Branch*] to make any claim on them. The separate legal entity would be the vehicle that would propel the concept of the NCB, and funds received by the entity could be used to support the NCB concept through supporting candidates in the election and paying for various associated expenses.

27. Mr Wilson goes on to depose in his witness statement:²²

I did some research to inform myself about how to go about setting up a legal entity to receive the monies from the DCP [Dawesville Channel Project]. I may have asked someone like my accountants, or Steven Booth or Julia Gillard. I got as much information as I could about how to go about it from various sources. After informing myself I believe that the entity should be an incorporated association.

28. Mr Wilson's evidence was that he believed he asked Ms Gillard about establishing an incorporated association.²³

¹⁹ Ralph Blewitt, 12/5/14, T:11.8-13.

²⁰ Bruce Wilson, 12/6/14, T:420.10-12.

²¹ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 113.

²² Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 117.

29. In his witness statement, Mr Wilson deposed that in discussions with Thiess someone suggested creating a separate legal entity ‘that could run the training and to which the funding could be provided’.²⁴
30. Mr Blewitt deposed that he had a number of discussions with Mr Wilson concerning the prospective Association and its activities at about this time. Mr Blewitt deposed that Mr Wilson wanted the Association kept out of arms reach of the AWU as a separate entity.²⁵ Mr Blewitt deposed that Mr Wilson said to him that he wanted the Association kept confidential from the rest of the AWU officials and executives.²⁶ No one else was present when Mr Wilson gave Mr Blewitt these instructions.
31. Mr Blewitt deposed that Mr Wilson told him why he wanted the Association kept confidential:²⁷

We needed to raise funds for potential election campaigns in the future and this was a vehicle to raise those funds, words to that effect.

32. Mr Blewitt deposed that it was never his and Mr Wilson’s intention to provide any actual services to Thiess at Dawesville.²⁸ According to Mr Blewitt, Mr Wilson said to him that they (i.e. Blewitt and Wilson) will not in fact be providing any services to Thiess, but ‘we will have a system by which we send them invoices periodically’.²⁹

The Association’s secret PO Box

33. Consistently with their intention to keep the fact of the Association secret from others at the AWU, Mr Wilson and Mr Blewitt established a new PO Box address, namely PO Box 253, Northbridge WA 6865 (the Northbridge PO Box). The purpose of the Northbridge PO Box was to act as the address for the Association and thereby in due course to receive mail addressed and sent to the Association, including cheques.

²³ Bruce Wilson, 12/6/14, T:410.12-25.

²⁴ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 112.

²⁵ Ralph Blewitt, 12/5/14, T:14.19-20.

²⁶ Ralph Blewitt, 12/5/14, T:14.23-27.

²⁷ Ralph Blewitt, 12/5/14, T:14.44-46.

²⁸ Ralph Blewitt, 12/5/14, T:15.4-5.

²⁹ Ralph Blewitt, 12/5/14, T:15.30-37.

34. The establishment of the Northbridge PO Box is significant. Mr Wilson accepted that he was a party to the establishment of the Northbridge PO Box.³⁰ When it was put to Mr Wilson that the reason for setting up the Northbridge PO Box was to keep the Association secret from others from the AWU he replied ‘not necessarily’.³¹ However there is no legitimate reason why the business address of the WA branch of the AWU could not have been used as the address for the Association.

Initial application for incorporation of the Association – approximately February 1992

35. Mr Blewitt or Mr Wilson lodged an application for incorporation of the Association with the Commissioner of Corporate Affairs in early 1992. This initial application was rejected. Mr Blewitt says that Wilson told him at the time that the Commissioner of Corporate Affairs had rejected the application because the proposed association was ‘too like a trade union’.

Instructions to Ms Gillard

36. Following the rejection of the initial application for incorporation Mr Wilson and Mr Blewitt sought legal advice from the law firm Slater & Gordon. Slater & Gordon was at that time the solicitor for the AWU’s Victorian branch and its Western Australian branch. There is a great deal of uncertainty concerning the precise tasks for which Slater & Gordon was retained.
37. Ms Gillard’s evidence was that in 1992 she received instructions from Mr Wilson about providing legal advice on the incorporation of an association.³² Ms Gillard was at that time a salaried partner at Slater & Gordon. She was also in a relationship with Mr Wilson, that relationship having begun in about late 1991.³³ Ms Gillard describes her understanding at the time in the following terms:³⁴

I understood that it was the desire of Mr Wilson and others involved in the Association to have an association, to be a team that would run together for union elections, and to have an account into which they would bank the monies that they had fundraised for that purpose, yes.

³⁰ Bruce Wilson, 12/6/14, T:412.41-43.

³¹ Bruce Wilson, 12/6/14, T:412.45-47; 413.1.

³² Julia Gillard, 10/9/14, T:770.26-28.

³³ Gillard MFI-1, 10/9/14, p 133.

³⁴ Julia Gillard, 10/9/10, T:774.34-39.

38. At the time Ms Gillard was already familiar with the Victorian legislation in respect of the incorporation of associations and she checked the corresponding Act in Western Australia.³⁵ Ms Gillard knew at the time she provided legal advice on incorporation that her clients intended to set up an account for the Association.³⁶
39. Ms Gillard described her understanding of the purpose of the Association as follows:³⁷
- My understanding of the purpose of the Association was that it would formalise arrangements between a team of officials who had an intention of running together at the next election. It would enable them to fund-raise to support that re-election campaign.
40. Ms Gillard took instructions from Mr Wilson and Mr Blewitt, whom she regarded jointly as her client for the purposes of incorporating the Association.³⁸ Ms Gillard regarded Mr Wilson and Mr Blewitt as giving her instructions in their personal capacities.³⁹ Ms Gillard also stated in evidence that while she was communicating with both Mr Wilson and Mr Blewitt she was more regularly in contact with Mr Wilson.⁴⁰
41. According to Mr Blewitt, following the failure of this first attempt to incorporate the Association, in approximately late February or early March 1992 he and Mr Wilson flew to Melbourne to seek legal advice from the law firm Slater & Gordon.⁴¹
42. Mr Blewitt deposed further that while in Melbourne he and Mr Wilson attended a meeting at the offices of Slater & Gordon involving Ms Gillard and Bernard Murphy. The latter was at that time a more senior partner of Slater & Gordon, to whom Ms Gillard reported. Mr Blewitt says that the purpose of the meeting was for him and Mr Wilson to seek legal advice with regard to the establishment and incorporation of the Association. The meeting lasted for some hours. Mr Blewitt did not take any notes. He recalls that some of the other participants in the meeting were taking notes or at least ‘scribbling down bits and pieces’.⁴²

³⁵ Julia Gillard, 10/9/14, T:773.15-27.

³⁶ Julia Gillard, 10/9/14, T:775.7-9.

³⁷ Julia Gillard, 10/9/14, T:785.4-8.

³⁸ Julia Gillard, 10/9/14, T:797.12-17.

³⁹ Julia Gillard, 10/9/14, T:797.19-21.

⁴⁰ Julia Gillard, 10/9/14, T:779.6-7.

⁴¹ Ralph Blewitt, 12/5/14, T:18.1-10.

⁴² Ralph Blewitt, 12/5/14, T:18.37-47;19.1-2.

43. Mr Wilson's evidence was somewhat different. He says that at some stage in March 1992 he had a discussion with Ms Gillard in Perth concerning an application to incorporate the Association.⁴³ Mr Wilson's evidence was that he recollected a conversation with Ms Gillard in his office in Perth, during which he asked questions about the relevant legislation and she answered.⁴⁴ Mr Wilson further deposed that he was not sure if Mr Blewitt was present during this conversation and that he could not recall anyone else being present.⁴⁵
44. Mr Murphy (as his Honour Justice Murphy then was)⁴⁶ gave evidence to the effect that he did not attend a meeting with Mr Wilson, Mr Blewitt and Ms Gillard regarding the Association in 1992.⁴⁷ In her witness statement Ms Gillard's evidence was that she did not recall the meeting at Slater & Gordon with Mr Murphy, Mr Wilson and Mr Blewitt as described by Mr Blewitt.⁴⁸ However in her oral evidence to the Commission Ms Gillard seemed more certain that Mr Murphy had not been present at any discussion and that there had been no meeting in Melbourne.⁴⁹ In the light of Mr Murphy's denial, the absence of any contemporaneous record, and the matters in respect of Mr Blewitt's credit as set out further in Part B of these submissions below, it is submitted that the Commission should find that no meeting in Melbourne as described by Mr Blewitt took place. However ultimately little may turn on this. There is no doubt that Slater & Gordon through Ms Gillard, at least, advised on the incorporation of the Association. Whether the advice was given in Perth or Melbourne, and whether Mr Murphy was present at the initial conference, may ultimately be matters of little moment.

Documents creating the Association

45. As noted above, Ms Gillard accepted in evidence that she gave legal advice in respect of the incorporation of the Association. There seems no doubt that she played an active role in obtaining and completing the requisite documents and in drafting the rules of the Association. Those documents included the following.

⁴³ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 128.

⁴⁴ Bruce Wilson, 12/6/14 T:417.16-17.

⁴⁵ Bruce Wilson, 12/6/14, T:417.19-28.

⁴⁶ In these submissions, without meaning any disrespect Justice Murphy will be referred to as Mr Murphy since this was his title at the time.

⁴⁷ Bernard Murphy, witness statement, 9/9/14, para 3.2.

⁴⁸ Julia Gillard, witness statement 4, 10/9/14, para 15.

⁴⁹ Julia Gillard, 10/9/14, T:781.7-13.

46. *Application for Incorporation of Association*. The first document was headed ‘Application for incorporation of Association’ (Application).⁵⁰ It comprises five numbered paragraphs.
47. Paragraph one identified the person duly authorised to apply for incorporation of the Association. It was completed in blue ink. Mr Blewitt says that this was his hand writing.⁵¹ Mr Wilson agreed.⁵²
48. Paragraph two of the Application set out what is described as the ‘main purpose’ of the Association, in the following terms: ‘Development of changes to work to achieve safe workplaces’. These words were written in blue ink. Mr Blewitt deposed that the handwriting was his but that he merely wrote what was dictated to him.⁵³ Mr Wilson also identified the hand writing as that of Mr Blewitt.⁵⁴ Mr Wilson said he could not recall who had suggested those words to Mr Blewitt but said ‘I presume it would be either her [*Ms Gillard*] or me.’⁵⁵
49. As noted above, Ms Gillard’s evidence was that she understood that the purpose of the Association was to ‘formalise arrangements’ between a team of officials who were going to run at the next union election, and to enable them to raise funds in support of that re-election campaign.⁵⁶ Mr Blewitt’s evidence was also to the effect that the main purpose of the Association so far as he was concerned was to raise funds for election purposes.⁵⁷ Given this, it is hard to see how the Association’s ‘main’ purpose could have been described as the development of changes to work to achieve safe workplaces; at most the development of changes to work to achieve safe workplaces would have been a consequential or incidental purpose.
50. Paragraph two of the Application also included a reference to the *Associations Incorporations Act 1987 (WA)*. In particular there is handwriting in black ink

⁵⁰ Blewitt MFI-1, 12/5/14, p58.

⁵¹ Ralph Blewitt, 12/5/14, T:20.17-20.

⁵² Bruce Wilson, 12/6/14, T419.5-11.

⁵³ Ralph Blewitt, 12/5/14, T:20.31-45.

⁵⁴ Bruce Wilson, 12/6/14, T419.26-36.

⁵⁵ Bruce Wilson, 12/6/14, T419.38-42.

⁵⁶ Julia Gillard, 10/9/14, T:785.4-8.

⁵⁷ Ralph Blewitt, 12/5/14, T:21.19-22.

identifying s 4(1)(e) of that Act as the provision of s 4(1) applicable to the Association. Mr Wilson identified this handwriting as Julia Gillard's.⁵⁸ Mr Blewitt says that the reference to s 4(1)(a) was written in Ms Gillard's handwriting,⁵⁹ and that she wrote in those words immediately after he had completed the section of paragraph two in blue ink immediately above it.⁶⁰

51. Paragraph three of the Application was in the following terms:

The Association is not formed for the purpose of trading or securing a pecuniary profit to the members from the transactions of the Association.

52. Paragraph five of the Application included a date (22 April 1992) and Mr Blewitt's signature, both written in black ink. Mr Blewitt deposed that he inserted the date and his signature after he had returned to Perth, immediately before lodging the Application at the office of the Commissioner of Corporate Affairs. Mr Wilson also deposed that Mr Blewitt lodged the forms for the Commissioner of Corporate Affairs.⁶¹

53. At the end of the Application there was some further information written in blue ink being the name of the person lodging the Application and that person's address and telephone details. Mr Blewitt inserted this information.⁶² The address was his home address, rather than the address of the AWU at the WA branch. Mr Blewitt said that he could not recollect why he gave his own address.⁶³ Likewise the telephone number which Mr Blewitt wrote on the Application was his home telephone number at the time.⁶⁴

54. It is reasonable to infer that the insertion of Mr Blewitt's home address and telephone number (rather than the address and telephone number of the WA branch) was consistent with, and in pursuance of, keeping the Association secret from any other official at the WA branch of the AWU.

⁵⁸ Bruce Wilson, 12/6/14, T:420.22-23.

⁵⁹ Ralph Blewitt, 12/5/14, T:21.24-27.

⁶⁰ Ralph Blewitt, 12/5/14, T:21.29-31.

⁶¹ Bruce Wilson, 12/6/14, T:420.42-45.

⁶² Ralph Blewitt, 12/5/14, T:21.33-39.

⁶³ Ralph Blewitt, 12/5/14, T:21.41-44.

⁶⁴ Ralph Blewitt, 12/5/14, T:21.46-47; 22.1.

55. *Applicant's Certificate to Accompany Application for Incorporation*. The next document was headed 'Applicant's certificate to accompany applications for incorporation' (Certificate).⁶⁵
56. Again Mr Blewitt filled in his name and home address in blue ink as the person giving the Certificate at the meeting at Slater & Gordon.⁶⁶ Mr Blewitt did not identify his occupation on the Certificate despite that being an item of information called for in the form.
57. Paragraph (i) of the Certificate identifies in black ink the name of the Association, namely 'Australian Workers' Union - Workplace Reform Association'. This handwriting was Ms Gillard's.⁶⁷
58. The fact that the name of the Association incorporated the name of the AWU is significant. No permission or authorisation had been obtained by the AWU in this regard. Ms Gillard said that she did not turn her mind to the question of whether such authorisation had been obtained, nor give advice in respect of that issue.⁶⁸
59. Paragraph (iii) of the Certificate confirmed that the requirements of section 6 of the *Associations Incorporations Act 1987* (WA) regarding the advertisement of the Application for incorporation had been satisfied. In particular, paragraph (iii) provided that there had been an advertisement on 6 March 1992 in the West Australian. Mr Blewitt identified this hand writing as his. Mr Wilson also said that the handwriting was that of Mr Blewitt.⁶⁹
60. The Certificate was dated 22 April 1992 and signed by Mr Blewitt. His evidence was that he inserted this date and his signature after he had returned to Perth, immediately before lodging the Certificate at the Office of the Commissioner of Corporate Affairs.⁷⁰

⁶⁵ Blewitt MFI-1, 12/5/14, p 59.

⁶⁶ Ralph Blewitt, 12/5/14, T:22.35-37.

⁶⁷ Bruce Wilson, 12/6/14, T:422.26-27; Julia Gillard, 10/9/14, T:795.39-45.

⁶⁸ Julia Gillard, 10/9/14, T:799.13-34.

⁶⁹ Bruce Wilson, 12/6/14, T:422.33-39.

⁷⁰ Ralph Blewitt, 12/5/14, T:23.5-11.

61. Paragraph (v) of the Certificate stated that the certifier (i.e. Mr Blewitt) verified that the Association had more than five members. According to Mr Blewitt this certification was not true. His evidence was that the Association had no members at that time and that the only people involved were himself and Mr Wilson.⁷¹ Mr Wilson's evidence was that the Association did not have on the day the Certificate was completed more than five members and that he knew it at the time.⁷²

62. *Rules of the Association.* The Rules describe the objects of the Association in the following terms:

- a. To contribute to the development of changes to work in order to achieve democratic, safe workplaces;
- b. To contribute to the implementation of a more equitable distribution of wealth between employers and workers;
- c. To contribute to the implementation of appropriate skills training for workers;
- d. To promote and contribute to the development of unions and unionism and in particular to promote the Australian Workers' Union.
- e. To promote within unions the adoption of the aims of the Association and its policies;
- f. To support and assist union officials and union members who are contributing to the adoption of the aims of the Association and its policies;
- g. To consult with union officials, union members, employers, industrial organisations, academics and others as necessary to further objects (a) to (f) herein; and
- h. To publish and distribute publications as necessary to further objects (a) to (f) herein.

63. Object number 2 of the Rules is in the following terms:

The property and income of the Association must be applied solely in accordance with the objects of the Association and no part of that property or income may be paid or otherwise distributed, directly or indirectly, to Members, except in good faith in the promotion of those objects.

64. Mr Blewitt's evidence was that he did not read the Rules before lodging them with the office of the Commissioner of Corporate Affairs. His recollection was that the Rules were delivered to him in Perth by Mr Wilson after the meeting at the offices of Slater & Gordon.⁷³

⁷¹ Ralph Blewitt, 12/5/14, T:24.2-6.

⁷² Bruce Wilson, 12/6/14, T:423.7-16.

⁷³ Ralph Blewitt, 12/5/14, T:25.7-16.

Opening of a file

65. Ms Gillard's evidence was that she maintained a file, in the sense that she collated the relevant documents and put them in a manila folder, Ms Gillard says that this folder would have been kept in a filing cabinet on the ground floor of Slater & Gordon where the industrial unit worked.⁷⁴ However Ms Gillard did not open a file on the Slater & Gordon computer system.⁷⁵ In her interview with Mr Shaw and Mr Gordon on 11 September 1995 (Interview) Ms Gillard indicated that with the benefit of hindsight it might have been better to have opened a file on the Slater & Gordon system.⁷⁶

Advertisement for the Association – 6 March 1992

66. Consistently with the terms of the Certificate Mr Blewitt caused to be published on 6 March 1992 an advertisement in the West Australian newspaper in the following terms:⁷⁷

Notice is hereby given that Ralph Blewitt of 138 Warwick Road, Duncraig, Union Official, being duly authorised by the above Association, intends to apply to the Commissioner of Corporate Affairs on or after 8 April 1992 for the incorporation of the Australian Workers' Union Workplace Reform Association Inc. The Association is formed for the purpose of promoting and encouraging workplace reform for workers performing construction and maintenance work.

Agreement between Thiess and the Association – 16 March 1992

67. As noted above the discussions between Thiess and Mr Wilson and Mr Blewitt culminated in a letter being sent on 16 March 1992 which captured the proposed agreement between Thiess and the Association. In particular, on 16 March 1992, Thiess wrote to the secretary of the Association (to the attention of Mr Blewitt) in the following terms:⁷⁸

Further to our recent discussions, I confirm our agreement that your Association will provide a service to Thiess on the Dawesville Channel Project in matters relating to workplace reform, site safety and operator training.

The AMMA, Thiess and your Association share a common concern about the need to develop programs for training on mine sites throughout Western Australia and each is committed to the

⁷⁴ Julia Gillard, 10/9/14, T:776.19-24.

⁷⁵ Julia Gillard, 10/9/14, T:776.26-29.

⁷⁶ Julia Gillard, 10/9/14, T:777.39-44.

⁷⁷ Blewitt MFI-1, 12/5/14, p 56.

⁷⁸ Blewitt MFI-1, 12/5/14, p 57.

principle of workplace reform. Thiess will demonstrate its commitment to training and workplace reform progressively throughout its civil construction projects.

Thiess views the Dawesville Channel Project as a good “pilot project” and welcomes your involvement in it. We are certain that both Thiess and your Association will learn a great deal from this “pilot project”.

As discussed, we would be pleased to second on a full-time basis, a representative of your Association to co-ordinate and liaise with our senior management and site management. The secondment should commence in January 1992 and will last for the duration of the project.

It will be a requirement that the seconded person works site hours which are a maximum of 54 hours per week. In addition, all travelling costs, accommodation, industrial overheads etc, are included in the rate agreed at \$36 per hour. Accounts are to be submitted by your Association monthly and will be paid within 30 days of receipt.

68. The terms of this letter, and its consequences are considered in more detail below. For present purposes it is worth emphasising that the letter provides that it is a ‘requirement that the seconded person works site hours’. In other words, it is clear that Thiess was proceeding on the basis that any obligation on its part to make payment would be enlivened in the event that the representative of the Association had actually carried out work.
69. Next, the letter is addressed to ‘the Secretary’ of the Association. At that time the Association had not been incorporated; indeed, although an advertisement had appeared in the West Australian, the application for incorporation had not yet been lodged.
70. Despite the fact that the letter was dated 16 March 1992 it stipulates that the secondment ‘should’ commence in January 1992 and that the secondment would last the duration of the project. Mr Jukes gave evidence in respect of this aspect of the letter in his statement in reply dated 15 August 2014. He deposes in that statement that he drafted the letter in these terms because he thought the AWU had already commenced work. He deposed that in early 1992, Mr Wilson telephoned him and said words to the following effect:⁷⁹

I have recruited Colin Saunders to assist with the training at Dawesville. He’s been doing preparatory work and we are incurring costs. I need you to start paying.

71. Mr Jukes deposed that as a result of what Mr Wilson had said he felt under pressure to draft a letter quickly because he understood that the AWU had already started work and incurring costs. He says that it was for this reason that he included in the letter a

⁷⁹ Nicholas Jukes, witness statement in reply, 10/6/14, para 7.

reference to the works starting in January 1992 – he thought that was when the AWU had in fact commenced working on the project.

Incorporation of the Association – 23 April 1992

72. On 22 April 1992 Mr Blewitt signed the Application and the Certificate. The next day he lodged the Application, the Certificate and the Rules at the Office of the Commissioner of Corporate Affairs in Perth.

Ms Gillard drafts new rule

73. Following the lodgement of the Application and the Certificate, the Commissioner of Corporate Affairs must have raised some question or concern about the application for incorporation. This question or concern must also have been communicated to Ms Gillard in Melbourne.
74. On 13 May 1992 Ms Gillard wrote to the Office of State Corporate Affairs in Western Australia concerning the Association. It is not possible to locate a copy of Ms Gillard's letter of 13 May 1992, however it appears to have provided an explanation to the Office of State Corporate Affairs of the purposes of the Association. In substance the letter appears to have been arguing the case for incorporation, following some objection or challenge having been raised by the Commissioner of Corporate Affairs.⁸⁰ Ms Gillard said that in her letter she put her client's instructions and her view of the law.⁸¹
75. On 15 May 1992 Mr Ray Neal, the assistant director of the office of State Corporate Affairs wrote to Ms Gillard in the following terms:

Thank you for your letter of 13 May 1992 concerning the application by Mr R E Blewitt to incorporate the above association.

The explanation which you have provided in relation to the purposes of the Associations is accepted, however it is believed that the matter does need to be clarified by the amendment to the association's rules to include the new rule 3A.

In order to avoid any unnecessary costs and delays in this matter, the Commission is prepared to incorporate the association with the existing rules and with Mr Blewitt's application subject to receiving a written undertaking that the association will amend its rule to include the new rule 3A within 30 days of being notified of incorporation.

⁸⁰ Julia Gillard, 10/9/14, T:806.2-27;807.4-29.

⁸¹ Julia Gillard, 10/9/14, T:807.30-32.

76. On 21 May 1992 Ms Gillard wrote a memorandum addressed to Mr Blewitt, enclosing the letter dated 15 May 1992 set out above. In this memorandum Ms Gillard advised Mr Blewitt that in order to finalise the incorporation of the Association he needed to write to Mr Neal on Association letterhead giving an undertaking to insert a new rule 3A in the objects of the Association.
77. The new rule 3A which Ms Gillard advised Mr Blewitt he should undertake to include in the Rules of the Association was in the following terms:

The Interpretation of Objects of the Association

The Objects specified in sub rule 3 (1) must not be interpreted as meaning that the Association aims to seek to regulate the relations between workmen and employers, or between workmen and workmen, or between employers and employers, or aims to impose or have imposed by others any restrictive conditions on the conduct of any trade or business.

78. Ms Gillard's memorandum to Mr Blewitt concluded by her advising Mr Blewitt that an undertaking to include a rule in the above terms should finalise the incorporation. Presumably, Mr Blewitt then wrote in the terms suggested by Ms Gillard, although his letter has not come to light.
79. The new rule 3A is problematic. It precludes the Association regulating relations between workmen and employers. But, as Ms Gillard acknowledged in evidence, one of the things that an employer is supposed to do is provide a safe system of work.⁸² An association devoted to workplace reform, and in particular to making the workplace safer, would appear to be seeking to regulate relations between workmen and employers. Thus while the new rule 3A might have satisfied the concerns raised by the Commissioner of Corporate Affairs, it does not appear to reflect the intended workings of the Association. Ms Gillard did not offer any clear explanation as to why the rules of the Association did not simply state that it was not going to be a trade union because it was going to raise money for trade union elections.⁸³
80. Ms Gillard did not provide any advice to Mr Blewitt concerning how the rule change to incorporate the new rule 3A would need to be effected in accordance with the rules of the Association.⁸⁴ No special resolution of the members of the Association was ever

⁸² Julia Gillard, 10/9/14, T:809.36-38.

⁸³ Julia Gillard, 10/9/14, T:810.13-23.

⁸⁴ Julia Gillard, 10/9/14, T:812.37-41.

passed effecting the rule change to introduce the new rule 3A despite Mr Blewitt having given an undertaking to do so to the Commissioner of Corporate Affairs. Indeed since the Association had no members it would not have been possible for it to pass a special resolution within the timeframe required by Mr Blewitt's undertaking, or at all.

Incorporation of Association

81. On 24 June 1992, the Commissioner of Corporate Affairs issued pursuant to section 9(1) of the *Associations Incorporations Act 1987 (WA)* a certificate of incorporation in the following terms:

This is to certify that AUSTRALIAN WORKERS' UNION – WORKPLACE REFORM ASSOCIATION INC has this day been incorporated under the *Associations Incorporations Act 1987 (WA)*.

Association starts invoicing Thiess – April 1992

82. By the time the Association had been incorporated it had already begun issuing, and being paid for, invoices.
83. In particular, on or about 22 April 1992⁸⁵ Mr Blewitt created invoice number 001 addressed to Thiess on behalf of the Association, seeking payment of \$25,272 (Invoice 001).⁸⁶ Mr Blewitt's evidence was that he prepared Invoice 001 on the instruction of Mr Wilson.⁸⁷ Invoice 001 was signed by Mr Blewitt.⁸⁸
84. In particular Mr Blewitt deposed that prior to his preparation of Invoice 001 he had a conversation with Mr Wilson, no one else being present, in which Mr Wilson said words to the effect:⁸⁹

Work out hours that equate roughly 50-odd, whatever hours a week it is. Work out some penalty rates included in that. You know how to do it, Ralph.

85. Later in his evidence Mr Blewitt confirmed that this was the effect of the conversation he had with Mr Wilson prior to sending Invoice 001:⁹⁰

⁸⁵ Ralph Blewitt, 12/5/14, T:30.44-47; Blewitt MFI-1, 12/5/14, p 70.

⁸⁶ Blewitt MFI-1, 12/5/14, p 69.

⁸⁷ Ralph Blewitt, 12/5/14, T:26.10-12;30.1-3.

⁸⁸ Ralph Blewitt, 12/5/14, T:25.40-42.

⁸⁹ Ralph Blewitt, 12/5/14, T:26.15-18.

Q. Do you remember what he said ?

A. Basically what I said to you before, “let’s do the first invoice dummy up the hours, you know. It’s 54 hours. Work in the penalty rates, etc. just do some figures, give it to Chris Campbell to type up and get it mailed. Oh, and do it for the three months we’re doing it in arrears”, because we hadn’t sent an invoice at that point in time.

86. Mr Wilson said that it was agreed between himself and Mr Blewitt that Mr Blewitt would be responsible for doing the invoices, and that Mr Blewitt told him that he had issued Invoice 001.⁹¹

87. Mr Blewitt’s evidence was that following his conversation with Mr Wilson set out above, Mr Blewitt prepared the basic layout of Invoice 001 including the heading at the top of the page.⁹²

88. The heading of Invoice 001 is worth further discussion.⁹³ The words ‘The Australian Workers’ Union’ appear in capitals in the middle of the page. Immediately below those words, in much larger font, are the words ‘Workplace Reform Association Inc’, also in capitals.

89. This arrangement of the words at the top of Invoice 001 conveys a particular impression to the recipient of the invoice: it suggests that the document emanates from the AWU, and that the Association was a division of or entity controlled by the AWU. That is precisely what Thiess assumed on receipt of Invoice 001 and further invoices issued by the Association from time to time. That is, Thiess assumed that the Association was a division or part of, or entity controlled by, the AWU, such that payment to the Association was in substance payment to the AWU.⁹⁴

90. Invoice 001 then includes the following under the heading ‘details’:

Provision of AWU Work Place Reform Association representative
Dawesville Channel Project – as per agreement
* January – 248.4 hours

⁹⁰ Ralph Blewitt, 12/5/14, T:30.9-15.

⁹¹ Bruce Wilson, 12/6/14, T:431.10-25.

⁹² Ralph Blewitt, 12/5/14, T:27.15-27.

⁹³ Blewitt MFI-1, 12/5/14, p 69.

⁹⁴ Nicholas Jukes, witness statement, 23/5/14, para 24; Nicholas Jukes, witness statement, 23/5/14, para 12; Steven Schalit, witness statement, para 12.

- * February - 216.0 hours
- * March – 237.6 hours

91. The reference to the ‘agreement’ is to the letter from Thiess to the Association dated 16 March 1992 referred to above. The number of hours set out in Invoice 001 next to each month suggests to the recipient of Invoice 001 that the Association’s representative worked those hours during each of the three months.
92. Mr Blewitt’s evidence was that he calculated the said number of hours based on a ‘guesstimate’ of how many hours would have been worked had a representative been on site for a maximum of 54 hours a week as specified in the letter from Thiess to the Association dated 16 March 1992.⁹⁵
93. However the fact is that when Mr Blewitt prepared Invoice 001 the Association had not provided any representative at the Dawesville Channel Project.⁹⁶ No work had been done by the Association at all. Indeed the Association had not been incorporated, had no staff, no employees, and no members. It was not simply the case that the Association had done no work; the Association could not have done any work.
94. Mr Blewitt was well aware of these facts when he prepared Invoice 001 and forwarded it to Thiess. So far as he was aware, Mr Wilson knew it also.⁹⁷ For his part Mr Wilson accepted that no work was done during the months of January, February and March 1992.⁹⁸ Mr Wilson suggests that the Association was entitled to render invoices despite the fact that no work was done; for the reasons set out below this argument should be rejected.
95. In other words, Invoice 001 was false to both Mr Wilson’s and Mr Blewitt’s knowledge at the time Mr Blewitt signed it and forwarded it to Thiess.

⁹⁵ Ralph Blewitt, 12/5/14, T:27.29-36.

⁹⁶ Ralph Blewitt, 12/5/14, T:26.43-46.

⁹⁷ Ralph Blewitt, 12/5/14, T:27.1-5.

⁹⁸ Bruce Wilson, 12/6/14, T:433.25-28.

The Association did no work for Thiess

96. As just noted, Mr Wilson contended that the Association was entitled to render invoices despite the fact that no work had been done. This suggestion is critical to Mr Wilson's position and should be considered further.
97. The letter from Thiess to the Association dated 16 March 1992 set out above does not identify precisely the services which the Association would be providing to Thiess. The first paragraph of the letter refers to the Association providing a service to Thiess on the Dawesville Channel project 'in matters relating to workplace reform, site safety and operator training'. The detail of what exact services would be provided is only addressed, if at all, in the fourth paragraph of the letter which contemplates that the Association would provide a representative 'to coordinate and liaise with our senior management and site management'.
98. It would seem that the parties to the agreement contained in the letter of 16 March 1992 contemplated that the training itself would be undertaken by Thiess, whether on its own account or through persons engaged by it to provide such training, and that the Association (or, as Thiess understood it, the AWU) would perform a coordinating and liaison role, presumably between the members of the AWU onsite at the Dawesville Channel project and Thiess senior and site management. The precise scope and content of this coordination and liaison role is somewhat unclear.
99. One could imagine, in another case, there being an issue as to whether services provided by way of coordination and liaison were apt or sufficient or provided with the requisite degree of skill care and diligence. However that issue is moot here, because it seems common ground that no work was done by the Association during at least the calendar years 1992 and 1994.
100. Thus as already noted Mr Blewitt's evidence was to the effect that no services of any kind were ever provided to Thiess by the Association and indeed that he and Mr Wilson had never expected that they would be.
101. Mr Wilson's evidence was that the late Mr Glen Ivory, then the President of the WA Branch of the AWU, performed certain services on behalf of the Association but only

for a limited period, such services having been provided according to Mr Wilson from approximately the beginning of 1993 to ‘pretty much the end of 1993’.⁹⁹

102. The suggestion that the Association carried out work through Mr Ivory, but only for a few months in 1993, created an immediate and serious difficulty for Mr Wilson. The Association had, to his knowledge, rendered invoices from April 1992 and continuously up until the end of 1994. But Mr Wilson was now saying that work was only done for a limited period during the calendar year 1993 by the late Mr Ivory.
103. Mr Wilson sought to deal with this difficulty by asserting that he and Thiess (through Mr Jukes) had entered into an oral agreement at an earlier point in time than the letter of 16 March 1992, pursuant to which Thiess would pay the Association from the outset of the project until the end regardless of whether any work was in fact carried out.¹⁰⁰
104. This suggestion gives rise to two closely related issues, which need to be dealt with separately. First, was there an oral agreement between Thiess and the Association, prior to and independent of the agreement contained in the letter dated 16 March 1992, pursuant to which Thiess would pay the Association for the full term of the Dawesville Channel project regardless of whether work was carried out or not? Secondly, did the late Mr Glen Ivory provide services to Thiess on behalf of the Association pursuant to the agreement contained in the letter dated 16 March 1992 during part of the calendar year 1993? These two issues will be considered in turn.
105. Alleged oral agreement. The first difficulty with the oral agreement is that it is inconsistent with the contemporaneous written record, namely the letter from Thiess to the Association of 16 March 1992. As noted above, the letter stated squarely among other things that: ‘**It will be a requirement** that the seconded person work site hours which are a maximum of 54 hours per week’ (emphasis added). Thus the letter proceeded on the basis that work was required to be and would in fact be carried out.
106. Further it is unclear why Mr Jukes, the author of the letter, would have not referred to an earlier oral agreement had one in fact been concluded. The letter is plainly intended to

⁹⁹ Bruce Wilson, 12/6/2014, T:434.9-9;439.22-33.

¹⁰⁰ Bruce Wilson, 12/06/2014, T: 415.42; 432.10-13; 433.25-28;434.35-435.7;439.38-42.

reduce to written form, and thereby create a record of, all of the material conditions of the agreement.

107. Also, the invoices subsequently issued by the Association were prepared on the basis of, and expressly refer to, the letter of 16 March 1992. The invoices do not refer to an oral agreement separate from the letter. In other words the parties were proceeding on the basis that their relationship was regulated by the letter of 16 March 1992, not by some other oral agreement.
108. Mr Wilson's first witness statement of 4 June 2014 was lengthy, comprising some 91 pages. He nevertheless included a statement at the outset of his witness statement complaining that he had not had sufficient time or opportunity to obtain or review documents and regarded himself thereby under constraints in giving his evidence. For that reason the Commission offered him an opportunity to prepare a further witness statement, an opportunity which he took up. On 10 June 2014 Mr Wilson served a supplementary witness statement, comprising of further ten pages (some paragraphs in this supplementary statement were ultimately rejected as inadmissible).
109. Mr Wilson did not anywhere in his two witness statements make any suggestion that there had been an oral agreement of the kind he ultimately asserted, despite this being critical to his entire case. No doubt for that reason, the suggestion of an oral agreement was never put to Mr Jukes when he initially gave evidence and was cross examined.
110. Confronted with an unsatisfactory state of affairs, namely that evidence on a critical matter had not been canvassed with Mr Jukes, the Commission requested that Mr Jukes put on a statement in reply, being his further witness statement dated 15 August 2014. In this statement Mr Jukes expressly referred to the allegation of an oral agreement by Mr Wilson and denied that any such agreement had been entered into. Mr Jukes was cross examined on his evidence in reply on 9 September 2014. Neither senior counsel for Mr Wilson nor anyone else put to Mr Jukes that his evidence in this regard was mistaken, let alone false.
111. Further, it is inherently unlikely that Thiess would have entered into an arrangement pursuant to which it agreed to pay the Association on a monthly basis for doing nothing. It is equally unlikely that Thiess would have consistently paid which to its knowledge

were false (in the sense that the invoices refer to the letter of 16 March 1992 and suggest that work has in fact been carried out when none had). It is particularly unlikely when, as noted above, Thiess sought to record its agreement in writing and did so in its letter of 16 March 1992. Neither Mr Wilson nor Mr Blewitt, nor the Association wrote back following receipt of the letter of 16 March 1992 to assert that it did not accurately reflect the agreement that had been reached. Indeed no such suggestion appears ever to have been raised until Mr Wilson's oral examination in 2014, some 22 years later.

112. Lastly, and for the sake of completeness, for the reasons set out in the next section of this chapter dealing with credit issues, the uncorroborated word of Mr Wilson on this issue should not be accepted.
113. Work allegedly performed by the late Mr Glen Ivory. The second issue is whether the late Mr Glen Ivory provided services to Thiess on behalf of the Association during the calendar year 1993.
114. The starting point is that this suggestion was made for the first time by Mr Wilson in his evidence to this Commission in 2014, some 21 years after the event. In fairness to Mr Wilson, that fact, of itself, and without more, does not adversely affect the credibility of the evidence. Mr Wilson would no doubt say that he had not previously chosen to put a detailed version of his story into the public domain. At the same time the fact that the suggestion has been raised only now means that it is not possible to raise the question with the late Mr Ivory himself, since he passed away a number of years ago.
115. Mr Wilson was confronted during his examination with a statement which Mr Ivory provided to the West Australian Police in 1997. At that time the relevant events would have been reasonably fresh in Mr Ivory's memory. The gist of the statement was that Mr Ivory disclaimed any knowledge of the Association whatsoever. Mr Ivory did not deal expressly with the question of whether he provided services to Thiess on behalf of the Association in 1993, no doubt because no such suggestion had ever been raised at the time.
116. Mr Wilson suggested that the phraseology of the statement suggested that it must have been prepared by some person other than Mr Ivory. There is no basis for this suggestion. Nor is there any basis for thinking that Mr Ivory set out to prepare some

inaccurate record of what had occurred in a detailed statement provided to the police. Mr Ivory was the President of the branch. He had no motive to be dishonest. Certainly none was identified by Mr Wilson. It is submitted that the statement should be taken at face value. If Mr Ivory was unaware of the Association he could not have been providing services on behalf of it in 1993. It is also common for police statements – and indeed affidavits and witness statements used in courts – to be expressed in language which is less demotic than the maker would employ in the ordinary dealings of life. That circumstance does not render them incapable of credit.

117. The above position is corroborated by the evidence of Mr Lovett. Mr Lovett was an organiser employed by the AWU between January 1992 and October 1993. Part of his duties included servicing members who were working on the Dawesville Channel project, such that he visited Dawesville at least once a week and sometimes two or three times a week for the whole period between January 1992 to October 1993.¹⁰¹ Mr Lovett was acquainted with Mr Ivory, Mr Ivory then being president of the union. Mr Lovett's evidence was that he never saw Mr Ivory at the Dawesville project and was not aware of Mr Ivory doing any work at Dawesville.¹⁰²

118. In cross examination it was put to Mr Lovett that if Mr Ivory had been providing training services at Dawesville Mr Lovett would not necessarily have seen him. Mr Lovett's response to this was that he would have known because 'the boys would have told me'.¹⁰³ This is an entirely reasonable response. It is of course correct that on a large project one person might enter onsite without someone else on the site being aware of it. On the other hand it is entirely unlikely that an organiser employed by the AWU and visiting the site up to two or three times a week for a lengthy period, would entirely be unaware that the president of the union was also on site providing services corresponding to those set out in the letter of 16 March 1992, namely coordinating and liaising between site management and AWU members. In other words the appropriate conclusion is that Mr Ivory was not on site at all.

119. Similar comments apply in respect of the evidence of Mr Saunders. Mr Colin Saunders was an industrial officer employed by the AWU between January 1992 and November

¹⁰¹ Tony Lovett, 23/6/2014, T:913.42-914.4.

¹⁰² Tony Lovett, 23/6/2014, T:914.14-18.

¹⁰³ Tony Lovett, 23/6/2014, T:915.34-38.

1993. He also travelled to the Dawesville project at least once a week and definitely once a fortnight.¹⁰⁴ Mr Saunders was also acquainted with the late Mr Ivory, who he knew as the president of the WA branch of the AWU. He never saw Mr Ivory at the Dawesville project and added 'it wasn't his responsibility as far as I knew'.¹⁰⁵ Mr Saunders accepted in cross examination that it was possible that Mr Ivory could have been on the site without his knowledge however he said that this would have surprised him and he also stated that the AWU members would have said something to him.¹⁰⁶

120. Mr Brian Douglas Pulham was the Project Manager of the Dawesville Channel project on behalf of Thiess. He did not recollect the late Mr Ivory and said that the only persons that he recalled liaising with in relation to the Association were Mr Lovett and Mr Saunders.¹⁰⁷
121. More generally, had Mr Ivory been retained by the Association to provide services, and had he in fact provided such services, one might have expected there to have been at least some surviving record of those matters – for example a retainer agreement between the Association and Mr Ivory and some record of what was done. None of this is available. Mr Wilson asserts that he paid Mr Ivory in cash for his work.
122. It is submitted that the Commission should find that the late Mr Ivory did not perform any such services and that this was a very belated invention of Mr Wilson's devised to meet the exigencies in which he found himself as his oral testimony proceeded.
123. Lastly, it is worth noting that, even putting Mr Wilson's case at its absolute highest, and accepting for the sake of argument that the late Mr Ivory did perform work during 1993 (despite what is set out above), it still follows that no work was done by the Association during the calendar year 1992, nor during the calendar year 1994, yet invoices were issued throughout both those years by the Association seeking recompense for work allegedly done by the Association.

¹⁰⁴ Colin Saunders, 23/6/2014, T:918.19.

¹⁰⁵ Colin Saunders, 23/6/2014, T:918.32-34.

¹⁰⁶ Colin Saunders, 23/6/2014, T:920.35-39.

¹⁰⁷ Brian Pulham, 23/6/2014, T:924.16-24.

Opening of bank accounts – 4 May 1992

124. On or about 22 April 1992 Thiess paid Invoice 001 by posting a cheque in the sum of \$25,272 to the Northbridge PO Box.¹⁰⁸ Once Mr Blewitt had collected Thiess' cheque from the Northbridge PO Box he needed somewhere to bank it.
125. On or about 4 May 1992 Mr Blewitt and Mr Wilson opened two bank accounts ostensibly on behalf of the Association at the Commonwealth Bank of Australia (CBA),¹⁰⁹ namely a cheque account (account number culminating in 2582) and a cash management account (account number culminating in 2590).
126. The application form to open these accounts was signed by Mr Blewitt, who identified himself as the secretary of the Association, and by Mr Wilson, who identified himself as the treasurer of the Association. Mr Blewitt deposed that Mr Wilson signed the application for the CBA bank accounts in his (Blewitt's) presence.¹¹⁰
127. The application form stipulated that 'both must sign'. Plainly, this meant each of Mr Blewitt and Mr Wilson would need to sign cheques if they were drawn on the account of the Association.¹¹¹
128. Neither Mr Blewitt nor Mr Wilson obtained any approval from the federal or state executive of the AWU to open the CBA accounts.¹¹²
129. On the following day, 5 May 1992, Blewitt deposited Thiess' cheque for \$25,272 in the Association's cash management account.

Further invoices

130. After sending Invoice 001 Mr Blewitt commenced sending monthly invoices on behalf of the Association to Thiess. Each of these invoices was in the same format as, and in broadly similar terms to, Invoice 001.

¹⁰⁸ Blewitt MFI-1, 12/5/14, p 70.

¹⁰⁹ Blewitt MFI-1, 12/5/14, p 71.

¹¹⁰ Ralph Blewitt, 12/5/14, T:32.20-21.

¹¹¹ Ralph Blewitt, 12/5/14, T:32.27-30.

¹¹² Ralph Blewitt, 12/5/14, T:32.41-47.

131. Until about October 1993, the invoices issued by the Association were approved by Mr Brian Pulham of Thiess and paid shortly after they were received. Mr Pulham did not seek any detail or verification as to what work had allegedly been done by the Association. He simply approved each invoice as he received it and processed it for payment. Cheques continued to be sent by Thiess to the Northbridge PO Box address. The cheques were collected by Mr Blewitt and placed in the CBA bank account discussed above.

Mr Wilson moves to Melbourne

132. In approximately late 1991 or early 1992 there had been upheavals in the Victorian branch in the AWU.

133. A group or faction lead by Mr Robert John Kernohan had made allegations of corruption or misappropriation of union funds against the then Secretary of the Victorian branch Robert Lesley Smith and others. Mr Kernohan was running for elected office in the Victorian branch of the AWU.

134. A view seems to have been taken by senior personnel at the AWU that Mr Wilson would be an appropriate person to come to Victoria to try and resolve these issues. Mr Kernohan's campaign material included, for example, the statement:

The Victorian Executive put Bruce Wilson into our Branch to hide the fact that the same people responsible for the \$1,000 000 debt are still pulling the strings.

135. Similarly the Industrial Relations and Management letter dated 1992 includes the following:

In the one corner, is Acting Victorian Secretary Bruce Wilson, who was seconded from the WA Branch to clean up the mess in the Victorian operations caused by the activities of the former Bob Smith team.

Wilson is young, very ambitious, and considered by his supporters as a strong willed "Doer". In other words, leadership material.

In the other corner is Bob Kernohan, an ex Victorian Organiser who only just lost his position in the Branch when the Bob Smith Team were swept into office in 1989.

It was Kernohan who was instrumental in getting the Bob Smith Team to step aside, when he alerted the membership to the financial debacle in the Branch.

136. On 3 July 1992 the WA branch executive passed a resolution giving authority for Bruce Wilson to take the position of Assistant Branch Secretary in Victoria for a period of 3 months or longer as required.¹¹³
137. Mr Wilson seems to have moved to Victoria initially on a temporary basis at some point after this meeting. However he continued to involve himself in the affairs of the WA branch.

Consideration of buying a property in Melbourne

138. By about late 1992 a significant sum of funds had accumulated in the Association's CBA accounts.¹¹⁴ The funds had not been used for the purpose of a union election.
139. As noted above, when Mr Wilson first moved to Melbourne he seemed to have done so on a temporary basis. However in due course it became clear that he would be staying in Melbourne more permanently.
140. Mr Blewitt said that Mr Wilson told him that he would shop around for a property and also asked what funds were in the account.¹¹⁵ Mr Blewitt regarded it as entirely up to Mr Wilson if he wanted to buy a house using funds of the Association and did not ask any questions.¹¹⁶
141. From the outset it seems to have been intended that the property be purchased in the name of Mr Blewitt rather than Mr Wilson or for that matter the Association.¹¹⁷ Mr Blewitt explains the reasons for this in his evidence as follows:¹¹⁸

Mr Wilson wanted to distance himself from the ownership of the property and not precise words, but words to the effect – were that it would be best if the Australian Workers' Union, federal office was not aware of who the owner of the property was, so as to enable him to claim a living away from home allowance whilst he was based in Melbourne, and he didn't want it to be shown that he was owning the property and asked me to put it in my name, and I said, "Yeah, right-o mate, no worries.

¹¹³ Wilson MFI-3, 12/6/14, p 6.

¹¹⁴ Ralph Blewitt, 12/5/14, T:37.20-22.

¹¹⁵ Ralph Blewitt, 12/5/14, T:38.28-29.

¹¹⁶ Ralph Blewitt, 12/5/14, T:38.31-40.

¹¹⁷ Ralph Blewitt, 12/5/14, T:39.9-11.

¹¹⁸ Ralph Blewitt, 12/5/14, T:39.14-23.

142. Mr Wilson at that time maintained his home in Perth where his wife and two children were living.¹¹⁹

143. Mr Wilson's oral evidence on 12 June 2014 included the following exchange:¹²⁰

Q. The Kerr Street property was put in Mr Blewitt's name as part of the process of keeping activities of the Association concealed from others at the AWU; correct?

A. I don't know if that was the driving force behind that. I think it just came out of a series of discussions that we had about – not in one discussion but over a period of time.

Q. It may not have been the driving force, as you put it, but you accept, do you, at least in part your motive for the acquisition for the property in Kerr Street, Fitzroy, being in Mr Blewitt's name was to conceal the activities of the Association from others at the AWU?

A. I suppose in part.

Q. You knew that at the time?

A. Most likely.

Dinner in Melbourne 3 February 1992

144. For the purposes of enabling Mr Wilson to execute documents relating to the acquisition of a property in Victoria in the name of Mr Blewitt, Mr Blewitt signed a power of attorney in favour of Mr Wilson. The original of this document can no longer be located. A copy of the power of attorney which was on 22 February 1993 certified as a correct copy is in evidence (Power of Attorney).¹²¹

145. The Power of Attorney is a specific power of attorney pursuant to which Mr Blewitt authorises Mr Wilson to do anything that Mr Blewitt could lawfully authorise an attorney to do 'in relation to the purchase of property situated in the State of Victoria'.

146. On its face the Power of Attorney suggests that it was signed by Mr Blewitt on 4 February 1993 in the presence of Ms Gillard. However Mr Blewitt contends that the only persons present when he signed the Power of Attorney were Mr Wilson and himself, and that he signed the document in the Perth offices of the AWU in the week

¹¹⁹ Ralph Blewitt, 12/5/14, T:39.26-28.

¹²⁰ Bruce Wilson, 12/6/14, T: 459.8-24.

¹²¹ Blewitt MFI-1, 12/5/14, p 105.

commencing 14 February 1993.¹²² In other words Mr Blewitt has contended in evidence that Ms Gillard falsely purported to witness his signature on the Power of Attorney. For the reasons set out below, Mr Blewitt's version of events should be rejected.

147. The starting point is that Mr Blewitt was certainly in Melbourne on the evening of 3 February 1993. On that evening he attended a dinner at the Patee Thai Restaurant in Fitzroy, Victoria. Mr Blewitt paid for that dinner using his personal credit card; a copy of the original Mastercard receipt is in evidence.¹²³
148. The Mastercard receipt simply refers to a dinner and a total amount paid of \$80. However in due course Mr Blewitt made a claim for reimbursement of expenses associated with his trip to Melbourne from the WA branch of the AWU. In support of his claim for reimbursement of those expenses Mr Blewitt provided the WA branch of the AWU with a note in which he had described the dinner in Fitzroy of the evening on 3 February 1993 as 'Slater & Gordon dinner'.¹²⁴ For her part, Ms Gillard has no recollection of having dinner with Mr Blewitt on the evening of 3 February 1993.¹²⁵
149. By the following day, 4 February 1993 Mr Blewitt was back in Perth. This emerges from two contemporaneous documents.
150. First, on 4 February 1993 Mr Blewitt submitted a claim for reimbursement from the AWU of certain expenses paid for by him in connection with federal executive meetings; he received on 4 February 1993 a receipt in relation to those expenses dated that day.¹²⁶
151. Secondly, at 5.57 am in the morning of 5 February 1993 Mr Blewitt parked his car at Perth domestic airport.¹²⁷ Mr Blewitt seems to have gone on a day trip, since he returned to the car park at Perth airport and picked up his vehicle at 9.10 pm that evening. The fact that Mr Blewitt parked his car at Perth airport at 5.57am on the morning of 5 February suggests that he was back in Perth on 4 February 1993.

¹²² Ralph Blewitt, 12/5/14, T:41.13-19.

¹²³ Blewitt MFI-1, 12/5/14, p 107.

¹²⁴ Blewitt MFI-1, 12/5/14, p 113.

¹²⁵ Julia Gillard, 10/9/14, T:816.28.

¹²⁶ Blewitt MFI-1, 12/5/14, p 114.

¹²⁷ Blewitt MFI1, 12/5/14, p 111.

152. It follows that the likely sequence of events is that Mr Blewitt took a flight from Melbourne to Perth sometime on the morning of 4 February 1993. He then spent the day at his office at the WA Branch of the AWU in Perth. During the course of that day he lodged his claim for expenses dated 4 February 1993. He then went home and returned to Perth airport early the following morning.
153. Mr Wilson's evidence was to the effect that he picked Mr Blewitt up on the morning of 4 February 1993, and drove him to Slater & Gordon for the purposes of executing the power of attorney, then drove him to the airport. For his part, Mr Blewitt deposed that he had a clear recollection of signing the Power of Attorney in the Perth office of the AWU in the week commencing 14 February 1993.¹²⁸ Mr Blewitt says that he could be sure of the date because it related to a significant event: Mr Wilson returned in that week to address the WA branch and, in particular, to explain why he was now moving to Victoria and handing over the role of branch Secretary to Mr Blewitt. For the reasons set out in the next section of these submissions on the topic of credit, the uncorroborated evidence of either Mr Blewitt and Mr Wilson should not be treated as determinative of this issue. Rather, the question as to when the Power of Attorney was signed and who was present should be resolved on the contemporaneous records. This is dealt with further below. Before then it will be helpful to describe briefly the circumstances relating to the purchase of the Kerr Street property.

Purchase of Kerr Street property

154. In due course Mr Wilson identified a property he was interested in buying, being the property known as unit 1/85 Kerr Street, Fitzroy being unit 1 of strata plan 011174 and comprising the whole of the land described in Certificate of Title Volume 9250 Folio 117 (Kerr Street property).
155. Mr Hem who frequently visited the Kerr Street property described it in his oral evidence in the following terms:¹²⁹

It was an old 1930s, 1940s style house. It had been modernised a bit over time. You walked in through the front door and you had a lounge room on your left and a parlour-type room on your right. You walk down the corridor a bit and you – before the stairwell, you had a study or an office, more likely Bruce used it occasionally as an office and you walked straight down

¹²⁸ Ralph Blewitt, 12/5/14, T:41.17-19.

¹²⁹ Wayne Hem, 11/6/2014, T:309.29-45.

beside the stairs to a laundry on your left and an open plan kitchen which opened out with a double – large glass double doors which slid back and opened into the backyard...

And upstairs there was, if I remember right, three bedrooms, two normal size and one very small, sort of loft-style bedroom. Bruce's bedroom was the front bedroom, Ben's bedroom was the middle one and sometimes a guest or whatever in the loft.

156. An auction of the Kerr Street property was scheduled for Saturday 13 February 1993 at 11.00am.¹³⁰ A deposit of 10% of the purchase price was payable on exchange of contracts. On 10 February 1993 a cheque in Mr Blewitt's favour in the amount of \$25,000 was drawn on the account of the Association.¹³¹ Mr Blewitt's evidence was as follows:¹³²

He [*i.e.*, Mr Wilson] wanted \$25,000. He indicated to me he had found a property; the property would auction on, whatever date it was, I think 13 or 14 February; he needed sufficient funds to pay the deposit; the house would sell for between \$220,000 or \$250,000. "I need 10% deposit. Could you send me \$25,000 please".

157. Initially Mr Blewitt recalled that Mr Wilson had come to Perth and that Mr Blewitt had cashed the cheque and given him the cheque.¹³³ However it appears (as Mr Blewitt in due course accepted) that the cash cheque in his favour dated 10 February 1993 was deposited into his and his wife's home building society account, from which a cheque in due course was drawn in the amount of \$23,000.¹³⁴ Mr Blewitt was asked why he didn't just draw a cheque on the Association's account in favour of the auctioneer or the vendor of the Kerr Street property. He said that Mr Wilson had directed him to run the funds through his (Blewitt's) account.¹³⁵
158. Clearly the precise amount required to be paid by way of deposit would not be known until the auction had taken place and a final price had been reached. It would appear reasonable to infer that Mr Blewitt signed a blank cheque drawn on his and his wife's own building society account, forwarded it to Mr Wilson, and Mr Wilson completed the cheque upon the finalisation of the auction.

¹³⁰ Blewitt MFI-1, 12/5/14, p 119.

¹³¹ Blewitt MFI-1, 12/5/14, p 118.

¹³² Ralph Blewitt, 12/5/14, T:50.12-17.

¹³³ Ralph Blewitt, 12/5/14, T:50.19-22.

¹³⁴ Blewitt MFI-1, 12/5/14, pp 122-3; Ralph Blewitt, 12/05/14, T:51.10-17.

¹³⁵ Ralph Blewitt, 12/5/14, T:53.11-18.

159. On 13 February 1993 the auction of the Kerr Street property took place. The auction was attended by Mr Wilson and Ms Gillard. Mr Wilson bid on the property and was successful. A contract for sale of land was entered into between Harry Julian Onsman and Nikki D'Emden (as vendor) and Ralph Blewitt (as purchaser) for the sale of the Kerr Street property at a sale price of \$230,000. The purchaser's solicitor was identified on the contract as Slater & Gordon of 562 Little Bourke Street, Melbourne, with the reference 'RMB:LI'. The contract states that it was executed by Mr Wilson using a power of attorney.¹³⁶

160. On exchange the deposit of \$23,000 was payable. It would appear to have been paid by Mr Wilson in the manner suggested above. On the same day, 13 February 1993, GA Thomson & Co, the auctioneers and real estate agents associated with the sale, issued a receipt to Mr Blewitt in the amount of \$23,000, being 10% deposit of the purchase of 85 Kerr Street.¹³⁷

161. Mr Blewitt deposed that he had a telephone conversation with Mr Wilson on the afternoon of Saturday 13 February 1993 in the following terms:¹³⁸

I spoke to Bruce later that afternoon, after the auction, and asked him if he had been successful and we had a general chit chat and he indicated to me that he and Julia had attended the Auction.

162. On 14 February 1993 Mr Wilson seems to have flown to Perth to attend the meeting of the branch discussed above.

163. On Monday 15 February 1993 GA Thomson & Co wrote to Slater & Gordon in the following terms:¹³⁹

We wish to confirm having sold the above mentioned property to your client Ralph Blewitt of 128 Warwick Road, Duncraig, Western Australia on Saturday 13th February, 1993 however we suggest you seek confirmation of the same.

The purchase price was \$230,000.00 and your client has paid a deposit of \$23,000.00 and has been issued with a Section 51 Statement, a Vendors' Statement and a Contract of Sale.

¹³⁶ Gillard, MFI-1, 10/9/14, p 63.

¹³⁷ Blewitt MFI-1, 12/5/14, p 137.

¹³⁸ Ralph Blewitt, 12/5/14, T:54.24-28.

¹³⁹ Blewitt MFI-1, 12/5/14, p 138.

164. The letter also identified the solicitor for the vendor, namely Rose Mary Brondolino and Co of Fitzroy. The letter was signed by Mr Ross Hedditch, a director of GA Thomson who also seems to have been the auctioneer.¹⁴⁰

The signing of the Power of Attorney

165. It is now possible to consider further the circumstances in which Mr Blewitt came to sign the Power of Attorney.
166. The starting point is that it would appear objectively likely that Mr Wilson and Ms Gillard had the original power of attorney at the auction on 13 February 1993. It would seem unlikely that the vendors under the contract of sale would have exchanged contracts with a person (Wilson) who was not, himself, the purchaser of the property (i.e. Blewitt), and who did not have a Power of Attorney from that purchaser. In the unlikely event that the vendors would have exchanged on the basis of a contract signed by Wilson without some proof of his authority to do so one would have expected detailed correspondence on this issue immediately following the auction. There is no such correspondence.
167. If Mr Wilson and Ms Gillard had the executed Power of Attorney with them at the auction on 13 February 1993 then it would appear reasonable to infer that it was executed at some point leading up to that date – presumably on the evening of 3 February or the morning of 4 February 1993 when Mr Blewitt was last in Melbourne. This version is also consistent with Ms Gillard’s evidence as to her practice as a solicitor, namely that she would not have witnessed Mr Blewitt’s signature without having seen him sign the Power of Attorney. Ms Gillard had no reason to take a professional risk by departing from her usual practice, since Mr Blewitt had been in Melbourne on the evening of 3 February and the morning of 4 February 1993.
168. The position becomes clearer when the subsequent contemporaneous records are considered. On 16 February 1993, Ms Brosnahan had a telephone conversation with ‘Elisha/Julia’.¹⁴¹ Julia is Ms Gillard. Elisha was Ms Gillard’s then secretary. The note

¹⁴⁰ Blewitt MFI-1, 12/5/14, p 119.

¹⁴¹ Gillard, MFI-1, 10/9/14, p 79.

then records 'we need P/A or certified copy'.¹⁴² This suggests that Slater & Gordon did not have at that time the original power of attorney.

169. On 17 February 1993 Ms Brosnahan received a telephone call from Heidi of GA Thompson. Ms Brosnahan's note reads: 'Will let me have original P/A – she will need certified copy'.¹⁴³

170. This note suggests that GA Thompson was in possession of the original Power of Attorney. The obvious inference is that GA Thompson had come into possession of the original Power of Attorney on the day of the auction on 13 February 1993, as discussed above. The note suggests that Heidi of GA Thompson would send the original Power of Attorney to Ms Brosnahan.

171. On 22 February 1993 Ms Brosnahan wrote to GA Thompson & Co. stating:¹⁴⁴

We acknowledge receipt of signed Contract of Sale, Section 32 Statement and Power of Attorney.

We now enclose certified copy of Power of Attorney for your records.

172. This letter makes two things clear. First, by 22 February 1993 Slater & Gordon had received from Heidi at GA Thompson the original Power of Attorney. On the same day Ms Brosnahan forwarded a certified copy of the Power of Attorney to GA Thompson for its records consistently with the telephone conversation she had had with Heidi on 17 February 1993.

173. Given the above circumstances it is submitted that the Commission should find that the Power of Attorney was executed by Mr Blewitt in the presence of Ms Gillard on either 3 or 4 February 1993 (a finding which would be consistent with what one would expect to be the ordinary practice of a competent solicitor); that Mr Wilson and Ms Gillard took the original Power of Attorney to the auction on 13 February 1992 and provided it to the vendors' agent on exchange of contracts (which again would be consistent with ordinary practice); that Ms Brosnahan then rang and requested that the original Power of Attorney be forwarded to Slater & Gordon after which they would send back a certified

¹⁴² Gillard, MFI-1, 10/9/14, p 79.

¹⁴³ Palmer MFI-1, 10/6/14, p 297.

¹⁴⁴ Olivia Palmer, witness statement, 10/6/14, para 214; Palmer MFI-1, 10/6/14, p 235.

copy; that by 22 February 1993 Slater & Gordon was in possession of the Power of Attorney, which is confirmed by Ms Brosnahan's letter of 22 February 1993 set out above; and that Ms Brosnahan caused a certified copy of the Power of Attorney to be created and forwarded that certified copy to the vendors' solicitor on 22 February 1993. If this version of events is accepted then it follows that Mr Blewitt's sworn evidence that he signed the Power of Attorney in Perth in the week beginning 15 February 1993 is incorrect. The implication so far as Mr Blewitt's credit is concerned of rejecting this aspect of his evidence is considered further in the next section below.

Obtaining funds to complete the purchase of the Kerr St Property

174. Also on 22 February 1993, Ms Brosnahan sent a letter to Mr Wilson giving him information about the purchase of the Kerr Street property.¹⁴⁵ Mr Blewitt deposed that he had never seen this letter prior to giving evidence before the Commission.¹⁴⁶
175. As is set out below, approximately \$92,000 of the funds required to complete settlement of the purchase of the Kerr Street property came from the Association.
176. The balance of the purchase price (making allowance for expenses associated with the sale) of \$150,000 was advanced by way of loan from Jonathan Malcolm Rothfield, the then senior partner of Slater & Gordon, who also took as security for that loan a mortgage over the Kerr Street property.
177. The conveyancing file includes a handwritten note dated 3 March 1993, which records in effect that Mr Blewitt would be required to provide proof of income such as to demonstrate his ability to service the loan.¹⁴⁷
178. However Mr Wilson engaged in most of the dealings on Mr Blewitt's behalf in this respect. The note includes the following in handwriting:

Attending Mr Wilson re above 4/3/93. He will let me have proof of income by fax and then original and also let me have cheque for \$500.

¹⁴⁵ Blewitt MFI-1, 12/5/14, p 139.

¹⁴⁶ Ralph Blewitt, 12/5/14, T:57.2-6.

¹⁴⁷ Palmer, MFI-1, 10/6/14, p 161.

179. The reference to a cheque for \$500 was a reference to a valuation which Slater & Gordon (or the related mortgagee) wished to carry out on the Kerr Street property.

180. On 4 March 1993, Hewitt & Co, chartered accountants, of Perth wrote to Slater & Gordon in the following terms:¹⁴⁸

At the request of Mr Ralph Blewitt we confirm the following details:

Gross salary received from the Australian Workers' Union (West Australian branch)

1 July 1991 to 30 June 1992 \$47,418

Current gross salary \$51,801 p.a.

Should you have any queries concerning the above please do not hesitate to phone.

181. Mr Blewitt's evidence was that he knew nothing about the provision of this information and that he had not contacted anyone at Hewitt & Company to suggest that they supply it.¹⁴⁹ However he accepted that the information which had been provided in respect of his salary was approximately correct.¹⁵⁰

182. On 10 March 1993 Slater & Gordon wrote to Mr Blewitt advising him that his loan application had been approved subject to certain conditions.¹⁵¹

183. The letter of offer was signed by Mr Wilson pursuant to the Power of Attorney. The loan which had been approved contemplated an advance in the sum of \$150,000. The lender is not identified in the letter but as noted above it was Jonathan Rothfield the senior partner at Slater & Gordon. Mr Blewitt deposed that he had not seen the loan application prior to giving evidence in the Commission.¹⁵²

184. It is worth noting that while information concerning Mr Blewitt's salary had been obtained, no attempt had been made to obtain information concerning his expenses. For example no information had been obtained regarding the amount of his mortgage repayments on his matrimonial home at Duncraig in Perth; no information had been

¹⁴⁸ Blewitt MFI-1, 12/5/14, p 149.

¹⁴⁹ Ralph Blewitt, 12/5/14, T:12/5/14;60.1-3.

¹⁵⁰ Ralph Blewitt, 12/5/14, T:12/5/14;60.5-10.

¹⁵¹ Blewitt MFI-1, 12/5/14, p 152.

¹⁵² Ralph Blewitt, 12/5/14, T:60.41-61.2.

obtained concerning Mr Blewitt's assets and liabilities; and no information had been obtained, concerning Mrs Blewitt's financial position.

185. On 17 March 1993 Slater & Gordon wrote to Mr Wilson giving him information concerning the mortgage of the Kerr Street property.¹⁵³ Again Mr Blewitt deposed that he had not seen this letter prior to giving evidence in the Commission.¹⁵⁴
186. On 18 March 1993, Slater & Gordon (per Olive Brosnahan) wrote to Mr Blewitt in respect of the Kerr Street property in the following terms:¹⁵⁵

Settlement of this matter is due to take place on the 22 March 1993 and we are endeavouring to arrange a settlement for that date.

To enable this to be done, we should be pleased if you would let us have a BANK CHEQUE made payable to this firm in the sum of \$67,722.30 on or before Friday, 19 March 1993.

A Bank Cheque is a cheque issued at a Bank and signed by the Manager and Accountant of that Bank. No other cheque is a Bank Cheque.

Alternatively, you can arrange for this amount to be telegraphically transferred into our Trust Account with the Commonwealth Bank of Australia, 221 William St, Melbourne, Account No 000043, Branch No 3009, no later than Friday, 19 March 1993.

An explanation of this amount is provided in the attached Purchaser's Statement of Account.

Shortly prior to settlement, you must inspect the Property to ensure that no damage has been caused to it since first inspecting the same. If the Property is not in an acceptable condition you should notify us as soon as possible and at least one hour prior to settlement. You should make inspection arrangements with the Vendor or the Agent.

187. Mr Blewitt's evidence was that he did not recollect the above letter and that as far as he could remember Mr Wilson had asked him to provide a cheque in the amount of \$67,722.30.¹⁵⁶
188. On the same day, Wilson and Blewitt signed cheque 802205 drawn on the Association's CBA account in favour of Slater & Gordon Trust Account in the sum of \$67,722.30.¹⁵⁷
189. Although this cheque was drawn on the Association's account, Slater & Gordon's trust account ledger indicates that on 22 March 1993 Mr Blewitt deposited a sum of

¹⁵³ Blewitt MFI-1, 12/5/14, p 155.

¹⁵⁴ Ralph Blewitt, 12/5/14, T:61.26-30.

¹⁵⁵ Blewitt, MFI-1, 12/5/14, p 159.

¹⁵⁶ Ralph Blewitt, 12/5/14, T:61.46-62.5.

¹⁵⁷ Blewitt, MFI-1, 12/5/14, p 163.

\$67,722.30 in the trust account.¹⁵⁸ Ms Gillard was unable to shed light on why a cheque drawn on the account of the Association was recorded in the trust account ledger as monies having been received from Mr Blewitt.

190. A further amount of \$2,000 was paid by Blewitt to Slater & Gordon using a cheque drawn on the Association's cheque account on 4 April 1993.¹⁵⁹
191. On 22 March 1993 Mr Wilson as Mr Blewitt's attorney signed a transfer of the sale of the Kerr Street property as transferee.¹⁶⁰
192. On the same day, 22 March 1993, Wilson signed as Blewitt's attorney a mortgage of the Kerr Street property in favour of Jonathan Malcolm Rothfield of 562 Little Bourke Street, Melbourne 3000.¹⁶¹ The amount advanced pursuant to the mortgage was \$150,000. The due date was 22 March 1996; in other words, the advance was for a period of three years. Interest was to be charged at a low rate of 9.75% per annum and a high rate of 13.75% per annum, commencing on 22 March 1993.
193. Also on 22 March 1993 the Commonwealth Bank sent a fax to Slater & Gordon addressed to the attention of Julia Gillard.¹⁶² The fax related to a certificate of currency for mortgage insurance and stated as follows:

In accordance to your request we advise that the building/s are insured for \$200,000 with Commonwealth Bank of Australia Insurance Scheme and the policy has been renewed to 18th March 1994.

The interest of Jonathan Malcolm Rothfield as first mortgagee has been noted.

194. A hand written note dated 22 March 1993 in the conveyancing file appears to relate to this matter. The note begins with the words 'Bruce Wilson' and underneath that reads as follows:¹⁶³

Certificate currency through Cth Bank. Ralph spoke to Julia Gillard. Spoke to Ralph this morning, he was chasing up Cth Bank.

¹⁵⁸ Gillard MFI-1, 10/9/14, p 123A.

¹⁵⁹ Blewitt, MFI-1, 12/5/14, p 183.

¹⁶⁰ Blewitt, MFI-1, 12/5/14, p 173.

¹⁶¹ Blewitt, MFI-1, 12/5/14, pp 174-175.

¹⁶² Palmer, MFI-1, 10/6/14, p 187.

¹⁶³ Palmer, MFI-1, 10/6/14, p 189.

195. Underneath the above handwritten note Ms Brosnahan records that she left a message for Julia to call her.
196. It follows that at least \$92,722.30 of the funds paid to the Association by Thiess appear to have been used to purchase the Kerr Street property in Blewitt's name.¹⁶⁴
197. Ian Cambridge has deposed as follows:¹⁶⁵

I could not find any record of and do not believe that any authorisation by the AWU ever existed for Wilson or Blewitt to use AWU funds for this purpose [*i.e.*, *acquiring the Kerr St Property*]. The residential property has since been sold in February 1996 and the proceeds of sale were not accounted for to the AWU, nor was the AWU notified of the sale.

Mortgage Repayments

198. The mortgage entered into by Mr Blewitt (through Mr Wilson) for the Kerr Street property required payment of interest only.
199. This seems to have been achieved by money that travelled through Mr Blewitt's joint account which his wife maintained at the Home Building Society. Mr Blewitt deposed as follows:¹⁶⁶

It was indicated to me recently, on around 11 April, that the Victoria Police had some evidence that showed I paid mortgage payments for the Kerr Street property. I was very, very surprised, because I still have no recollection of having made payments for the mortgage to whoever the agent was at that time. It has now been brought to my attention by the Victoria Police that I subsequently did pay to two quarterly payments for that mortgage, but I have no recollection of that occurring at the time.

Cash withdrawals from the Association's accounts

200. In the meantime the Association continued to send (through Mr Blewitt) monthly invoices to Thiess. Thiess continued to pay those invoices. As a result funds continued to accumulate in the Association's CBA accounts.
201. In and from about September 1993 Mr Blewitt commenced writing cash cheques drawn on the accounts maintained by the Association with the CBA.

¹⁶⁴ Ian Cambridge, witness statement dated 27/5/14, 10/6/14, para 333.

¹⁶⁵ Ian Cambridge, witness statement dated 27/5/14, 10/6/14, para 334.

¹⁶⁶ Ralph Blewitt, 12/5/14, T:68.35-44.

202. There is a conflict in the evidence between Mr Blewitt and Mr Wilson on how these cash cheques were deployed.
203. The largest of the cash cheques was drawn on 7 September 1993 in the sum of \$50,000.¹⁶⁷ Mr Blewitt's evidence is to the effect that he drew this cheque on Mr Wilson's instructions and that having presented the cheque to the CBA he then brought the sum of \$50,000 in cash to Sydney and handed it to Mr Wilson at a meeting at the Camperdown Travel Lodge.¹⁶⁸ Mr Blewitt's evidence was that when he handed the money to Mr Wilson the latter indicated that he was providing it to, or in some way using it for the benefit of, Mr Bill Ludwig.¹⁶⁹ This was denied by Mr Wilson. Since it rests entirely on the uncorroborated evidence of Mr Blewitt it should not be accepted.
204. Mr Blewitt drew a series of further cash cheques on the Association's CBA account. For example, on 12 October 1993 he drew a cash cheque in the sum of \$8,000.¹⁷⁰ Mr Blewitt's evidence was that he drew these funds and held them until he next saw Mr Wilson. He would then hand the funds over to Mr Wilson.
205. The cheques that were drawn by Mr Blewitt were on occasion in very quick succession. For example, on 21 March 1994 Mr Blewitt drew a cheque for \$6,000.¹⁷¹ On 23 March 1994 Mr Blewitt drew a further cheque, this time in the sum of \$5,500.¹⁷² The next day, 24 March 1994, Mr Blewitt drew another cash cheque, this time in the sum of \$3,000.¹⁷³ And then on 29 March 1994 Mr Blewitt drew a further cash cheque, this time in the sum of \$4,000.¹⁷⁴ Each of these cheques was 'signed' by Mr Blewitt using Mr Wilson's signature stamp.

¹⁶⁷ Ralph Blewitt, 12/5/14, T:70.38-46.

¹⁶⁸ Ralph Blewitt, 12/5/14, T:72.1-14.

¹⁶⁹ Ralph Blewitt, 12/5/14, T:72.16-22.

¹⁷⁰ Blewitt MFI-1, 12/5/14, p 205.

¹⁷¹ Blewitt MFI-1, 12/5/14, p 227.

¹⁷² Blewitt MFI-1, 12/5/14, p 228.

¹⁷³ Blewitt MFI-1, 12/5/14, p 229.

¹⁷⁴ Blewitt MFI-1, 12/5/14, p 230.

206. Mr Blewitt's evidence was that each of these cheques was drawn at the instruction of Mr Wilson.¹⁷⁵ Mr Blewitt said that he kept the cash with him at his home in Duncraig. He said that he received no benefit in a financial sense from drawing these cheques.¹⁷⁶
207. For his part Mr Wilson denied Mr Blewitt's version of events. Mr Wilson said that he signed a number of cheques in blank and left them with Mr Blewitt. He said that the cheque for \$50,000 fell into this category. He said that he understood that this cheque was intended to pay for Mr Ivory's work at the Dawesville Channel project on behalf of the Association.
208. Mr Wilson accepted that he received some cash sums from Mr Blewitt from the Association's funds. For example he said that in September 1993 he received from Mr Blewitt the sum of \$15,000 in cash, which Mr Wilson then handed to Mr Ivory.¹⁷⁷ Mr Wilson says that on or about 12 October 1993 he received the sum of \$8,000 in cash from Mr Blewitt, which he handed to shop stewards for a shop steward's committee.¹⁷⁸ Mr Wilson says that in November 1993 Mr Blewitt provided him with cash which he used to purchase office equipment for the Kerr Street property. Mr Wilson said that he thought that this was an amount of \$8,000 referred to in cheque 802213 and that he used the funds to buy computers, a printer, a fax machine, a whiteboard and an answering machine.¹⁷⁹ Mr Wilson also said that on a date he does not recall Mr Blewitt brought \$5,000 in cash to Sydney and gave it to him and he used it to pay telephone bills and the like and also to reimburse certain shop steward wages.¹⁸⁰ It is not possible to verify this evidence. Mr Ivory is dead. The shop stewards are anonymous. There are no receipts.
209. Mr Wilson's evidence was that these withdrawals were the only ones that he could recall.¹⁸¹
210. In substance then Mr Blewitt says that all of the cash withdrawals were made at the instruction and for the benefit of Mr Wilson. Mr Wilson on the other hand acknowledges receiving some cash payments but says that the rest was misappropriated

¹⁷⁵ Ralph Blewitt, 12/5/14, T:74.19-24.

¹⁷⁶ Ralph Blewitt, 12/5/14, T:74.44.

¹⁷⁷ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 190.

¹⁷⁸ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 192.

¹⁷⁹ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 194.

¹⁸⁰ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 195.

¹⁸¹ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 196.

by Mr Blewitt. For the reasons set out in the next section of these submissions, there are serious reservations as to the credit of both Mr Blewitt and Mr Wilson. Since the money was raised in cash there are unlikely to be any written records relating to how the money was spent, even if such records were still available 20 years later. In these circumstances it is unlikely that it will ever be possible to determine with any finality how the balance of the money in the Association's account was spent. It is probable that the truth lies in the middle: that is, Mr Wilson received payments from Mr Blewitt in addition to those he says he can recall, but not as many as Mr Blewitt said. It is possible that Mr Blewitt may have misappropriated certain funds.

Work on Ms Gillard's Abbotsford property – March 1993

211. In and from about March 1993 Melbourne builder Athol James carried out building works at Ms Gillard's Abbotsford property.
212. Mr James advertised in the local paper. Ms Gillard said in her interview with Slater & Gordon on 11 September 1995 (Interview) that she obtained three quotes and picked the lowest one. Mr James initially gave a number of quotes with respect to replacing a window in the living room with four hinged doors and making other repairs. In due course he also renovated the floors. Mr James was meticulous in his record keeping, issuing written quotes and invoices. In the Interview Ms Gillard remarked that she recalled particularly dealing with Mr James because 'he came back more than once and sort of lived at my place for a substantial period of time whilst he did the floors'.¹⁸²
213. Mr James, in his witness statement dated 23 May 2014, gave the following evidence:¹⁸³

During the work I would deal with Ms Gillard in relation to any payment for the completed work. I would give her the invoice. I am pretty certain she said she would get money from Bruce and pay me in the next few days. I am certain she said Bruce was paying for it. I am certain I saw Bruce hand Ms Gillard a large amount of cash on two occasions. Ms Gillard said to me that as Bruce brought her the cash she would pay me by cheque. When Bruce handed Ms Gillard the cash she would write me a cheque. I never was paid in cash and I don't know what happened with the cash Bruce handed her.

In oral evidence, Mr James described the 'large amount of cash' handed over as being on each occasion 'a wad of notes'.¹⁸⁴ He also said in oral evidence that it was 'quite clear in my mind' that Ms Gillard told him that 'Bruce was paying for the job'.¹⁸⁵

¹⁸² Gillard MFI-1, 10/9/14, p 149.

¹⁸³ Athol James, witness statement, 11/06/14, para 13.

214. Ms Gillard put this in issue, deposing in her first witness statement:¹⁸⁶

I paid Athol by cheque. I never said to Athol that Bruce Wilson was paying for his work and I did not obtain cash from Bruce Wilson for the work Athol James undertook.

215. In cross-examination Mr James insisted that he had a clear recollection of events. Indeed he explained that he had good memory of the particular job because he regarded the Abbotsford property as having been constructed in a poor fashion:¹⁸⁷

The job was very clear in my mind because as a builder it has been over the years said to us, “they don’t build houses like they used to”. And I’ve said each time, “yeah, it’s just as well they don’t”. And I quoted the state of the house in Abbotsford.

216. Some deficiencies in Mr James’ recollection of events were exposed in his cross-examination. For example, in his statement to the Commission Mr James said that he did not remember going to the Abbotsford property to quote for the job, but in his oral evidence he said that he did have such a recollection.¹⁸⁸ Mr James’ explanation was that since preparing his statement he had seen a photograph of the house and he now recalled his first visit (‘it became clear to me when I saw the house and things come back to you after a time’¹⁸⁹). Mr James initially stated that the five or so invoices he rendered to Ms Gillard during 1993 were posted to her,¹⁹⁰ but he subsequently stated that he believed that he handed Ms Gillard the invoices.¹⁹¹ When this discrepancy was pointed out to him he said that it was one or the other and ‘I am not certain which it was’.¹⁹² There was also some uncertainty as to whether the conversation to which Mr James had deposed in his statement (quoted above) occurred when he had handed Ms Gillard an invoice or at some earlier point in time.¹⁹³ Mr James frankly conceded that he could not

¹⁸⁴ Athol James, 11/6/14, T:334.6

¹⁸⁵ Athol James, witness statement, 11/6/14, T:11-15.

¹⁸⁶ Julia Gillard, witness statement 1, 10/6/14, para 5.

¹⁸⁷ Athol James, 11/6/14, T:340.29-33.

¹⁸⁸ Athol James, 11/6/14, T:341.26 – 36.

¹⁸⁹ Athol James, 11/6/14, T:341.46

¹⁹⁰ Athol James, 11/6/14, T:336.24-25.

¹⁹¹ Athol James, 11/6/14, T343.3-6.

¹⁹² Athol James, 11/6/14, T:343.8-11.

¹⁹³ Athol James, 11/6/14, T:344.7

tell the Commission precisely when cash was handed over by Mr Wilson to Ms Gillard, nor whether the cash related to any particular invoice.¹⁹⁴

217. Rejection of Mr James would depend on concluding either that he was a liar, motivated by malice towards Ms Gillard, or that he was completely unreliable. There is no reason whatever to support the view that Mr James was a liar. He was 84 when he gave his evidence. It was plain that he did not want to be giving it. As noted above, he gave an explanation as to why he remembered the particular job. Ms Gillard described him as ‘sort of living’ at her place for a substantial period of time, which suggests that they got on reasonably well. Indeed Mr James remembered with apparent affection and gratitude the stimulating manner in which the young Ms Gillard, whose long and distinguished political career was in its earliest stages, discussed political affairs: ‘We developed a fairly close relationship and we had a lot of interesting talks with her on political matters.’¹⁹⁵ He showed her no malice and he had no reason to. It is impossible to see why a person in Ms James’s position would come to the Commission and give false evidence on oath. It is also impossible to see why he would provide a statement to Victoria Police, when they asked him for one in March 2013, which was false. And there is no sufficient reason for concluding that Mr James was completely unreliable on the issue of whether Mr Bruce Wilson gave Ms Gillard two wads of cash and that Ms Gillard paid Mr James by cheque. It is submitted that the points of detailed criticism mentioned above do not require the rejection of Mr James as a reliable witness. Indeed, if anything his evidence would have been less credible if he had professed to have an encyclopaedic and mechanically self-consistent recollection of every detail. He was a careful and meticulous person in business, as appears from the records he maintained. Under skilled and searching cross-examination, he gave his evidence in a clear, cautious and careful fashion. Mr James had every opportunity to see and hear transactions involving Mr Wilson. His memory appeared to be clear and accurate.

218. It is submitted that Mr James should be accepted as a witness of truth and his version of events should be accepted.

Invoices regarding Melbourne Water – 12 October 1993

¹⁹⁴ Athol James, 11/6/14, T:347.47

¹⁹⁵ Athol James, 11/9/14, T:355.35-36.

219. Until October 1993 all of the invoices issued by the Association related to work allegedly done in connection with the Dawesville Channel project. In that month the Association began issuing invoices for services allegedly provided to Thiess with respect to Melbourne Water.
220. The background to this project was as follows. Melbourne Water operated a system of pipes for water supply, sewerage and drainage across seven districts in Melbourne. In early 1993 Melbourne Water invited tenders for a contract to provide maintenance and repair of these pipes. In around June 1993 Thiess was awarded a contract to provide services in respect of three of the seven areas. The implementation of this contract by Thiess necessitated among other things Melbourne Water making approximately 800 employees redundant and Thiess then re-hiring a significant proportion of those employees.¹⁹⁶
221. Mr Paul Darrouzet was at that time employed by Thiess as Group Manager, Human Resources. His evidence was to the effect that in approximately July or August 1993 Mr Wilson told him that he wanted a ‘consulting fee’ to offset the cost of employing two additional officials to help with this transition.¹⁹⁷ Mr Darrouzet said that after taking instructions he agreed that Thiess would enter into an agreement with (as he thought) the AWU for the provision of additional services.
222. Mr Leigh Ainsworth was in charge of Thiess’s tender for the Melbourne Water project. He was assisted by Mr Darrouzet. His evidence was broadly consistent with that of Mr Darrouzet.¹⁹⁸
223. Mr Wilson’s evidence was that the services provided to Thiess by the Association in connection with the Melbourne Water project were supplied by Ms Robyn McLeod, Mr Jim Collins and Mr Mark Barnes, with some additional involvement by Mr Bill Telikostoglou.¹⁹⁹

¹⁹⁶ For evidence of the matters contained in this paragraph see Paul Darrouzet, witness statement dated 18/8/14, 9/9/14, paras 5-6; Leigh Ainsworth, witness statement, 9/9/14, paras 4-6.

¹⁹⁷ Paul Darrouzet, witness statement dated 18/8/14, 9/9/14, para 11.

¹⁹⁸ See Leigh Ainsworth, witness statement, 9/9/14.

¹⁹⁹ Bruce Wilson, 12/6/2014, T:480.12-18.

224. The critical difficulty with Mr Wilson's version of events is that each of the persons to whom he referred was employed by the AWU, not by the Association. Ms McLeod's evidence, for example, was that she was employed by the AWU and had never heard of the Association.²⁰⁰ The late Mr Collins is deceased, but was an organiser employed by the AWU. Mr Telikostoglou was also an organiser employed by the AWU. Mr Barnes likewise was an employee of the AWU.
225. It may be assumed that certain officials or employees of the AWU (including Ms McLeod) provided services to Thiess in connection with Melbourne Water. However there is no basis at all for the Association invoicing Thiess for those services, let alone retaining the proceeds for itself.
226. Mr Wilson's examination included the following exchange:²⁰¹
- Q. Let's just be clear about this Mr Wilson. You have three people that you say were from the AWU and were being paid by the AWU doing the work. Did the Association refund the AWU money that it had acquired from Thiess in payment for the services provided by those three persons?
- A. No
- Q. Kept it?
- A. Yes.
227. The invoices issued by the Association with regard to Melbourne Water were in similar form to those invoices which had been issued to Thiess with regard to the Dawesville Channel Project.²⁰² They were signed by Mr Blewitt.²⁰³
228. For his part, Mr Blewitt deposed that he knew nothing about what was allegedly done by the Association with regard to Melbourne Water. Mr Blewitt did not recall how he received instructions from Mr Wilson with regard to drawing this invoice and could

²⁰⁰ Robyn McLeod, witness statement, 9/9/14, para 15.

²⁰¹ Bruce Wilson, 12/6/2014, T:481.25-33.

²⁰² Blewitt MFI-1, 12/5/14, p 206.

²⁰³ Ralph Blewitt, 12/5/14, T:75.23-24.

only assume that he had been given such instructions by Mr Wilson.²⁰⁴ As to the receipt of payment from Thiess for these invoices Mr Blewitt's evidence was as follows:²⁰⁵

I just received cheques from Thiess Contractors and deposited them in accordance with the normal procedure. I never turned my mind to what Thiess were paying those payments for.

Major renovations to Ms Gillard's property in Abbotsford

229. Major renovations were carried out on the Abbotsford property in September, October and November of 1994. The clearest account of these renovations is in the Interview.
230. Ms Gillard states in the Interview that she had a long term plan to fix the bathroom and laundry of the Abbotsford property. She says that she went away for a holiday in late August or early September 1994. While she was away Mr Wilson decided that the plan to renovate should be instituted immediately. He therefore decided, without consultation with or notice to Ms Gillard, to demolish the bathroom. This he achieved with the assistance of a group of friends. Ms Gillard says that she came back from her holiday in early September to find the bathroom destroyed. She says that she therefore had no option other than to get the rest of the renovations done.
231. This work was carried out in September, October and November of 1994. In other words it began within a matter of weeks from Ms Gillard's return from holiday. Ms Gillard recounts in the Interview that the late Jim Collins, arranged for the work to be carried out using persons he had come to know through his local football club. Given that Mr Collins was an organiser of the AWU, and Mr Wilson was then the State Secretary, it may be inferred that Mr Collins made the arrangements for the work to be done at the request or direction of Mr Wilson.
232. Ms Gillard seems to have had only limited involvement in the carrying out of major renovations to her home. She did not obtain any quotes. She did not participate in the selection of tradesmen. She did not prepare any budget or apparently have regard at all to what the work might cost. She did not enter into any building contract, or at least not one in writing. All this was in contrast to her careful selection of quotes when it came to carrying out work the previous year.

²⁰⁴ Ralph Blewitt, 12/5/14, T:76.1-2.

²⁰⁵ Ralph Blewitt, 12/5/14, T:77.44-47.

233. The work carried out over those few months was extensive and included building the bathroom, completing the kitchen, tiling on the kitchen floor, and plastering and replacing ceilings.

Cash provided to pay for Gillard renovations

234. The next question is whether any funds obtained by the Association were deployed to pay for the building work carried out on the Abbotsford property in late 1994. The starting point is the evidence of Mr Wayne Hem. The evidence of Mr Blewitt will then be considered. It will then be necessary to consider in some detail the evidence of Ms Gillard on this topic.

235. Evidence of Mr Hem. Two parts of Mr Hem's evidence are relevant. First, Mr Hem deposed that Mr Wilson gave him \$5,000 in cash to put in Ms Gillard's bank account. Mr Hem's witness statement includes the following.²⁰⁶

One morning in mid to late 1995, Bruce and Bill came into the Drummond Street office. Bruce went to his office and Bill got a coffee. I asked Bill how was their evening because they both looked scruffy. Bill said he had been to the Casino and I asked how they went and he said not good.

Bruce then asked me to come down to his office. When I got there he asked if I would do him a favour. He took a wad of notes out of his pocket and he wrote on a piece of paper a bank account number. He handed me the cash and the piece of paper and asked me to deposit the cash into the bank account. I looked at the paper and asked him to tell whose account it was, and handed him the piece of paper back so that he could write now the details on the paper for me. He then wrote Julia GILLARD on the piece of paper and handed it back to me. I asked him what bank I had to go to. He told me the Commonwealth Bank. I asked how much money there was. He said \$5,000. I then verified that by counting it out in front of him. There was \$5,000 in cash and I told him I would be back shortly.

I went to the Commonwealth Bank in Victoria Street, Carlton and deposited the money into the bank account as requested and then returned to the office. I then gave Bruce back the bank details.

236. Mr Hem's oral evidence was to substantially similar effect. He was cross-examined about the fact that he seems in 1996 to have told Mr Cambridge that he observed a

²⁰⁶ Wayne Hem, witness statement, 11/6/14, paras 19-21.

bundle of \$100 and \$50 notes but in his oral evidence in the Commission he referred to \$20 and \$10 notes (i.e. in addition to \$100 and \$50 notes). After such a long period of time this small discrepancy does not seem material. Indeed the fact that Mr Hem gave an account of this transaction to Mr Cambridge in 1996 provides some support for his position rather than the reverse, at least in the sense that there can be no suggestion of recent invention.

237. Significantly, Mr Wilson did not deny the transaction described by Mr Hem. Mr Wilson said in his oral evidence that he had no recollection of asking Mr Hem to deposit \$5,000 to Ms Gillard's account. The following was put to him:

Q. You certainly don't deny it, do you?

A. I just have no recollection of it.

Q. It might have happened, you just can't remember one way or another?

A. Yes.²⁰⁷

Mr Wilson's non-denial in circumstances where it was strongly in his interests to offer a denial is very substantially supportive of Mr Hem.

238. Assuming that this transaction occurred, the only source of the \$5,000 in cash would appear to have been the funds raised and held by the Association. The following evidence from Mr Wilson is on point:²⁰⁸

Q. Mr Blewitt was the only person who from time to time was giving you sums of money in cash; correct; at that time?

A. Yes

Q. You can't point to anyone else who might have handed you \$5,000 in cash, can you?

A. No

Q. If you did have \$5,000 in cash, it must have come from Mr Blewitt?

A. Well, the way you're putting it, that's what it sounds like, but as I say, I don't recall having given Wayne Hem \$5,000.

239. Had Ms Gillard's relevant bank account details still been available it would have been possible to resolve this issue one way or the other. However those records are no longer

²⁰⁷ Bruce Wilson, 12/6/2014, T:477.14-19.

²⁰⁸ Bruce Wilson, 12/6/2014, T:477.31-44.

available, some 19 years having passed. Nevertheless, the fact that Mr Hem has a clear recollection of this event, and Mr Wilson does not deny it, and Mr Wilson was also in the habit of receiving cash sums of about this amount from Mr Blewitt from time to time as set out above, it is submitted that the Commission will accept that this transaction took place.

240. Secondly, Mr Hem also gives evidence concerning payments made to tradesman working at Ms Gillard's home at Abbotsford. His witness statement included the following:²⁰⁹

About two weeks after the Fitzroy property was finished with the renovating I attended at a house at Abbotsford with Bill the Greek. Prior to arriving at this house Bill and I were in Bill's union car and Bill said that he had to go to this house to pay some tradesman. I didn't know whose house it was. When I went inside I could see that the house was being renovated. We went into the lounge room that was being painted by two painters. I had not seen the painters before. I saw Con the Builder in the kitchen and it looked like he had finished doing some tiling work.

241. Mr Hem goes on in his witness statement to say that he saw Bill hand one of the painters an envelope which he assumed contained some money.²¹⁰

242. Ms Gillard responded to the above evidence of Mr Hem by observing that, to the best of her recollection, the painting at her home at Abbotsford was undertaken earlier than in mid-1995. Little would appear to turn on a question of a few months in respect of a date after such a long period. More significantly, Ms Gillard then deposes:²¹¹

I have no reason to believe that payment for any section of it [i.e., *the painting of Ms Gillard's home in Abbotsford*] was made by any person other than me. I have no knowledge of Bill attending my property and purportedly paying one or more of the tradesman as described in the statement.

243. The resolution of the collision between Mr Hem's evidence and Ms Gillard's is suggested below. It will first be helpful to consider the relevant evidence of Mr Blewitt.

²⁰⁹ Wayne Hem, witness statement, 11/6/14, para 23.

²¹⁰ Wayne Hem, witness statement, 11/6/14, para 24.

²¹¹ Julia Gillard, witness statement 3, 10/6/14, para 3.

244. Mr Blewitt's evidence. Mr Blewitt deposed that in about September or October 2004 at Mr Wilson's direction he paid a sum of approximately \$7,000 to a tradesman working on the Abbotsford property.²¹² Mr Blewitt's evidence on this topic was as follows:²¹³

I arrived at the house [i.e., *the Abbotsford property*], walked through the house to the back – the whole place was open. My recollection is Julia Gillard was in one of the rooms adjacent to the front door. She said words to the effect, “oh, Bruce is through the back just go through.” I went through. I met Bruce Wilson in the kitchen/veranda area. There were three other people in attendance that day. They were just dressed in worker's-type overalls. They were doing renovations in either the veranda or the kitchen; I can't remember precisely. Mr Wilson called out to somebody. Oh, he asked me if I had the money. I said, “Yeah.” He called out to somebody who came in. He asked me to pay him \$7,000 which I did. I counted off \$7,000 gave it to that gentlemen. He stuck it in the front pocket of his bib-and-brace overall and went back outside to join the other two workers that were there.

245. Mr Blewitt says that he gave the balance of the cash he had brought from Perth to Mr Wilson and left the Abbotsford property shortly thereafter.²¹⁴ He was clear that Ms Gillard was in a front room of the house and so played no part in paying the tradesman and had no knowledge of it.²¹⁵

246. Mr Blewitt's evidence is not inherently improbable. The prevalence of large cash payments in the circles in which Messrs Blewitt and Wilson moved is confirmed by persons other than Mr Blewitt – Mr Wilson, Mr James and Mr Hem. The difficulty with Mr Blewitt's evidence on this point is that, for the reasons set out in detail below, Mr Blewitt should not be accepted as a witness of truth. He is a self-confessed fraudster. Great caution would need to be exercised in accepting Mr Blewitt's evidence save where it is against his own interest or supported by contemporaneous documents – and neither applies here.

²¹² Ralph Blewitt, 12/5/14, T:81.39-43.

²¹³ Ralph Blewitt, 12/5/14, T:81.29-45.

²¹⁴ Ralph Blewitt, 12/5/14, T:81.47-82.4.

²¹⁵ Ralph Blewitt, 12/5/14, T:82.6-17.

247. Ms Gillard's evidence. Ms Gillard's evidence to the Commission was that she paid for the renovations herself.²¹⁶

All payments made for renovations on my property were from my own money which was either derived from a loan from the bank and my salary.

248. However in the Interview, which was carried out less than a year after the work was completed, Ms Gillard expressed uncertainty as to whether she had paid for all the work herself. Thus at page 23 of the Interview, Ms Gillard says as follows:²¹⁷

I will meet with Bob as soon as possible for the purpose of clarifying that matter. Now I believe that that must be the source of the rumour about, that must be the factual construct behind what has become the rumour about, the association or Bruce or the union or whoever paying for work on my house and I don't obviously given I've been fairly surprised by events to date in relation to this matter, **I can't categorically rule out that something at my house didn't get paid for by the association or something at my house didn't get paid for by the union or whatever, I just, I don't feel confident saying I can categorically rule it out**, but I can't see how it's happened because that really is the only bit of work that that that I would identify that I hadn't paid for (emphasis added).

249. Likewise, elsewhere in the Interview, Ms Gillard was asked whether it was fair to say that she had paid for all the work herself and she replied that she believed that to be the case – a cautious answer, which seems to leave room for doubt.²¹⁸

250. It seems objectively surprising that Ms Gillard was uncertain on this point in the Interview. Many people have caused renovations to be carried out on their property. Few would have difficulty, a few months later, in saying whether or not they paid for those renovations.

251. Ms Gillard's explanation for how she can now categorically rule out that someone else made any payments for the renovations, despite not being able to at the time of the Interview, was that since the Interview she had checked her records and considered the matter carefully and resolved that all work had been paid for by her. However it would

²¹⁶ Julia Gillard, witness statement 4, 10/9/14, para 26.

²¹⁷ Gillard MFI-2, 10/9/14, p 23.

²¹⁸ Gillard MFI-2, 10/9/14, p 20.

be difficult even for an experienced quantity surveyor to determine with precision what work might or might not have been done and what might reasonably have been charged for it. Ms Gillard, as she acknowledged, had no such training or experience. Also an academic exercise of this kind could only arrive at a view as to what could, or should, have been charged by the building worker. It is always possible that for whatever reason the person carrying out the work charged more than the person carrying out the exercise might have expected.

252. It is submitted that the way to resolve these various accounts and uncertainties is as follows. When Ms Gillard returned from her holiday in early September she discovered the bathroom had been demolished without her knowledge. Within weeks persons from the AWU had arranged for tradesmen to start work effecting major repairs. It would appear reasonable to infer that tradesmen were coming and going. No doubt a large part of the payments for the work came from Ms Gillard. However, she could not rule out that some payments were being made in cash by or on behalf of Mr Wilson, which explains her uncertainty on the topic in the Interview. In these circumstances there is no reason to reject the evidence of Mr Hem that he arrived at Ms Gillard's house with Mr Telikostoglou and a payment for work was made by Mr Telikostoglou.²¹⁹

Altercation between Mr Wilson and Mr Blewitt

253. As set out above there is a conflict of the evidence of Mr Wilson and Mr Blewitt concerning how cash sums withdrawn from the Association's CBA account were spent. Mr Wilson contends that in about November 1994 he discovered that Mr Blewitt had been removing funds from the Association's account.²²⁰ Mr Wilson says that upon discovering this he became enraged with Mr Blewitt, to the point that he grabbed Mr Blewitt and pushed him against the wall.²²¹ In essence, this appears to be Mr Wilson's explanation for what happened to the bulk of the funds in the Association's account (or at least those funds which cannot be expressly accounted for): he accuses Mr Blewitt of 'stealing' them.²²²

²¹⁹ Wayne Hem, witness statement, 11/6/14, para 23-25.

²²⁰ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, paras 226, 228-232; Bruce Wilson, 12/6/14, T:478.14-47; 479.1-5.

²²¹ Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 233.

²²² Bruce Wilson, witness statement dated 4/6/14, 12/6/14, para 237.

254. However if Mr Wilson truly believed that Mr Blewitt had been stealing funds from the Association's account he did not behave in a way consistent with that belief. He did not report the matter to the police. He did not even report it to senior management at the AWU.²²³ He said he was concerned that the union would become 'embarrassed' if Mr Blewitt's alleged theft became public knowledge; that the National Construction Branch and the objectives of the Association would be put in jeopardy; and that he felt compassion towards Mr Blewitt.²²⁴ None of this could in any way excuse the failure to report a theft of such proportions.
255. Further, if Mr Wilson had discovered that Mr Blewitt had been stealing money he would thereafter have distrusted Mr Blewitt. He did not. On the contrary within a few weeks Mr Wilson had set up a new account on behalf of the National Construction Branch in respect of which, to his knowledge, Mr Blewitt was the signatory.²²⁵ This aspect of Mr Wilson's version of events is entirely implausible. It is inconceivable that he would within a short time after discovering a serious theft have placed Mr Blewitt in a position of trust.
256. It may be that Mr Blewitt was using a signature stamp to procure certain funds from the Association's account and was spending some of those funds for his own benefit. However it is submitted that the Commission should find that the real reason Mr Wilson did not report the matter was because he knew very well that the monies in the Association account had been obtained improperly by deceit, and also because he had obtained the benefit of at least a large proportion of the funds in the Association's account.

AWU discovers secret accounts – August 1995

257. The AWU amalgamated with the Federation of Industrial Manufacturing and Engineering Employees (FIME) on or about 1 November 1993.²²⁶ In late 1994, the National Executive of the AWU – FIME resolved to establish the National Construction Branch and to create a single Victorian branch of AWU – FIME, consolidating what had

²²³ Wilson, 12/6/14, T:479.22-27.

²²⁴ Bruce Wilson, witness statement, 4/6/14, paras 237-238.

²²⁵ Wilson MFI-2, 12/6/14, pp 298-299; Bruce Wilson, witness statement, 4/6/14, para 276; Wilson, 12/6/14, T:490.8-34; 491.10-18.

²²⁶ Robert Smith, witness statement, 9/9/14, para 4.

until then been duplicate branches in Victoria of AWU and FIME.²²⁷ The proposed rules were certified by the Industrial Registrar on 17 February 1995.²²⁸ Mr Wilson was elected Secretary of the National Construction Branch.²²⁹ Mr Bob Smith, formally joint Secretary of FIME, was elected Secretary of the now unified Victorian branch of AWU – FIME.²³⁰

258. Upon taking over as Secretary of the National Construction Branch, Mr Wilson seems to have established a number of accounts with the CBA. One of these was the AWU Members' Welfare Account, being account number 300810009828 (Account). Mr Wilson elicited monies from a number of companies which were then paid into the Account. He thereafter used the monies in the account for various purposes. In particular he provided a cheque in the sum of \$6,500 to Mr Bob Kernohan.²³¹
259. In early to mid-July 1995 Mr Smith had a meeting with a Mr Peter Collins of the Commonwealth Bank. The solicitor for the Victorian branch of AWU – FIME, Mr John Cain of Maurice Blackburn, also attended this meeting. Mr Smith's evidence was that to his surprise at this meeting Mr Collins revealed him a number of accounts maintained by or on behalf of the AWU, including one in which a sum of approximately \$157,000 had been deposited.²³²
260. Mr Smith was immediately concerned that a serious breach of the union's rules had occurred. The accounts which Mr Collins revealed to him were not audited and did not appear to have been included in the union's regular accounts. Mr Smith took immediate steps to freeze the accounts. On 14 July 1995, Mr Cain wrote to Mr Collins at CBA requesting that all authorities to operate the accounts previously given by Mr Wilson be

²²⁷ Robert Smith, witness statement, 9/9/14, para 6.

²²⁸ Ian Cambridge, witness statement dated 27/5/14, 10/6/14, para 42.

²²⁹ Robert Smith, witness statement, 9/9/14, para 7; Ian Cambridge, witness statement dated 27/5/14, 10/6/14, para 92.

²³⁰ Evidence of the matters contained in this paragraph is at Robert Smith, witness statement 9/9/14 paras 4-8; see also Ian Cambridge, witness statement dated 27/5/14, 10/6/14, paras 92 and 93. In these submissions references to Mr Bob Smith are to Mr Robert Frederick Smith who was previously Secretary at FIME, not to the Mr Robert Lesley Smith who was previously Secretary of the Victorian branch of the AWU.

²³¹ Robert Kernohan, witness statement, 11/6/14, paras 94-95.

²³² Robert Smith, witness statement 9/9/14, para 11.

withdrawn and that the accounts be frozen until such time that new authorities had been lodged.²³³

261. On 25 July 1995 Mr Smith wrote to Mr Harrison and Mr Cambridge in their capacities as joint Secretaries of the AWU seeking approval from the National Executive in dealing with the matter of the money in the accounts.²³⁴
262. On 27 July 1995 Mr Cambridge and Mr Harbour, the National Vice President of AWU, issued a circular letter to members of the National Executive stating that the matters raised by Mr Smith required proper investigation and a thorough financial audit. The letter suggested that it was appropriate that the National Executive should resolve as a matter of urgency to commence the relevant audit process. The letter also noted that this matter would be included on the agenda for a forthcoming finance committee meeting to be held on Wednesday 2 August 1995.²³⁵
263. On 2 August 1995 the foreshadowed meeting of the AWU – FIME Finance Committee took place. The attendees at the meeting included Mr Smith, Mr Wilson and Mr Cambridge. Things became heated. Mr Smith was concerned that Mr Wilson had been misappropriating funds for his own personal benefit and was robust in pointing this out. Mr Smith's evidence was that he told Mr Wilson that he was 'going to the slammer'.²³⁶
264. On 7 August 1995 Mr Cambridge travelled to Brisbane and had a meeting at the AWU office in Adelaide Street with Mr Ludwig, Mr Harrison and Mr Smith. Mr Smith says that at this meeting he insisted that he have Mr Wilson's resignation that day, if not he was going to the police.²³⁷
265. At about this time a serious divergence of views manifested itself in the leadership of AWU – FIME. On the one hand, Mr Smith, Mr Harrison and others appeared to have decided that the appropriate course was to make Mr Wilson and others redundant. Mr Cambridge and others vigorously resisted this course.

²³³ Robert Smith, witness statement 9/9/14, annexure A.

²³⁴ Robert Smith, witness statement 9/9/14, annexure B.

²³⁵ Cambridge MFI-1, 10/6/14, pp 117-119.

²³⁶ Robert Smith, witness statement 14/8/14, paras 18-21; see also Robert Smith, 9/9/14, T678.20-35; Ian Cambridge, witness statement dated 27/5/14, 10/6/14, paras 123-151.

²³⁷ Robert Smith, witness statement 14/8/14, paras 23-24.

266. By this time Mr Wilson had decided to seek legal advice. He approached Slater & Gordon. In the first instance he had discussions with Ms Gillard. She then referred him to Mr Murphy. On 8 August 1995 Mr Murphy and Mr Wilson had a conference. Mr Wilson claims legal professional privilege over the matters communicated in that conference. However Mr Murphy says that he ceased to act for Mr Wilson in respect of the allegations made against him by Mr Smith immediately following the conference.²³⁸
267. On 14 August 1995 Mr Murphy sent a letter to Mr Wilson setting out his instructions given in the 8 August 1995 conference and confirming that the firm Slater & Gordon would no longer act for him.²³⁹ Mr Wilson claims legal professional privilege over this letter. Mr Murphy thereafter did not do any further work for either Mr Wilson or the AWU.
268. On 14 August 1995 Mr Harrison and Mr Barry Cochran, National Vice President, issued a circular letter to members of the National Executive which included a resolution authorising payment of a redundancy package to Mr Wilson and others.²⁴⁰
269. As noted above, Mr Cambridge strenuously opposed the payment of a redundancy package to Mr Wilson and his colleagues from the National Construction Branch. On the same day, 14 August 1995, Mr Cambridge issued his own circular letter to members of the National Executive. In this letter Mr Cambridge raised serious concerns with what he described as ‘the extraordinarily hasty attempts by Joint National Secretary Steve Harrison and others’ to pursue the postal ballot. He indicated that the matters relating the payment of redundancies were complex and required a thorough investigation. He went so far as to assert his belief that payment of redundancies without proper investigation, consideration and debate was a misuse of union funds:

These hasty and ill-conceived actions are unfortunately consistent with a series of improper decisions which have not only exposed serious mismanagement of the Union but which continue to publicly damage the organisation. I believe that the recent history of hasty “quick fix” decisions which amount to little more than using members’ money to seek to obtain some political advantage must stop.²⁴¹

²³⁸ Bernard Murphy, witness statement, 9/9/14, para 5.5-5.7.

²³⁹ Bernard Murphy, witness statement, 9/9/14, para 5.8.

²⁴⁰ Cambridge MFI-1, 10/6/14, pp 146-148.

²⁴¹ Cambridge MFI-1, 10/6/14, pp 149-150.

270. On 15 August 1995 the then President of the Queensland branch of the AWU, Mr Bill Ludwig, wrote a letter stating his agreement with Mr Cambridge's letter of the same day and urging that the National Executive vote against the payment of the redundancy package.²⁴²
271. On 16 August 1995 Mr Cambridge sent a further circular letter to members of the National Executive again urging that the National Executive refuse the redundancy at least until a proper investigation had taken place. Mr Cambridge pointed out that once an officer had taken a redundancy he or she would not be under an obligation to comply with directions to provide information regarding their conduct such that the ability of the union to properly investigate what had occurred would be 'significantly impeded'.²⁴³
272. Despite this opposition on 17 August 1995 Mr Harrison issued a circular letter to members of the National Executive containing the results of the postal ballot and advising that the payment of a redundancy package had been approved.
273. By this stage another aspect of the arrangement had emerged. As discussed above, the Account held a sum of approximately \$157,000. This money had been obtained from a number having drawn cheques in favour of the AWU, which cheques had then been deposited by Mr Wilson into the Account rather than the union's central fund.
274. By mid-August 1995 Mr Smith, Mr Harrison and others had resolved not only to pay Mr Wilson a redundancy package but, at the same time, to refund the money in the Account to the various companies who had originally paid it to the AWU. This proposed course required the cooperation of Mr Wilson and others receiving the redundancy package because as at mid-August 1995 he remained one of the signatories on the Account. They were therefore needed to sign the refund cheques drawn on the Account.
275. The decision to refund this money is highly problematic. Either the money in the account *was* union money or it *was not*. If it *was* union money it belonged to the members and there was no proper basis for refunding it to the persons who had paid it in the first place. If it was not union money then very serious questions arose as to the circumstances in which Mr Wilson procured those sums to be paid to the AWU and

²⁴² Cambridge MFI-1, 10/6/14, pp 151-153.

²⁴³ Cambridge MFI-1, 10/6/14, p 154.

deposited them into the Account. Those questions would not be answered simply by paying the money back with no investigation or audit.

276. In mid-July 1995 Mr Smith had been concerned that the monies in the Account were union monies. By mid-August 1995 he had changed his mind. His explanation for this change of heart was as follows:²⁴⁴

Well, I'd formed the view that it was money inappropriately obtained by Wilson who was – let's call a spade a spade. It was "go away money". It was "keep the peace money". It was bribe money by the companies and Wilson admitted that to us at the Executive. He said yes, we were naïve if we didn't understand that's the way it worked in construction. Well, I plead guilty. We were naïve.

277. Indeed the whole question of paying redundancies to Mr Wilson and others associated with the National Construction Branch (including Mr Blewitt) was highly problematic. The National Construction Branch had been established only relatively recently and at considerable expense to the union. The positions of Wilson and others do not appear to have been 'redundant' in any conventional sense. Mr Smith was examined about this matter on 9 September 2014. He indicated that he had a 'very very low opinion of Mr Wilson and his *modus operandi*. I wanted him out'.²⁴⁵ He said that he still wished to pursue Wilson legally.²⁴⁶ He described a redundancy payment as 'the most convenient vehicle to remove him'.²⁴⁷

278. At the same time however Mr Smith accepted that Mr Wilson and others were resigning and that their positions had not become redundant. Mr Smith said 'I suppose in a legal sense that is probably right'.²⁴⁸ Mr Wilson also accepted that it would be difficult in a practical sense to recover the redundancy payments once they had been made and Mr Wilson had left the union.²⁴⁹

279. On 17 August 1995 a meeting took place at the Victoria Street branch of the CBA. The meeting was attended by Mr Smith, Mr Cain, Mr Collins and Mr Wilson. By this stage

²⁴⁴ Robert Smith, 9/9/14, T:694.6-15.

²⁴⁵ Robert Smith, 9/9/14, T:685.10-12.

²⁴⁶ Robert Smith, 9/9/14, T:686.1-7.

²⁴⁷ Robert Smith, 9/9/14, T:687.18.

²⁴⁸ Robert Smith, 9/9/14, T:686.39-43.

²⁴⁹ Robert Smith, 9/9/14, T:686.9-12.

the AWU had drawn cheques on its State Bank of NSW account to pay the redundancies. For his part Mr Wilson had drawn and signed the various cheques to refund the monies in the Account.²⁵⁰

280. There appears to have been some concern on the part of Mr Collins, the manager of the Commonwealth Bank about these transactions. Mr Cain drafted a letter dated 17 August 1995 which referred to the accounts which had been frozen identified certain other accounts and then stated:²⁵¹

The AWU has no interest in any other accounts held at the Victoria Street branch of the Commonwealth Bank.

281. In effect the letter provided an assurance that the AWU had no interest in the Account. Given that no investigation had taken place at that stage, and given that Mr Cambridge has expressed serious concerns about the arrangements that were being entered into and the need for an audit, it is difficult to see how this statement could have been made.

282. At the meeting at CBA on 17 August 1995 the following redundancy cheques were handed over:²⁵²

<u>Recipient</u>	<u>Amount</u>
Ralph BLEWITT	\$30,249.00
Jim COLLINS	\$26,346.00
Bill TELIKOSTOGLU	\$16,218.00
Marie MURRAY	\$16,342.00
Bruce WILSON	\$55,204.00
Mark BARNES	\$11,479.00

283. On the back of the cheques is written in hand 'please pay cash' with a signature of the late Jim Collins. In other words it would seem that the recipients of the redundancies cashed their cheques on the same afternoon. There reasons for doing so are somewhat

²⁵⁰ Robert Smith, witness statement, 9/9/14, para 33.

²⁵¹ Cambridge MFI-1, 10/6/14, p 163.

²⁵² Ian Cambridge, witness statement dated 27/5/14, 10/6/14, paras 222-223.

unclear but it would appear likely that they wished to obtain their funds as quickly as possible.²⁵³

284. Following the payment of the monies Mr Cambridge went to further efforts to recover the funds that had been paid out. A number of the companies who received the refund cheques wrote back to the AWU indicating that as far as they were concerned the monies had been properly paid.

Events of September 1995

285. By about early September 1995 Mr Murphy had become aware of the Association and of concerns being aired by some of the partners of Slater & Gordon about Ms Gillard's involvement in the conveyance of the Kerr Street property. In his oral evidence he referred to questions 'swirling around Slater & Gordon at that point' (T:575.26).²⁵⁴ He deposed further concerning the concerns which had been aired with him by other partners in Slater & Gordon.²⁵⁵

[The] concern that was conveyed was that Julia Gillard had created an Association which might have been set up corruptly and might have involved corrupt moneys and it involved the firm in a conveyance involving those moneys.

286. Mr Robert Smith deposed that at about this time, namely September 1995, Mr Spyridis turned up out of the blue at the AWU office in Spencer Street Melbourne and asked for a meeting with Mr Smith. At this meeting Mr Smith demanded money for work that he had done for 'the union houses'. He identified these houses as houses in Kerr Street and Abbotsford. According to Mr Smith, Mr Spyridis said that Bruce Wilson had been paying him and that he was owed \$17,000.²⁵⁶ It is significant that Mr Spyridis referred to these houses as 'union houses'.

287. Mr Kernohan's account of this episode is contained in his witness statement. He deposes that in approximately September 1995 he heard a commotion at the reception area of the Spencer Street AWU branch office. Three tradesmen were shouting out words to the effect 'we want to be paid we haven't been paid'. Just as he was leaving

²⁵³ Ian Cambridge, witness statement dated 27/5/14, 10/6/14, para 223.

²⁵⁴ Bernard Murphy, 9/9/14, T:575.26.

²⁵⁵ Bernard Murphy, 09/09/2014, T574.4-15.

²⁵⁶ Robert Smith, witness statement, 9/9/14/, para 44.

the reception area he observed Terry Muscat coming in.²⁵⁷ Mr Muscat was an official at the Victorian branch of the AWU who worked closely with Mr Smith.²⁵⁸

288. Mr Kernohan says that he went to another meeting elsewhere and when he returned he went to see Terry Muscat in order to find out what the yelling was about. Mr Kernohan's evidence was as follows:

Terry Muscat said to me that Wilson was up to a lot more than [sic] operating dodgy bank accounts. He had authorised in the name of the AWU house renovations to a private property which was Julia Gillard's, the girlfriend of Bruce Wilson, and that they haven't been paid.²⁵⁹

289. On 11 September 1995 Ms Gillard was interviewed by two partners at Slater & Gordon, Mr Peter Gordon and the late Mr Geoff Lowe. At one point in that interview she made reference to Mr Spyridis going to the AWU and speaking with Bob Smith demanding payment. Ms Gillard's evidence was to the effect that Mr Spyridis was seeking payment of an invoice which he had recently delivered to her house.

290. Subsequent to the Interview Slater & Gordon did not disclose to the AWU the existence of the Association. Mr Murphy left the employ of Slater & Gordon at about this time.

Sale of Kerr Street property – March 1996

291. In March 1996, Mr Wilson caused the Kerr Street property to be sold. Blewitt contends that he does not know where the net proceeds of the sale went and that he himself received none of the proceeds.

292. However, Mr Blewitt certainly knew that the Kerr Street property was being sold. On 23 February 1996 he signed the transfer for the sale of the property for a consideration of \$233,000.²⁶⁰

293. In approximately mid 1996 the AWU through Mr Cambridge discovered the existence of the Association. In due course proceedings were commenced against a number of persons seeking recovery of funds and also recovery of the redundancy payments. Among that the defendants to this action was Mr Kernohan who was joined on the basis

²⁵⁷ Robert Kernohan, witness statement, 11/6/14, paras 114-115.

²⁵⁸ Robert Kernohan, witness statement, 11/6/14, para 102

²⁵⁹ Robert Kernohan, witness statement, 11/6/14, para 117.

²⁶⁰ Blewitt MFI-1, 12/5/14, p 295.

of the \$6,500 he had received as reimbursement for election expenses incurred by him.²⁶¹

294. Mr Kernohan was appalled by what he had discovered on receipt of the court documents. In particular he was appalled by the fact that redundancy payments had been made to Mr Wilson and others. He deposes that he had a conversation with Mr Shorten and others in which he said words to the following effect:

I told them it was a bloody disgrace that they received redundancy payments whilst they were internally investigated for fraud.²⁶²

295. Mr Kernohan deposed that Mr Shorten (then a junior official in the AWU) told him in essence not to take it any further and that 'we are all just moving on'.²⁶³ At the time of writing these submissions evidence had been sought but not yet received from Mr Shorten on this topic.

B CREDIT ISSUES

296. Before coming to the recommendations concerning the main protagonists, it will be helpful to consider in detail the credit of each of Mr Blewitt and Mr Wilson in the light of the above analysis of the facts.

Credit of Mr Blewitt

297. The starting point is that on Mr Blewitt's own evidence he engaged in systematic deliberate and long term fraud. The evidence of a witness who makes such admissions must be approached with great caution. Put simply, if the witness has shown a willingness to lie and be deceitful on some earlier occasion, who is to say that the witness is not being deceitful again now?
298. Mr Blewitt's evidence was unimpressive in other ways. On a number of occasions his recollection was unreliable. A good example involves his recollection concerning the circumstances in which the Power of Attorney was executed, which has already been discussed above. Another example involves his evidence that he had no or very limited knowledge of, or involvement in, the mortgage of the Kerr Street property; it is very

²⁶¹ Robert Kernohan, witness statement, 11/6/14, para 130.

²⁶² Robert Kernohan, witness statement, 11/6/14, para 132.

²⁶³ Robert Kernohan, witness statement, 11/6/14, para 134.

difficult to reconcile this evidence with the fact that he provided various information (including a personal cheque \$500)²⁶⁴ in connection with that sale and also paid at least some instalments of interest from his and his wife's personal Home Building Society account.

299. In fairness to Mr Blewitt, he gave every impression of endeavouring to make an honest and careful attempt to put fairly and fully before the Commission his recollection of events. He deposed candidly about circumstances adverse to himself, including circumstances which he acted with conscious impropriety or engaged in potential criminal conduct. While much of his evidence was to the effect that he acted on the instruction of Mr Wilson, he was also frank about matters which to some extent did not support this. For example, as noted above he identified numerous cheques on which he himself had inserted an imprint of Mr Wilson's signature stamp, rather than have Mr Wilson sign the cheque himself.
300. Nevertheless, at the end of the day it is submitted that as a self-confessed fraudster Mr Blewitt's evidence needs to be approached with great caution, at least save where it is against his own interests or corroborated by the contemporaneous record or the evidence of other witnesses.

Credit of Mr Wilson

301. Mr Wilson did not make broad ranging admissions of the kind made by Mr Blewitt. It is also true that generally Mr Wilson gave his evidence in a direct, straightforward way. He did not give the impression of evading the question; on the contrary he generally seemed to be doing his best to give a direct answer. As appears from the forgoing he was also prepared on occasion to make admissions against interest.
302. Nevertheless, Mr Wilson's evidence suffered from serious deficiencies such that it is submitted that he should not be accepted as a witness of truth.
303. *First*, as discussed above Mr Wilson suggested in evidence that the late Mr Ivory was involved with the Association - as a member, as regularly in attendance at meetings of the members of the Association, and as a person carrying out work at the Dawesville project on behalf of the Association for which he was paid in cash - is inconsistent with

²⁶⁴ Blewitt MFI-1, 12/5/14, pp 150-151.

the late Mr Ivory's witness statement. This evidence should be rejected. It is critical to Mr Wilson's contention that work was done by the Association in 1993.

304. *Secondly*, as discussed above Mr Wilson's account of an oral agreement pursuant to which Thiess agreed in effect to pay the Association for a full three year term regardless of whether the Association was in fact doing any work should also be rejected. The reasons for this are set out in detail above. Again this was an important component of Mr Wilson's position. In essence it was his explanation as to how the Association could have been rendering invoices during 1992 and 1994 without any work having been done. The rejection of this evidence leaves Mr Wilson in a position in which invoices were being levied to his knowledge in circumstances in which they were false.

305. *Thirdly*, there were other difficulties with Mr Wilson's evidence. For example, he asserted that Ms McLeod was providing services to Thiess on behalf of the Association but Ms McLeod denied that she had ever done any work for anyone other than the AWU and disclaimed any knowledge of the Association. Similarly, he claimed that the Kerr Street property was utilised extensively for union purposes, but Mr Hem's evidence is inconsistent with this, as is Mr Cambridge's. In general Mr Wilson's testimony tended to react to and be stamped by whatever particular testimonial crisis he perceived from moment to moment. In consequence it tended to lurch.

C CONCLUSIONS CONCERNING MR BLEWITT AND MR WILSON

306. This section of the submissions addresses whether findings of criminal conduct should be made against Mr Blewitt and Mr Wilson.

C1 Gaining a pecuniary benefit by deceit and fraud

307. The first question is whether Mr Blewitt and Mr Wilson committed a crime pursuant to section 409(1) of the *Criminal Code* (WA) by issuing the Association's invoices to Thiess and thereby, by deceit or fraudulent means, gaining a pecuniary benefit for themselves.

308. Section 409(1) of the *Criminal Code* (WA) in force 1992 and 1993²⁶⁵ was in the following terms:

Any person who, with intent to defraud, by deceit or any fraudulent means-

- (a) obtains property from any person;
 - (b) induces any person to deliver property to another person;
 - (c) gains a benefit, pecuniary or otherwise, for any persons;
 - (d) causes a detriment, pecuniary or otherwise, to any persons;
 - (e) induces any person to do any act that the person is lawfully entitled to abstain from doing; or
 - (f) induces any person to abstain from doing any act that the person is lawfully entitled to do,
- is guilty of a crime and is liable to imprisonment for 7 years.

309. Section 409(2) as in force in 1992 and 1993 provided that if the value of the property obtained or benefit gained was more than \$4000 the charge was not be dealt with summarily. The sums involved in the present case greatly exceeded that amount. It follows that if the elements of section 409(1) are established the offence is indictable and a prosecution may be commenced at any time.²⁶⁶

310. Turning to the elements of section 409(1), the first question is whether Mr Blewitt and Mr Wilson acted ‘with intent to defraud’. As noted by King CJ in the *Queen v Kastratovic* (1985) 42 SASR 59 at 61 the expression ‘with intent to defraud’ is a familiar element of many statutory offences. In the context of section 409(1), in *Matthews v The Queen* (2001) 24 WAR 438 Burchett AUJ (with whom Malcom CJ and Steytler J agreed) held (at [17]):

But section 409(1) itself contains a mental element, which may involve a question whether an accused person has a belief in the existence of a state of things, by virtue of the word “with intent to defraud”. Also, perhaps, by virtue of the words “by...any fraudulent means”. Fraud wears many disguises and the shapes it may take are multiple. It is therefore necessary, in any case of fraud, to analyse the facts in order to identify the aspect of them with is alleged to reveal a fraud. If there is a fraud, there must have been an intent to defraud. That intent may be revealed by knowledge, such as knowledge that a bank account being drawn upon is devoid of funds. However, since *Derry v Peek* (1889) 14 App Cas 337, it has been established that an intent to defraud is not to be equated with carelessness; so even an unreasonable belief fortified by knowing enquiries, that the account is good for the cheques drawn on it, will suffice to repel a suggestion of intent to defraud.

²⁶⁵ See *Criminal Code Act Compilation Act 1913* (WA), reprinted under the *Reprints Act 1984* (WA) as at 31 May 1999.

²⁶⁶ See section 3, *Criminal Code* (WA).

311. The position of Mr Blewitt will be considered first. It is submitted that Mr Blewitt acted with the requisite intent to defraud in the present case. The following passage of evidence makes the point:²⁶⁷

Q. But the invoices suggested in their terms that the Association had provided a representative to carry out workplace safety reform work at the Dawesville Channel project; correct?

A. Yes

Q. And that representation was false?

A. It never occurred

Q. It was false?

A. Yes.

Q. And you knew that at the time?

A. Yes.

Q. So you accept, do you, that you were, by sending these invoices making a false representation to Thiess to the effect that the Association was providing Thiess with services at the Dawesville Channel Project?

A. Correct.

312. Evidence such as that set out above also addresses the section element, namely whether Mr Blewitt acted ‘by deceit or any fraudulent means’. It is true that by reason of section 6DD of the *Royal Commissions Act* 1902 (Cth) Mr Blewitt’s evidence to the Commission can not be admitted against him in criminal proceedings. However Mr Blewitt cooperated with the Commission in giving his evidence, and had previously cooperated with the Victorian Police, such that it would appear at this stage likely that he will give similar evidence voluntarily in another forum.

313. Next Mr Wilson’s position must be considered. As noted above, Mr Wilson did not make admissions of the kind made admissions of the kind made by Mr Blewitt. However, there can be no real doubt he acted with the requisite intent to deceive.

314. Looking first at the broader context, Mr Wilson was the driving force behind the Association. Given his dominance over Mr Blewitt it may be inferred he also was the driving force behind the Association’s illegal activities. He was treasurer of the

²⁶⁷ Ralph Blewitt, 12/5/14, T:34.33-35.5.

Association. He knew of the obligations of a treasurer under the Rules. He was party to the arrangements pursuant to which the Association utilised: the secretive Northbridge PO box; the name of the AWU without approval; the home address and telephone number of Mr Blewitt rather than the address of the office of the WA Branch of the AWU on its application for incorporation; and letterhead the layout of which suggested that it was part of the AWU.

315. On his own evidence he concealed from Ms Gillard the true purpose of the Association and concocted a false story as to the reasons for the purchase of the Kerr Street property. He concealed his and Mr Wilson's conduct from the other officials of the WA branch of the AWU, including by putting the Kerr Street property in the name of Mr Blewitt.
316. More importantly, Mr Wilson procured, or least knew of, the issuing of invoices by the Association which deceitfully represented that work had been done when in fact it had not. The invoices were dishonest on their face: they claimed for certain hours worked when, to Mr Blewitt's and Mr Wilson's knowledge, no such hours had been worked. They also referred to the agreement contained in the letter from Thiess to the Association of 16 March 1992, when on Mr Wilson's evidence this was not the basis on which the Association was able to charge. Of course, for the reasons set out above Mr Wilson's evidence in relation to a purported oral agreement independent of the letter of 16 March 1992 should also be rejected.
317. Lastly, each of Mr Blewitt and Mr Wilson engaged in the above activities to gain benefit for himself, for each other, and for the Association. It follows that, at least, section 409(1)(c) is satisfied.
318. For the above reasons it is submitted that the Commission should recommend that each of Mr Blewitt and Mr Wilson be charged by the Western Australian regulatory authorities with an offence under section 409(1) of the *Criminal Code* (WA).

C2 Conspiracy

319. The next question is whether Mr Blewitt and Mr Wilson committed the crime of conspiracy. Section 558 of the *Criminal Code* (WA) provides that any person who conspires with another to commit an indictable offence is guilty of a crime. In the present case the indictable offence is the crime under section 409(1) set out above. In

other words it is submitted that Mr Blewitt has conspired with Mr Wilson, with intent to defraud by deceit or any fraudulent means to gain a benefit, pecuniary or otherwise for himself, Mr Wilson or the Association.

320. The essential aspect of the conspiracy is the agreement between the person accused and at least one other (*R v Darby* (1982) 148 CLR 668; *R v Trudgeon* (1988) 39 A Crim R 252 at 254). The conspiracy is complete when the agreement is made (*R v Rogerson* (1992) 174 CLR 268 at 279). There need not be any overt acts (*Lipohar v R* (1999) 200 CLR 485 at 451 [140], 560 [189] and [190]).

321. It should be noted that there has been some suggestion in the authorities that an accused should not be charged both with the crime of conspiracy and with the substantive offence (see *R v Hoar* (1981) 148 CLR 32). In some cases, by reason of the complexity of the underlying facts, a charge of conspiracy has been seen as a more practical and expeditious way to proceed than charging a person with the substantive offence. In *R v Symonds* [1969] 1 QB 685 Fenton Atkinson J held at 689-90 (and see *Caratti v R* (2000) 22 WAR 527; [2000] WASCA 279 at [344]):

As a preliminary it is to be noted that the ever-mounting intricacy of the legislation imposing taxes has been followed by ever-increasing ingenuity on the part of numbers of persons conspiring together fraudulently to evade the taxation. Such the complexities of these fraudulent schemes and the devices used in them that only too often the only way that the interest of justice can be served is by presenting to a jury with the aid of schedules and overall picture of the scheme and charging a conspiracy to cheat and defraud. Obviously every effort should be made to present instead to the jury a relatively small series of substantive offenses – but that cannot always be done and this case is one of those that only a conspiracy charge can provide for the protection of the interests of the community when once the legislature produces intricate laws.

322. In the present case the agreement, thereby the conspiracy, relates to the agreement between Mr Blewitt and Mr Wilson to establish the Association and, thereafter, to issue invoices to Thiess for work that was never carried out.

323. The only direct evidence of the agreement is contained in the testimony of Mr Blewitt. That testimony is problematic, for the reasons discussed above. However a process of inference is available. As noted above Mr Wilson accepts he was the driving force of the establishment of the Association. The facts relevant to the Association and the means by which it procured payment from Thiess are set out above. Given these matters it is reasonable to infer that a conversation along the lines of the one deposed to by Mr

Blewitt in fact took place and that is what led to the establishment of the Association. In that event the conspiracy could be found.

C3 Offences in Victoria

324. Some of the conduct engaged in by Mr Blewitt and Mr Wilson took place in Victoria, most particularly in respect of the invoices issued by the Association in relation to the Melbourne Water project.

325. The Melbourne Water project was located in Victoria. At that time Mr Wilson was based in Victoria. The relevant arrangements between the AWU and Thiess were entered into in Victoria. Mr Wilson was the treasurer of the Association when he caused invoices to be issued in respect of the Melbourne Water project.

326. In these circumstances similar offences to those set out above may have been committed in Victoria at least in respect of the Melbourne Water project. Section 82 of the *Crimes Act 1958 (Vic)* is in similar terms to section 409 of the *Criminal Code (WA)* and section 321 of the *Crimes Act 1958 (Vic)* is in similar terms to section 558 of the *Criminal Code (WA)* in relation to conspiracy. For the same reasons as those set out above, the elements of the Victorian offences are also satisfied.

D RECOMMENDATIONS CONCERNING MS GILLARD

327. For the reasons set out above the Association and those who stood behind it were involved in criminal conduct.

328. Ms Gillard gave advice in respect of the incorporation of the Association. However that does not suggest, still less establish, any wrongful conduct on her part. The fact that a solicitor gives advice in respect of the incorporation of an entity and that entity goes on to participate in, or be used for, criminal conduct by the solicitor's client, does not establish any criminal conduct on the part of the solicitor. There must be more. In particular, the solicitor advising in respect of the incorporation must have known when giving the advice that the client intended to cause the corporation to pursue a criminal purpose.

329. There is no evidence that Ms Gillard knew when she was giving advice to her clients Mr Wilson and Mr Blewitt in relation to the incorporation of the Association that her clients were proposing to or would use the Association for a criminal purpose.
330. Ms Gillard's evidence was that she had no discussions with Mr Wilson concerning the Association.²⁶⁸ Ms Gillard says that she did not know that any invoices were sent still less approve them. Her evidence is also that Mr Wilson never suggested that the Kerr Street property was acquired for union purposes or for the Association.²⁶⁹ Mr Wilson says that he had no discussions with Ms Gillard concerning how the Association would raise funds and that she never asked.²⁷⁰ It is perhaps a little surprising that during her intimate relationship with Mr Wilson, Ms Gillard did not successfully inquire into how Mr Wilson's 'Workplace Reform Association' was going – his favoured child which she had helped into the world. But Mr Wilson was undoubtedly a very secretive man. And one part of Ms Gillard's evidence rang very true. In relation to the spring of 1995 and in relation to movements of money into or out of the Association's account, Ms Gillard was asked: 'Did you raise it with Mr Wilson just in your personal capacity to say, "What on earth is going on?"' She replied: 'Subsequent to these events I had a discussion with Mr Wilson where he was evasive and I formed the view that I had not been fully in the picture about the nature of his conduct, and I took steps to end our relationship'²⁷¹ Whatever inquiries Ms Gillard did make or might have made earlier, she would have remained not fully in the picture.
331. At the same time, while there is no suggestion of criminal culpability, some aspects of Ms Gillard's professional conduct of the matter as a solicitor appear questionable.
332. The starting point is to endeavour to understand more precisely the scope of Ms Gillard's retainer. Ms Gillard's evidence was to the effect that she provided legal advice 'on the incorporation of an association'.²⁷² However Ms Gillard was also apparently retained to carry out certain incidental tasks such as assisting in the completion of the requisite forms for incorporating the Association; arguing the case for incorporation

²⁶⁸ Julia Gillard, 10/9/14, T:814.38-815.8.

²⁶⁹ Julia Gillard, 10/9/14, T:827.36-42.

²⁷⁰ Bruce Wilson, 12/6/14, T:418.4-9.

²⁷¹ Julia Gillard, 10/9/14, T:857.23-28.

²⁷² Julia Gillard, 10/9/14, T:770.24-28; T:772.5; T:775.7-9.

through correspondence to the Commissioner of Corporate Affairs in May 1992; and, according to Mr Wilson at least,²⁷³ appearing in person to argue the case in Perth at some stage. Ms Gillard stated in her evidence, ‘I was obviously trying to give them [*i.e., Mr Wilson and Mr Blewitt*] the benefit of my professional expertise’.²⁷⁴

333. At the same time, Ms Gillard says it was not part of her retainer to ensure that the necessary requirements for incorporation such as the Association having at least five members and a functioning Committee of Management had in fact been complied with. Ms Gillard says that she explained those requirements to Mr Wilson and Mr Blewitt and thereafter left it to them to ensure that the requirements were fulfilled.²⁷⁵ Ms Gillard referred at times to the Association being ‘a team of officials’²⁷⁶ or to a combination or group of people,²⁷⁷ but she never found out who those people were. For example, she never made any inquiry as to whether there was a register of members,²⁷⁸ despite that been a requirement of the Rules²⁷⁹ she drafted and a requirement of the *Associations Incorporation Act 1987 (WA)*.²⁸⁰

334. It is of course possible for a solicitor and client to enter into retainer agreement pursuant to which the solicitor will be responsible for certain tasks and will otherwise disclaim responsibility for any others. In that event, however, one might expect that the retainer would be carefully documented so that both sides knew where they stood. Here there was no written retainer agreement at all.²⁸¹

335. Indeed the evidence generally supports the inference that the arrangements between Ms Gillard and her clients were casual and haphazard, not precise and detailed. As already noted, there was no written retainer between Ms Gillard and her clients. Ms Gillard did not keep file notes. She did not keep any record of the content of the instructions she received from, nor the advice which she says that she provided to, Mr Wilson and Mr

²⁷³ Bruce Wilson, 12/6/14, T:424.21.

²⁷⁴ Julia Gillard, 12/6/14, T:781.46-47.

²⁷⁵ Julia Gillard, 10/9/14, T:794.28-47; T:795.1-21.

²⁷⁶ Julia Gillard, 10/9/14, T:800.35; T:785.1-7; T:774.34-37.

²⁷⁷ Julia Gillard, 10/9/14, T:801.33-47.

²⁷⁸ Julia Gillard, 10/9/14, T:795.19-22.

²⁷⁹ Rules, clause 13, Gillard MFI-1, 10/9/14, p 11.

²⁸⁰ Section 27.

²⁸¹ Julia Gillard, 10/9/14, T:780.18-21.

Blewitt (in fact Ms Gillard tended to refer to advice she ‘would have’ given, rather than the advice she actually gave).²⁸²

336. Further, Ms Gillard was in a romantic relationship with the main person from whom she took instructions. She did not open a file on the Slater & Gordon computer system (which if nothing else would have assisted in keeping the relevant records intact). She did not consult with or seek the assistance of any other practitioner in the firm in respect of the setting up of the incorporation including Mr Lang who had experience in incorporated associations, nor Mr Murphy her more senior partner to whom she reported.
337. Despite the fact that the Victorian branch of the AWU was the firm’s client she did not check, or even seek instructions, as to whether the AWU had authorised the establishment of the Association or the use of its name.²⁸³ Ms Gillard seemed to accept that her failure to check that the use of the AWU’s name was authorised by the AWU was a deficiency on her part (‘Obviously, if one got to do the whole thing again you would do things differently, given what I know now that I did not know at the time’).²⁸⁴
338. Ms Gillard drafted the proposed new Rule 3A for Mr Blewitt and a letter for him to send to the Commissioner of Corporate Affairs undertaking to introduce the new Rule 3A within 30 days of incorporation. However, she gave Mr Blewitt no advice on how to cause the new Rule 3A to be incorporated into the Rules (which would have taken a special resolution of the members). Presumably she did not even discuss this issue with either Mr Wilson and Mr Blewitt because, if she had, she would have discovered that there were no members (despite the Commissioner of Corporate Affairs having been told that there were) so there could be no special resolution.
339. Nor did Ms Gillard take any steps to ensure that Mr Blewitt’s undertaking to the Commissioner was complied with. It never was. The wording of the suggested Rule 3A was problematic, for the reasons discussed above. Given all these circumstances it is difficult to escape the impression that Ms Gillard was more concerned with achieving a

²⁸² Julia Gillard, 10/9/14, T:794.42-47; T:802.12-14; T:803.1-10.

²⁸³ Julia Gillard, 10/9/14, T:797.28-30; T:799.13-34.

²⁸⁴ Julia Gillard, 10/9/14, T:799.19-21.

swift result for her client than in ensuring that the substantive requirements had been properly satisfied.

340. The fact is that Mr Wilson and Mr Blewitt set up a sham Association and used it to perpetrate fraud for a number of years. Mr Wilson and Mr Blewitt treated the legal requirements for the incorporation of the Association with disdain. If Ms Gillard or Slater & Gordon had insisted on even some of the substantive requirements for incorporation being satisfied it would if nothing else have been more difficult for Mr Wilson and Mr Blewitt to proceed as they did. At least, when the Association and its activities came to light in 1995 the full story would have been clearer, better documented and thereby easier to resolve.
341. At the same time, however, as discussed above, the obligation on Ms Gillard and Slater & Gordon to check or verify the fulfilment of such requirements depends on the scope of the retainer and what they agreed to do. At the end of the day the only two people who could have controverted Ms Gillard's evidence concerning the nature of the retainer were Mr Wilson and Mr Blewitt. Ms Gillard gave her oral evidence on 10 September 2014. Each of Mr Wilson and Mr Blewitt was represented on that day by experienced legal practitioners. Neither sought to challenge Ms Gillard's account of the arrangements between her and her clients. That was presumably done on instructions. Ms Gillard's evidence was unchallenged on this topic. In these circumstances, it should be accepted that the retainer was in substance as described by Ms Gillard.
342. Lastly, for the reasons set out above the Commission should find that Ms Gillard was the beneficiary or recipient of certain funds from Mr Wilson, consistent with the evidence of Mr James and Mr Hem. It is not possible to identify after all this time the precise source of the funds, since Mr Wilson seems to have drawn cash from the accounts operated in Victoria as well as from the Association's account. The skimpy nature of the available evidence does not make it possible to infer on the balance of probabilities that Ms Gillard was aware that she had received the \$5,000 which Mr Hem put into her bank account on Mr Wilson's instructions. But she was aware of facts, had she turned her mind to them, which would have indicated that the source of the wads of bank notes cannot have been the low union salary of Mr Wilson of about \$50,000 – a man who was supporting his family in Perth, his own household in Melbourne, and his relationship with Ms Gillard in Melbourne, and who was not shown to have had any

income from property exceeding the cost of mortgage repayments – but must have been some fund he did not own but did control. That is, she must have been aware of facts, which had she turned her mind to them, would have revealed that Mr Wilson was making payments to her in breach of some fiduciary duty.