

KATHY JACKSON ALLEGATIONS

CHAPTER 12.4

INTRODUCTION

1. During the course of the Commission, various allegations have been made against Kathy Jackson, including allegations relating to: her use of various credit cards; the payment of honorariums to members of the Branch Committee of Management of the Health Services Union (HSU) Victoria No 3 Branch and a separate honorarium to Ms Jackson; the use of cheques; a payment to Mr Jackson of \$58,000; a donation to ‘Ab Hinc’; and payments to Neranto No 10 Pty Ltd, a company of which she and her ex-husband, Jeff Jackson, were directors.
2. The allegations addressed in this chapter have obvious implications for Ms Jackson personally. But they also have a broader significance. They provide an insight into how the HSU functions, or did at the relevant time.
3. The evidence concerning some of the allegations reveals breaches of union rules, arrangements designed to circumvent the law, and poor governance, including a lack of transparency. It demonstrates a degree of conflict, disharmony and dysfunction within the union that can only be to the detriment of its members.

A CREDIT CARD USE

4. Various allegations have been made against Ms Jackson to the effect that she used or caused to be used members’ funds to pay personal debts run up on union credit cards.¹ The latest iteration of this allegation is contained in the proposed Further Amended Statement of Claim in the Federal Court Proceedings (being proceedings VID 1042 of

¹ Nick McKenzie et al, ‘Whistleblower used \$1m in union funds’, *Sydney Morning Herald*, 6 June 2014: <http://www.smh.com.au/national/whistleblower-used-1m-in-union-funds-20140605-391x1.html>.

2013). It is there alleged that Ms Jackson is liable to the HSU in the amount of \$257,382 in respect of the misuse of credit cards.

5. In her evidence to the Commission, Ms Jackson said that she had three union credit cards² – a Diners Club card, a Commonwealth Bank Mastercard and a Citibank Mastercard³ – the monthly account statements for which were sent to the union.⁴ She said that two of the cards were issued in her name because the relevant issuing financial institution required that the card be issued in the name of an individual.⁵ Addressing Mr McGregor’s evidence that she had been ‘reimbursed’ for personal expenditure exceeding \$1 million, incurred on ‘two personal credit cards’ in the period April 1998 to May 2011, Ms Jackson said:⁶

They were union credit cards issued in my name. There were no reimbursements. They were never personal credit card, as has been splashed across the newspapers. They were always union credit cards.

6. According to Ms Jackson, she was not the only person within the HSU who incurred charges on the card; other staff members also incurred charges for union-related purposes, including, for example, accommodation.⁷ Ms Holt retained records (for example, invoices and receipts) which Ms Jackson had collected, that supported the expenditure charged to the cards for the period when Ms Jackson was Secretary of the HSU Victoria No 3 Branch.⁸ She gave evidence that she would receive the credit card statements, check the recorded expenditure against the receipts Ms Jackson gave her, and then enter each transaction in MYOB, allocating it to an appropriate expense account (for example, fuel, telephone, travel, accommodation or meals).⁹

² Katherine Jackson, witness statement, 18/6/14, para 374; Katherine Jackson, 18/6/14, T:813.47 – 814.12; Jane Holt, 17/6/14, T:680.8-10.

³ Katherine Jackson, 18/6/14, T:812.21-22.

⁴ Katherine Jackson, witness statement, 18/6/14, para 374. See also Katherine Jackson, 18/6/14, T:814.18-19; Jane Holt, 17/6/14, T:680.12 – T:681.19, T:682.25-28.

⁵ Katherine Jackson, 18/6/14, T:814.27-28.

⁶ Katherine Jackson, 18/6/14, T:817.31-34.

⁷ Katherine Jackson, 18/6/14, T:814.30-37. See also Jane Holt, witness statement, para 29.

⁸ Katherine Jackson, 18/6/14, T:815.19-40; Katherine Jackson, witness statement, 18/6/14, para 378; Jane Holt, 17/6/14, T:681.21-32.

⁹ Jane Holt, 17/6/14, T:682.1-14.

7. During her examination on the topic of her credit card use, the Commissioner observed:¹⁰

Something that occurs to me, Mr Stoljar, if we just consider paragraph 374 and following [of Ms Jackson's 13 June 2014 statement], as it were, in isolation, it is very difficult, where a witness is trying to defend that witness's conduct in relation to hundreds and possibly thousands of transactions, to deal with it globally unless one knows what it is that the critics of that witness contend were wrong. Maybe Ms Jackson can clarify this or maybe there's some letter of complaint somewhere or other in the papers, but we're not really getting to the heart of a particular concrete issue unless someone can point to some transaction which that someone says is outside power or criminal or something and then Ms Jackson can explain why it might not be outside power.

8. The proposed Further Amended Statement of Claim now propounds a series of specific claims concerning Ms Jackson's use of union credit cards. Given that this issue is being or is likely to be determined by the Federal Court the view has been taken that, in all circumstances, it is not appropriate to deal with the issue at this stage (as to which see Chapter 1.1).

B NERANTO No 10 PTY LTD

9. Neranto No 10 Pty Ltd is a company that was registered in June 1994 and deregistered in November 2008. Its directors were Mr Jackson and Ms Jackson (formerly Ms Koukovaos).¹¹ The HSU Victoria No 3 Branch made a number of payments to Neranto in the period 1997 to 1998; it made another payment to Neranto in 2002.¹² Ms Jackson was Secretary of the branch when the payments were made. She authorised some of the payments; Katherine Whitfield, who Ms Jackson said was President of the branch at the relevant time, and Mr Yeates, who Ms Jackson said was an official of the branch at the relevant time, authorised other payments.¹³
10. Although she was a director of the company, Ms Jackson said that Neranto was a company Mr Jackson had set up and of which he had day to day carriage.¹⁴ She said that Mr Jackson – through Neranto – had been engaged to undertake some work for the HSU, described in invoices issued by Neranto as 'Industrial Services' or 'Industrial

¹⁰ Katherine Jackson, 18/6/14, T:812.33-37.

¹¹ McGregor MFI-1, 17/6/14, pp 253, 256. See also Katherine Jackson, 18/6/14, T:818.31-38.

¹² McGregor MFI-1, 17/6/14. See also Craig McGregor, witness statement, 17/6/14, para 43.

¹³ McGregor MFI-1, 17/6/14, pp 211, 214, 217, 220, 222, 225, 229 and 233.

¹⁴ Katherine Jackson, 18/6/14, T:818.18, 44-47.

Consulting'.¹⁵ When asked what services Neranto in fact provided, Mr Jackson said: 'It could have been a range of different services, from report writing or research. A variety of functions'.¹⁶

11. Ms Jackson said '[t]his was all approved by the Branch Committee of Management', referring, it appears, to the work performed in 1997 and 1998.¹⁷ Further, her relationship with Mr Jackson was 'known to all in the union movement'.¹⁸ Ms Jackson later reiterated that 'there was nothing secretive' about the services rendered by Mr Jackson.¹⁹
12. In cross-examination by the HSU's counsel, Mr Jackson denied that the payment of \$18,500 made to Neranto on 26 September 2002 was for 'electioneering for positions in the Victoria No 1 Branch'.²⁰ Mr Jackson's evidence was to the effect that genuine services were provided. This issue has been investigated by the Victorian Police, who decided to take no action. At this stage it is submitted that the Commission should not take this matter further.

C \$58,000 PAYMENT TO JEFF JACKSON

13. On 7 April 2010, Ms Holt, acting on the authority of Ms Jackson,²¹ transferred \$58,000 from an account of the HSU Victoria No 3 Branch to Mr Jackson.²² The Victoria No 3 Branch paid that amount to Mr Jackson on behalf of the HSU Victoria No 1 Branch. Ms Holt said that the payment was for 'some accrued entitlements' that were owed to Mr Jackson in connection with his prior employment as Secretary of the Victoria No 1 Branch; the 'Vic 1 Branch had inadequate cash, liquid cash' to effect the payment.²³

¹⁵ McGregor MFI-1, 17/6/14, pp 212, 215, 218, 223, 226-227, 230-231 and 234.

¹⁶ Jeffrey Jackson, 27/8/14, T:714.27-35.

¹⁷ Katherine Jackson, 18/6/14, T:819.25-40.

¹⁸ Katherine Jackson, 18/6/14, T:821.23-24.

¹⁹ Katherine Jackson, 18/6/14, T:820.11.

²⁰ Jeffrey Jackson, 27/8/14, T:719.1-5. See also McGregor MFI-1, 17/6/14, p 252.

²¹ Jane Holt, 27/8/14, T:773.34-35; T:774.2-5.

²² Jackson MFI-1, 27/8/14, pp 59, 62 and 63-1.

²³ Jane Holt, 27/8/14, T:773.6-13.

14. Ms Jackson gave evidence to similar effect. She said ‘the \$58,000 was Jeff Jackson’s long service leave entitlements that I was asked to pay by the No 1 Branch as a loan to the branch’.²⁴ The payment was recorded in the accounts of the Victoria No 3 Branch as a loan to the Victoria No 1 Branch.²⁵
15. Ms Jackson said that the loan was ‘minuted by the No 3 Branch’, but there was no loan agreement between the Victoria No 3 Branch and the Victoria No 1 Branch.²⁶ The Commission has records that relate to a BCOM meeting held on 23 March 2010.²⁷ The minutes of that meeting record that the ‘Secretary reminded the BCOM that the branch was still paying some bills for the Victoria No 1 Branch as the loan with the NAB had fallen through’.²⁸ In relation to the meeting on 23 March 2010, Mr Agostinelli noted the following in his review of the Branch Committee of Management minutes for the financial year ending 24 May 2010:²⁹

HSU No. 1 Branch

The Secretary reminded the BCOM that the branch was still paying some bills for the Vic No. 1 Branch as [the] loan with the NAB had fallen through.

16. He also noted in relation to a meeting on 21 December 2009 that there was a minute of the Secretary’s report as follows:³⁰

Vic No. 1 Branch had sought a loan from NAB however the loan has not been approved yet. The Secretary recommended tha[t] the Branch pay some of the Victoria No 1 Branches [sic] debts, and the Victoria No 3 Branch will be reimbursed when the Vic No. 1 Branch has its loan approved.

17. Although the documentary evidence the Commission does have tends in favour of the view that the Branch Committee of Management had approved the payment of some of Victoria No 1 Branch’s debts, it does not establish express approval of a \$58,000 loan to the Victoria No 1 Branch.

²⁴ Katherine Jackson, 28/8/14, T:888.37-40.

²⁵ Jackson MFI-1, 27/8/14, pp 59, 62 and 63-1. See also Jane Holt, 27/8/14, T:773.9.

²⁶ Katherine Jackson, 28/8/14, T:889.15 – 28.

²⁷ McGregor MFI-2, 17/6/14.

²⁸ McGregor MFI-2, 17/6/14.

²⁹ Agostinelli MFI-3, 17/6/14, p 741.

³⁰ Agostinelli MFI-3, 17/6/14, p 743.

18. Mr Agostinelli was asked, in relation to the review he undertook of the Branch Committee of Management minutes, whether he would have ‘duly noted’ any loans that had been approved by the Branch Committee of Management that were mentioned in the minutes. His response was that he would ‘likely’ have done so.³¹ The better view is that the Branch Committee of Management did not specifically approve the \$58,000 loan to the Victoria No 1 Branch.
19. Mr Jackson did not have a clear recollection of the purpose of the \$58,000 paid to him. He accepted that the payment ‘may well have been’ connected with ‘wages and entitlements’, but he initially said that he did not think the payment was for wages and entitlements.³² He said it was ‘more to do with costs’, which he later explained were related to ‘political, electoral processes’.³³ But Mr Jackson’s memory relating to the purpose of the payment was ‘hazy’.³⁴
20. After Mr Jackson gave evidence, the Commission received a further statement from Mr Bolano addressing the loan and the circumstances in which it was made. Mr Bolano’s evidence confirmed that Mr Jackson had an accrued long service leave entitlement of at least \$58,000.³⁵ He said that, after Mr Jackson sought payment of that entitlement, he was concerned that the Victoria No 1 Branch ‘would not have the cash flow to meet Mr Jackson’s request for about two months’.³⁶ He said he had a discussion with Ms Jackson about ‘the Victoria No 3 Branch helping the Victoria No 1 Branch out by lending the \$58,000 to the Victoria No 1 Branch to facilitate payment out of Jeff Jackson’s accrued long service entitlements on behalf of the Victoria No 1 Branch’.³⁷ Based on his ‘direct involvement and personal knowledge’, he said that the:³⁸

\$58,000 paid by the Victoria No 3 Branch to Jeff Jackson on 7 April 2014 [sic] was a payment made on behalf of the Victoria No 1 Branch, as a loan to that Branch, to facilitate a payment out of a portion of Jeff Jackson’s accrued long service leave entitlements that ought be paid.

³¹ John Agostinelli, 27/8/14, T:747.6-9.

³² Jeffrey Jackson, 27/8/14, T:713.8-9.

³³ Jeffrey Jackson, 27/8/14, T:713.6-34.

³⁴ Jeffrey Jackson, 27/8/14, T:713.6 – T:714.20, T:722.15-35.

³⁵ Marco Bolano, witness statement, 31/10/14, para 15.

³⁶ Marco Bolano, witness statement, 31/10/14, para 16.

³⁷ Marco Bolano, witness statement, 31/10/14, para 18.

³⁸ Marco Bolano, witness statement, 31/10/14, para 26.

21. Ms Holt's, Mr Bolano's and Ms Jackson's evidence concerning the purpose of the payment was preferable to Mr Jackson's. Not only was Mr Jackson's evidence equivocal, for the reasons given in Chapter 12.3, Mr Jackson's memory is generally unreliable. Further, although there is no evidence that the Branch Committee of Management specifically approved a loan to the Victoria No 1 Branch, there is evidence of the Victoria No 3 Branch paying 'some bills for the Vic No 1 Branch' which adds weight to Ms Holt and Ms Jackson's evidence that the payment to Mr Jackson was made for, or on behalf of, the Victoria No 1 Branch. It was also consistent with Ms Wilkinson's evidence. In her evidence to the Commission, she recalled that there was a time when 'the HSU No 1 Branch needed a loan due to some financial difficulties'.³⁹
22. As required by s 149 of the *Fair Work (Registered Organisations) Act 2009* (Cth), as it stood at (and around) the time the \$58,000 was paid to Mr Jackson, the HSU Rules relevantly provided that a branch shall not make a loan exceeding \$1,000 unless the committee of the branch satisfied itself that the loan would be in accordance with the other rules of the union and the branch; the security proposed to be given for repayment of the loan was adequate; and that the arrangements proposed for the repayment of the loan were satisfactory. Further, the branch committee needed to approve the loan.⁴⁰ On the available evidence, there was no specific approval.
23. The Commission issued a Notice to Produce to the Fair Work Commission requiring it to produce all documents lodged with FWC under s 237 of the *Fair Work (Registered Organisations) Act 2009* (Cth) by the HSU Victoria No 3 Branch for the financial year ending 24 May 2010.⁴¹ The FWC responded as follows:
- There is no record that the Branch lodged a statement regarding loans, grants or donations over \$1,000 for the financial year ending 24 May 2010 under s 237 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).
24. On that basis, it can be concluded that the HSU Victoria No 3 Branch did not lodge a statement, as required, under s 237 of the *Fair Work (Registered Organisations) Act 2009* (Cth) providing particulars of the \$58,000 loan to the Victoria No 1 Branch.

³⁹ Katharine Wilkinson, witness statement 17/6/14, para 40.

⁴⁰ HSU Rules (effective from 12 November 2009 to 24 May 2010): Exhibit 1, 17/6/14, Tab 1, rule 60.

⁴¹ Notice to Produce 712.

D HONORARIUMS

25. The following briefly summarise the issues. These submissions do not travel beyond this in circumstances, as explained in paragraph 8 above, where a view has been taken that it would be inappropriate to do so at this time (as to which see Chapter 1.1).

D1 Branch Committee of Management authorised an honorarium to be paid to its members, only a portion of which the members retained

26. The Branch Committee of Management met about once a month or at least once a quarter.⁴² Ms Jackson said that this was the position throughout the period from 1996 to 2010.⁴³ The members of the Branch Committee of Management received sittings fees or honorariums.⁴⁴ Ms Wilkinson gave evidence that the members ‘received modest sitting fees to defray the costs associated with attending meetings’.⁴⁵ The amount was usually \$100 in cash per meeting.⁴⁶ Ms Jackson said it was to ‘cover parking and petrol’.⁴⁷

27. Ms Wilkinson recalled that the Branch Committee of Management had resolved that higher sitting fees would be paid, and that members had agreed to contribute the difference between what they were paid, and the amount that had been authorised for payment, ‘towards expenses associated with protecting and advancing the interests of the union.’⁴⁸ Ms Wilkinson could not recall a resolution to this effect; she said that it was discussed at a Branch Committee of Management meeting, but accepted that there may have been a resolution.⁴⁹ Ms Jackson retained the balance.⁵⁰ The balance was placed in a kitty.⁵¹

⁴² Katharine Wilkinson, witness statement, 17/6/14, para 8; Katharine Wilkinson, 17/6/14, T:648.8-12.

⁴³ Katherine Jackson, 18/6/14, T:822.5-7.

⁴⁴ Katharine Wilkinson, witness statement, 17/6/14, paras 50-52; Jane Holt, witness statement, 17/6/14, para 18.

⁴⁵ Katharine Wilkinson, witness statement, 17/6/14, para 50; Katharine Wilkinson, 17/6/14, T:653.21-23.

⁴⁶ Katharine Wilkinson, witness statement, 17/6/14, para 51; Katharine Wilkinson, 17/6/14, T:663.31-32; Katharine Wilkinson, 27/8/14, T:755.34-36. See also Reuben Dixon, 27/8/14, T:768.44 – T:769.1.

⁴⁷ Katherine Jackson, 18/6/14, T:825.27.

⁴⁸ Katharine Wilkinson, witness statement, 17/6/14, para 51; Katharine Wilkinson, 17/6/14, T:663.37 – 664.5; Katharine Wilkinson, 27/8/14, T:754.41 – T:756.1.

⁴⁹ Katharine Wilkinson, 27/8/14, T:756.13-28.

⁵⁰ Katharine Wilkinson, witness statement, 17/6/14, para 52.

⁵¹ Katharine Wilkinson, 27/8/14, T:755.41-43.

28. Ms Holt's evidence to the Commission was that the 'sitting fees were usually around \$8,000 per meeting and would be paid in cash'.⁵² These payments would partly be recorded in the accounts of the HSU Victoria No 3 Branch as 'honarium', partly as 'conference/seminar' and partly as 'professional fees'.⁵³ Ms Holt said one of the committee members, who she later identified as Mr Yeates,⁵⁴ would advise her 'as to the break up of the payment'.⁵⁵
29. Ms Jackson's evidence was consistent with Ms Holt's. She said that the figure was generally in the amount of \$8,000 but it 'varied from time to time',⁵⁶ adding that the 'BCOM resolved that it would pay itself up to \$9,500 a meeting' and that the amount authorised was recorded in the minutes of the Branch Committee of Management.⁵⁷ During his audit for the period ending 24 May 2010, Mr Agostinelli noted:⁵⁸
- As per minutes 25/02/2010 an honorarium and training/conference allowance [is] to be paid up to \$9,800 per meeting to the BCOM, this would be paid at every meeting that was attended.
30. The Commission does not have the minutes of the meeting held on 25 February 2010, but it does have Mr Agostinelli's record of the content of those minutes. That record includes the following note: 'That the honorarium and training/conference allowances to be paid up to \$9,800 per meeting to the BCOM, this would be paid by cash at every meeting that was attended'.⁵⁹ The Commission does have the minutes of a Branch Committee of Management meeting held on 3 July 2008.⁶⁰ It relevantly states: 'That the honorarium and training/conference allowances to be paid up to \$9,500 per meeting to the BCOM, this would be paid by cash at every meeting that was attended.'⁶¹
31. These documents seem to suggest that the Branch Committee of Management had authorised the payment of an honorarium to its members up to a specified amount.

⁵² Jane Holt, witness statement, 17/6/14, para 18; Jane Holt, 17/6/14, T:677.21-25.

⁵³ Holt MFI-2, 17/6/14; Jane Holt, 17/6/14, T683.17-21; Jane Holt, 27/8/14, T:775.31-33.

⁵⁴ Jane Holt, 28/8/14, T:775.25-26.

⁵⁵ Jane Holt, 17/6/14, T:683.17-18.

⁵⁶ Katherine Jackson, 18/6/14, T:822.13-19.

⁵⁷ Katherine Jackson, 18/6/14, T:822.21-22, 29-32.

⁵⁸ Agostinelli MFI-3, 17/6/14, p 894.

⁵⁹ Agostinelli MFI-3, 17/6/14, p 742.

⁶⁰ Jackson MFI-1, 30/7/14, p 106.

⁶¹ Jackson MFI-1, 30/7/14, p 106.

32. Ms Jackson explained that usually on the day the Branch Committee of Management was scheduled to meet, generally she and Mr Yeates would withdraw money from the Commonwealth Bank, and return to the branch office.⁶² Then, she or Mr Yeates ‘would hand out \$100 to each committee member for their attendance’.⁶³ Since the money was ‘their honorarium’, the members of the Branch Committee of Management members could have elected to take more, ‘but they decided that the rest of the money would sit in a kitty’, a ‘little steel box’ that sat in a cupboard.⁶⁴

D2 How would the funds in the kitty be used?

33. The funds Ms Jackson retained would be used for ‘various political purposes’ as well as other purposes.⁶⁵ Members ‘in need’ could apply for money out of the kitty, and the funds would also be used to, among other things, pay for conferences and to reimburse members for expenses, such as taxi fares.⁶⁶

34. Ms Jackson explained that the HSU Victoria No 3 Branch was small relative to other branches. Those other branches could set up ‘re-election funds’, which staff would contribute to, but as a small branch it would have taken much longer to build up the resources of such a fund. As such, the Branch Committee of Management decided that the ‘honorarium that they could have legitimately collected would sit in [a] kitty to be spent’ on political campaigns, union campaigns or to assist a member in need.⁶⁷ (She said the same rationale also applied to the NHDA.)⁶⁸

35. Money was also ‘spent out of the kitty’ to fund Australian Labor Party candidates running in local council elections. At other times, Ms Jackson explained, the money was used to purchase overnight bags, which she said were ‘quite expensive’; the money was used to build a ‘stockpile of overnight bags and paper ... to be used in political and industrial campaigns.’⁶⁹ Ms Jackson also recalled that Ms Asmar was given money out

⁶² Katherine Jackson, 18/6/14, T:823.17–27.

⁶³ Katherine Jackson, 18/6/14, T:823.28-29.

⁶⁴ Katherine Jackson, 18/6/14, T:823.32-34.

⁶⁵ Katherine Jackson, 18/6/14, T:823.36, T:825.31.

⁶⁶ Katherine Jackson, 18/6/14, T:823.36 – T:824.7; T:824.32 – T:825.3.

⁶⁷ Katherine Jackson, 18/6/14, T:824.18-30.

⁶⁸ Katherine Jackson, 18/6/14, T:824.17-18.

⁶⁹ Katherine Jackson, 18/6/14, T:826.29-33.

of the kitty to fund expenses relating to her campaign for election to a local council,⁷⁰ presumably Darebin Local Council.

36. In cross-examination by counsel for the HSU, Ms Jackson said that donations to political candidates, political parties, and other unions were made out of money in the kitty.⁷¹ Many of the donations were over \$1,000, and none were declared under s 237 of what is now the *Fair Work (Registered Organisations) Act* 2009 (Cth).⁷² When asked whether the funds were declared, Ms Jackson said: ‘Of course not’, adding frankly: ‘That’s why you have those funds, Mr Irving’.⁷³ She admitted that the purpose of making the donations out of the kitty was to avoid the disclosure obligations in the Act.⁷⁴ The donations made out of the funds in the kitty were not declared in the branch’s audited reports.⁷⁵

D3 Were the honorariums in fact paid within the scope of what was authorised?

37. The question arises whether the amount withdrawn from the HSU Victoria No 3 Branch’s bank account fell within the scope of that Branch Committee of Management authorisation. However, there arises, first, a more fundamental question. That is whether the Branch Committee of Management had the power under the rules of the HSU to authorise the payment of an honorarium to its members in an amount up to \$9,500 or, at least at one point, up to \$9,800.
38. Mr Brown provided copies of the rules of the HSU in force from 2000 to the present. He said that over the period from 2000, the rules were sometimes renumbered and they were ‘significantly altered in August 2012, December 2013 and June 2014’.⁷⁶ For present purposes, those significant alterations are irrelevant. That is because this section of the submissions is concerned only with payments of honorariums to members of the Branch Committee of Management of the HSU Victoria No 3 Branch in the period up to

⁷⁰ Katherine Jackson, 18/6/14, T:826.35 – T:827.2.

⁷¹ Katherine Jackson, 28/8/14, T:863.4-11.

⁷² Katherine Jackson, 28/8/14, T:863.17-22.

⁷³ Katherine Jackson, 28/8/14, T:863.22-25.

⁷⁴ Katherine Jackson, 28/8/14, T:863.34-37, T:864.25-29.

⁷⁵ Katherine Jackson, 28/8/14, T:863.32.

⁷⁶ Christopher Brown, witness statement, 27/8/14, para 13.

24 May 2010, before it merged with the HSU Victoria No 1 Branch and the HSU New South Wales Branch.

39. In the period up to 24 May 2010, the rules relevantly provided for the ‘government, management and ... control of the affairs of each branch’ to be vested in a branch committee.⁷⁷ The branch committee had enumerated powers. Among other things, a branch committee could, subject to the rules and the control of branch members, ‘transact all the business of the branch’ and ‘take any action which in its opinion’ was in the ‘interests of the branch, provided that such action does not conflict with the policies of the Union’.⁷⁸ Relevantly, the rules also specifically entitled members ‘engaged on Union or branch business’ to be paid reasonable out of pocket expenses, and to be reimbursed – at their rate of salary – for any loss of salary or wages as a consequence of being engaged on branch business under the instructions of the branch committee.⁷⁹
40. As appears from the rules, which, accepting Mr Brown’s evidence, were in force in the period up to 24 May 2010, the Branch Committee of Management of the HSU Victoria No 3 Branch had at least two broadly expressed heads of power that could arguably have supported the payment of honorariums to its members of up to \$9,500 (or \$9,800) per meeting. The countervailing argument is that the specific provision in the Rules for members engaged, relevantly, on branch business to be paid reasonable out of pocket expenses prevails over (or cuts down) the general, and more broadly expressed, heads of powers conferred on the Branch Committee of Management. That construction is reinforced by the consideration that the enumerated powers of the Branch Committee of Management were expressed to be ‘subject to’ the rules.
41. On the other hand, the specific provision in the rules dealing with out of pocket expenses, properly construed, may simply establish a *minimum* entitlement. On that construction, the rule constitutes a floor and not a ceiling. This would have the consequence that, although members were *at least* entitled to be reimbursed their

⁷⁷ Christopher Brown, witness statement, 27/8/14, para 13, Annexure 1A (see rule 47) and Annexure 1B (see rule 49).

⁷⁸ Christopher Brown, witness statement, 27/8/14, para 13, Annexure 1A (see rule 50) and Annexure 1B (see rule 52).

⁷⁹ Christopher Brown, witness statement, 27/8/14, para 13, Annexure 1A (see rule 67) and Annexure 1B (see rule 68).

reasonable out of pocket expenses, the Branch Committee of Management could authorise the payment of an honorarium in a greater amount.

42. Both constructions – broad and narrow – are reasonably open. In light of the uncertainty, no conclusion could confidently be drawn that the Branch Committee of Management’s authorisation of payments up to \$9,500 or \$9,800 were beyond its power. As such, these submissions assume that the broader of the available constructions is correct, and proceed on the basis that the Branch Committee of Management did have the power to authorise the payments.
43. As discussed elsewhere, the Commission does not have a complete set of financial and other records, including Branch Committee of Management minutes, of the HSU Victoria No 3 Branch. But it follows from Ms Jackson’s evidence, and Ms Wilkinson’s, as well as the limited documentary evidence the Commission does have, that payments of an honorarium to Branch Committee of Management members were authorised by the Branch Committee of Management. Absent a comprehensive set of documents, it is impossible to test whether every amount withdrawn from the HSU Victoria No 3 Branch bank account to cover the payment of an honorarium to Branch Committee of Management members was in accord with what the Branch Committee of Management had in fact authorised. It is possible, though, on the evidence that is available, to draw the following conclusions.
44. Mr Agostinelli undertook a review of amounts withdrawn to cover the payment of an honorarium in the period ending 24 May 2010. It appears from his review that the amounts withdrawn from the HSU Victoria No 3 account, after the Branch Committee of Management had, on 25 February 2010, authorised the payment of an honorarium of up to \$9,800 per meeting, were consistent with the 25 February 2010 authorisation.⁸⁰ The balance of amounts withdrawn to cover the honorarium payment for meetings held before 25 February 2010 did not exceed \$9,500 with the exception of one withdrawal in the amount of \$9,600.⁸¹ There is evidence, set out above, that the Branch Committee of Management had, on 3 July 2008, approved the payment of an honorarium of up to \$9,500 per meeting. There is no evidence that authority was later reduced.

⁸⁰ Agostinelli MFI-3, 17/6/14, pp 894-895.

⁸¹ Agostinelli MFI-3, 17/6/14, pp 894-895.

45. However, three payments require further attention. The first concerns the cash withdrawal of \$9,600.
46. On 10 December 2009, \$9,600 was withdrawn from the HSU Victoria No 3 Branch's account, \$4,000 of which was recorded as an 'honorary' payment in the accounts of the branch.⁸² However, Mr Agostinelli's review of the Branch Committee of Management meeting minutes does not indicate that there was a Branch Committee of Management meeting on that day.⁸³ Further, his audit of honorariums paid in the period ending 24 May 2010 showed that he could not verify that a Branch Committee of Management meeting was held that day.⁸⁴ There is a real question, then, about whether or not that withdrawal was authorised.
47. The branch's accounts also indicate that an honorary payment was made on 28 January 2009. The amount allocated as 'honorary' in the accounts was \$3,000.⁸⁵ However, it would appear from the minutes which the Commission does have for the financial year ending 30 June 2009 that there was no Branch Committee of Management meeting on that day.⁸⁶ As such, there is also a real question whether the amount withdrawn to cover the payment of an honorary on that day was authorised.
48. Finally, there is evidence that cheques were made out to 'cash' on 18 December 2008 and 24 December 2008.⁸⁷ There do not appear to have been any Branch Committee of Management meetings on those days.⁸⁸ Further, there is no record in the internal accounts of the Branch that honorary payments were made on those days.⁸⁹ But the evidence is inconclusive. Although there may not have been any Branch Committee of Management meetings on those days, it is not possible to infer that the withdrawal of the monies was not authorised. The monies could have been authorised for some other purpose. In the absence of a satisfactory set of the financial records of the Branch (and

⁸² Agostinelli MFI-3, 17/6/14, pp 894-895; Holt MFI-2, 17/6/14.

⁸³ Agostinelli MFI-3, 17/6/14, pp 741-743.

⁸⁴ Agostinelli, MFI-3, 17/6/14, pp 894-895.

⁸⁵ Holt MFI-2, 17/6/14.

⁸⁶ Agostinelli MFI-3, 17/6/14, pp 172-199.

⁸⁷ McGregor MFI-1, 17/6/14, pp 194-195.

⁸⁸ Agostinelli MFI-3, 17/6/14, pp 172-199.

⁸⁹ Holt MFI-2, 17/6/14.

in circumstances where no responsibility for the deficiencies in the records could be sheeted home to Ms Jackson, Ms Holt or the members of the Branch Committee of Management at the relevant times) it is simply not possible to conclude that those payments were not authorised.

D4 The propriety of the arrangement

49. So far, the submissions have dealt with whether or not the payments of honorariums to Branch Committee of Management members were authorised. That is a relatively narrow question. As appears above, it turns on the proper construction of the HSU rules, and whether or not the monies withdrawn from the HSU Victoria No 3 Branch account fell within the scope of what was authorised.

50. The larger question is whether the arrangement was appropriate. In that connection, the following observations are pertinent.

51. The arrangement was not transparent. The way in which it was recorded in the records of the branch gave the appearance that the Branch Committee of Management members were being paid an honorarium up to \$9,500 or \$9,800. But the reality was different. The amount the Branch Committee of Management members in fact received, \$100 per meeting, as distinct from what they were entitled to receive, was relatively modest.

52. By the arrangement adopted, thousands of dollars that stood to the credit of the branch's bank account were withdrawn, ostensibly to cover the payment of an honorarium to the Branch Committee of Management members, and ended up in a kitty for use in the 'interests of' the union (broadly defined). Expenditure from the kitty was not accounted for in the books and records maintained by the branch

53. The arrangement, by Ms Jackson's own admission, was designed to avoid the strictures of what is now the *Fair Work (Registered Organisations) Act 2009* (Cth), including the requirement in s 237 to disclose donations. Section 190 of the Act also prohibits a branch using its resources to help one candidate against another candidate in an election. Ms Jackson gave evidence that the funds were used for political and union campaigns, which gives rise to the possibility that the arrangement was also to avoid the prohibition in s 190.

54. Propriety dictates that where an officer receives funds to be used for the benefit of the union, those funds ought be receipted, and accounted for, as branch funds. The use of a cash 'kitty' defeats transparency and accountability. It also, as proceedings of the Commission demonstrate, generates suspicion and accusation. The facts surrounding the No 3 Branch 'kitty', and the arrangements adopted by Ms Jackson and the Branch Committee of Management to fund that kitty, in effect, from branch funds, evidence the undesirable nature of the existence and operation of this kind of relevant entity.

E CHEQUES

55. The HSU Victoria No 3 Branch had three cheque accounts, two Commonwealth Bank accounts, and one Members Equity account.⁹⁰ Ms Holt was a signatory to each of the HSU Victoria No 3 Branch's accounts, as was Ms Jackson.⁹¹ Mr Yeates was a signatory to two of the accounts.⁹²

56. Ms Jackson accepted that the practice in the HSU Victoria No 3 Branch for signing cheques was not in accordance with the rules of the HSU, which required that cheques be signed by the Branch Secretary and two members of the Branch Committee of Management.⁹³ Ms Holt was never a member of the Branch Committee of Management.⁹⁴

57. Ms Jackson gave evidence that Ms Holt kept pre-signed cheques in a locked drawer in her office.⁹⁵ In cross-examination by counsel for the HSU, Ms Holt confirmed that she had pre-signed cheques, admitting that it was a 'bad practice', but adding that 'she had no problem signing a cheque that was held by Kathy [Jackson]' because she trusted Ms Jackson.⁹⁶ The requirement for a co-signatory before funds from a cheque account could be withdrawn is a mechanism to ensure union funds are not misused, or at least a mechanism for mitigating the risk of funds being misused. That follows because before

⁹⁰ Agostinelli MFI-2, 17/6/14, pp 375-376; Agostinelli MFI-3, 17/6/14, p 776.

⁹¹ Jane Holt, witness statement, 17/6/14, para 21; Agostinelli MFI-2, 17/6/14, pp 375-376; Agostinelli MFI-3, 17/6/14, p 776.

⁹² Agostinelli MFI-3, 17/6/14, p 776.

⁹³ Katherine Jackson, 28/8/14, T:873.26-35, T:874.46 – T:875.1.

⁹⁴ Katherine Jackson, 28/8/14, T:19-21.

⁹⁵ Katherine Jackson, witness statement, 18/6/14, para 373; Katherine Jackson, 28/8/14, T:877.21-23.

⁹⁶ Jane Holt, 27/8/14, T:774.34-40.

funds could be withdrawn, both signatories would need to be satisfied the funds were being withdrawn for a legitimate purpose. The practice, therefore, by which a co-signatory to an account pre-signs cheques, defeats the object of having more than one signatory.

58. In its proposed Further Amended Statement of Claim, the HSU makes various detailed allegations against Ms Jackson concerning the cashing of cheques. As noted above, in these circumstances, it would be inappropriate at this stage to say anything further in relation to them (see also Chapter 1.1).

F “AB HINC”

59. On 30 April 2014, the Sydney Morning Herald reported on a ‘\$500 per head banquet’, held at a Lebanese restaurant on 22 April 2010, to ‘help two Labor MPs build their war chests for that year’s November state election campaign’.⁹⁷ It reported that the ‘HSU had paid \$5,000 for 10 tickets’, but that internal HSU files described the ‘payment as a donation to a Uganda-focused charity called Australians Bringing Hope Incorporated’, the implication being that the union had sought to conceal the true nature of the payment.
60. On 21 May 2010, Ms Holt, acting on Ms Jackson’s authority, transferred \$5,000 to an account named ‘Ab hinc’.⁹⁸ That amount was to cover the cost of ten tickets to a dinner which would be attended by Martin Pakula MP who, at the time, was the Victorian Minister for Public Transport and the Minister for Industrial Relations.⁹⁹ Ms Holt recorded the payment in the accounts of the HSU Victoria No 3 Branch as a donation to a political party.¹⁰⁰ In evidence to the Commission, she said that she had looked at the invitation to the dinner and ‘interpreted [it] as a political dinner, campaign of some sort’.¹⁰¹

⁹⁷ Nick McKenzie and Richard Baker, ‘Questions but few answers surround curious bank account’, *Sydney Morning Herald*, 30 April 2014: <http://www.smh.com.au/national/investigations/questions-but-few-answers-surround-curious-bank-account-20140429-zr1ev.html>.

⁹⁸ Holt MFI-1, 17/6/14, pp 340-342.

⁹⁹ Holt MFI-1, 17/6/14, pp 340-341. See also Katherine Jackson, 19/6/14, T:854.39-47.

¹⁰⁰ Holt MFI-1, 17/6/14, p 339. See also Jane Holt, witness statement, 17/6/14, para 85.

¹⁰¹ Jane Holt, 17/6/14, T:694.4-2.

61. Ms Jackson's evidence to the Commission was that the dinner was a fundraiser for Marlene Kairouz.¹⁰² In an interview with Commission staff, Ms Kairouz explained that she chose the name 'Ab hinc' for her election campaign account because the Latin phrase 'Ab Hinc' translates in English to 'from here on'. The invitation for the dinner referred to 'Ab Hinc' as the name of the account.¹⁰³ This evidence is consistent with Ms Jackson's. Ms Kairouz explained that the 'first [she] ever heard about' Australians Bringing Hope was when a journalist raised it with her.¹⁰⁴ She added that the Latin term 'Ab Hinc' had 'absolutely no link or affiliation to that charity'.¹⁰⁵
62. Mr Agostinelli recorded the \$5,000 payment in the audited financial report of the HSU Victoria No 3 Branch for the period ending 24 May 2010 as a donation to 'Australia Bringing Hope Incorporated'.¹⁰⁶ That was notwithstanding that in the internal records of the branch the payment was recorded, properly, as a donation to a political party. Ms Jackson said that Mr Agostinelli had been provided with the underlying financial records of the branch.¹⁰⁷ In fact, during the course of his audit, Mr Agostinelli noted the payment to Ab Hinc as '10 tickets for a dinner with guest speaker Martin Pakula MP @ \$500 per head'.¹⁰⁸ Mr Agostinelli could not recall from where he got the name Australia Bringing Hope Incorporated.¹⁰⁹ He said: 'I don't know how the Australia Bringing Hope International Incorporated came into it'.¹¹⁰
63. Ms Jackson's evidence was that the 'union has never, ever, sent money to this charitable organisation'.¹¹¹ Addressing the allegation that she had 'tried to cover up some sort of donation to the Labor Party by saying that we gave some sort of donation to some group called Australia Bringing Hope Inc', she said: 'Let me make it clear, we never made any donation to anybody called Australian Bringing Hope Inc, but we did make a donation,

¹⁰² Katherine Jackson, 19/6/14, T:856.45.

¹⁰³ Record of telephone interview with Marlene Kairouz on 30 May 2014, 27/8/14, 6.

¹⁰⁴ Record of telephone interview with Marlene Kairouz on 30 May 2014, 27/8/14, 8.

¹⁰⁵ Record of telephone interview with Marlene Kairouz on 30 May 2014, 27/8/14, 8.

¹⁰⁶ Agostinelli Statement Folder, 18/6/14, p 38; Katherine Jackson, 19/6/14, T:856.2-15.

¹⁰⁷ Katherine Jackson, 19/6/14, T:857.36-46.

¹⁰⁸ Agostinelli MFI-3, 17/6/14, pp 892-893.

¹⁰⁹ John Agostinelli, 17/6/14, T:697.36-41.

¹¹⁰ John Agostinelli, 17/6/14, T:697.47 – T:698.1.

¹¹¹ Katherine Jackson, 19/6/14, T:857.12-14.

a political donation, to Marlene Kairouz.¹¹² She could not explain why Mr Agostinelli recorded the payment as a donation to Australia Bringing Hope Incorporated.¹¹³

64. On the evidence, there was no attempt to conceal the true nature of the \$5,000 payment to ‘Ab Hinc’. The payment was recorded in the HSU’s internal accounts as a political donation and the better view is that the reference to ‘Australia Bringing Hope Incorporated’ in the financial report of the HSU Victoria No 3 Branch for the period ending 24 May 2010 was an error during the audit process which neither Ms Jackson nor other members of the Branch Committee of Management detected when they received, reviewed and authorised the audited account statements.

G \$63,000 HONORARIUM TO MS JACKSON

65. In his audit for the period ending 24 May 2010, Mr Agostinelli identified that there was an amount of approximately \$48,000 owed to Ms Jackson.¹¹⁴ He noted in his review of Branch Committee of Management minutes for that period that:¹¹⁵

BCOM ... reminded the Secretary that she had not claimed the \$21,000 honorarium that she has been entitled to for the past 3 years, and she should arranged [sic] payment.

66. Ms Holt explained in her evidence that the Branch Committee of Management had agreed to pay Ms Jackson an honorarium for her ‘time in managing’ the branch when she was the National Secretary of the HSU, and not a paid official of the HSU Victoria No 3 Branch.¹¹⁶ Counsel for the HSU explored that topic with Ms Jackson in cross-examination on the last occasion she appeared before the Commission.¹¹⁷
67. The \$63,000 honorarium is another issue now being agitated in the Federal Court Proceedings and is not addressed further here (see Chapter 1.1).

¹¹² Katherine Jackson, 19/6/14, T:858.15-21.

¹¹³ Katherine Jackson, 19/6/14, T:858.7-9.

¹¹⁴ John Agostinelli MFI-3, 17/6/14, p 714; John Agostinelli, 17/6/14, T:704.12-29. See also Katherine Jackson, witness statement, 18/6/14, para 448; Katherine Jackson, 19/6/14, T:853.28 – T:854.3.

¹¹⁵ Agostinelli MFI-3, 17/6/14, p 741; John Agostinelli, 17/6/14, T:704.43 – T:705.9.

¹¹⁶ Jane Holt, 17/6/14, T:679.14-36. See also Holt MFI-2, 17/6/14.

¹¹⁷ Katherine Jackson, 28/8/14, T:839.33 – T:842.2.

H CONCLUSION

68. The matters set out above raise serious governance issues at the Victoria No 3 Branch, during the period Ms Jackson was Secretary.
69. It is difficult to imagine a more inappropriate series of arrangements. On Ms Jackson's own evidence, significant sums of members' money were kept in a kitty and handed out at her discretion. There were insufficient checks and records concerning other movements of money, including the use of credit cards.
70. The picture that emerges is of a union during the period 2000 - 2012 characterised by lax governance; frequent breaches of union rules and procedures of transparency and accountability; and 'smear' and 'dirt' campaigns, during which critical records were destroyed or tampered with, and reputations trashed. This is no model for a modern or effective union.