

THE PETER MAC SETTLEMENT AND THE NATIONAL HEALTH DEVELOPMENT ACCOUNT

CHAPTER 12.3

INTRODUCTION

1. In 2003, the Peter MacCallum Cancer Centre (**Peter Mac**) settled an industrial dispute with the Heath Services Union of Australia (**HSU**) and employees of Peter Mac (the **industrial dispute**). The dispute related to a substantial underpayment of research technologists (or researchers) employed by Peter Mac (the **affected employees**) arising from alleged breaches of various industrial instruments.
2. Kathy Jackson, the Secretary of the HSU Victoria No 3 Branch (the **Victoria No 3 Branch**), was a key player in the settlement of the industrial dispute. As part of the settlement of the dispute, she negotiated a payment to the HSU of up to \$250,000 to cover legal and ‘other’ expenses the HSU had incurred in the course of resolving the dispute, and ‘future expenses’ it expected to incur in connection with implementing the settlement. Peter Mac agreed to pay up to that amount upon presentation of an ‘itemised statement’.
3. Ms Jackson misrepresented the expenses the HSU had incurred, and expected to incur, to procure payment of the maximum amount of \$250,000 from Peter Mac. The Committee of Management of the Victoria No 3 Branch (the **BCOM**), of which Ms Jackson was a member, then apparently earmarked the ‘Peter Mac money’, as some within the Branch referred to it, for expenditure principally on activities to ‘advance the interests of the union’.
4. Over a period of about a decade, Ms Jackson caused those funds to be transferred from an account of the Victoria No 3 Branch into an account, which she had set up and which she alone operated, known as the National Health Development Account. Once the

funds left the Branch account, there was no trace in the records of the Victoria No 3 Branch of how the Peter Mac money was spent, except in an ‘exercise book’ in which Ms Jackson says she recorded expenditure from the account. The exercise book is missing, but the Commission has been able to establish that, among other things, Ms Jackson withdrew funds from the NHDA to support her ex-husband, Jeffrey Jackson, from whom she separated in March 2008, in a ‘bitter internal struggle for control of the Vic 1 Branch’.¹

5. This chapter deals with the circumstances leading to the payment of the Peter Mac money, the establishment of the NHDA, and the expenditure of monies in the NHDA. It reveals not only deceit on the part of Ms Jackson, but also a wholly inadequate system of governance within the Branch. For these reasons, the Peter Mac settlement and the NHDA deserve to be singled out as a case study, but, as the following chapter illustrates, it is not the only example that brings to the fore the shortcomings of the Victoria No 3 Branch.
6. This chapter also submits that Mr Dick, one of the former auditors of the Victoria No 3 Branch, failed to meet the relevant professional standard.

RESOLUTION OF THE INDUSTRIAL DISPUTE RELATING TO UNDERPAYMENT

A HSU AND PETER MAC ENTER INTO A MEMORANDUM OF UNDERSTANDING

7. On 21 March 2003, the HSU and Peter Mac entered into a Memorandum of Understanding relating to the resolution of the industrial dispute.² They agreed to negotiate an enterprise agreement that would ‘provide a new and agreed classification structure and rates of pay and conditions for Peter MacCallum Cancer Centre Research Technologists’; the agreement would be put to Peter Mac staff ‘for consideration and, if approved by vote of the staff, [would] become a registered Agreement’.³ Relevantly, the

¹ Katherine Jackson, witness statement, 28/8/14, para 13.

² Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 895. See also Katherine Jackson, 30/7/14, T:376.39-42.

³ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 895.

parties to the MoU also agreed ‘not to instigate any claims for retrospective payment for pay and conditions’.⁴

B HSU SEEKS ‘COMPENSATION’ FROM PETER MAC

8. Around June 2003, the HSU Victoria No 3 Branch ‘raised the matter of compensation being paid directly to the union as part of the overall settlement of the compliance issue’.⁵ On 8 July 2003, Dr Hillis, Brian Cook, a HR consultant, and Rohan Millar, a barrister, provided an update to the Peter Mac Board on ‘initiatives to finalise the acceptance of the Single Employer Certified Agreement (SECA) relating to the payment issues of Research staff’.⁶ The minutes of the Board meeting note that the HSU Victoria No. 3 Branch had ‘raised several key concerns the majority of which have been responded to at a senior management level’.⁷ An issue which remained ‘outstanding’ was ‘the Deed of Release and a payment to the HSUA #3 in respect of their legal costs and time impost on union officials’.⁸ Relevantly, the Board resolved:

Management continue to negotiate the certification of the SECA in partnership with HSUA #3.

Negotiations to continue with the HSUA #3 to determine the quantum of expenses incurred by HSUA #3 in the successful certification of the SECA.

Negotiations to continue on the option of Peter Mac paying HSUA #3 expenses[.]

If it is agreed that any payment is made to the HSUA #3, staff will be advised.

The Deed of Release should ideally incorporate HSUA #3 union members.

9. On 22 July 2003, there was a ‘special meeting’ of the Peter Mac Board.⁹ The meeting had been called to ‘consider a proposed Deed of Release’ between Peter Mac and the HSU Victoria No 3 Branch ‘relating to payment issues of Research staff’.¹⁰ In a memorandum to the Board, dated 22 July 2003, Dr Hillis said: ‘HSUA #3 are now agitated over delays in the process and have indicated commencement of Federal Court

⁴ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 896.

⁵ Brian Cook, witness statement, 27/8/14, para 12. See also David Ellis, 14 August 2014, T:7.7.

⁶ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 831. See also David Ellis, 14 August 2014, T:12.35-T:14.28.

⁷ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 831.

⁸ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 831.

⁹ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 833. See also David Ellis, 14 August 2014, T:14.30.

¹⁰ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 833.

action [to pursue penalties for beaches of industrial instruments] by Thursday 24 July unless the Deed issues are resolved.’¹¹

10. At the 22 July meeting, the Board was ‘unanimous in its view that should there be a payment made to the HSUA #3 that there is transparency and disclosure of information and that staff are to be advised of this fact prior to a vote of the SECA.’¹² The Board relevantly resolved:¹³

Negotiations to continue with the HSUA #3 on the option of Peter Mac paying HSUA #3 expenses up to a maximum of \$250,000

In the event of a payment being made to the HSUA #3 that staff will be advised of the payment.

An itemised statement is to be provided by the HSUA #3 outlining the expenses associated with the payment of up to \$250,000.

...

Any payment of the HSUA #3 is conditional on the successful voting on of the SECA by Peter Mac staff and the successful certification of the SECA in the AIRC.

...

An updated Deed of Release to be prepared incorporating confidentiality between Peter Mac and the HSUA #3 save that Peter Mac will make disclosure of the amount and purpose of the payment of up to \$250,000 to its staff.

C PETER MAC EMPLOYEES TOLD ABOUT PAYMENT TO HSU?

11. On 4 September 2003, Dr Hillis, Dr Wellington, Ms Jackson and Ms Cresshull attended a meeting with research staff at which ‘staff were advised of initiatives to progress the SECA and the resolution of the underpayment of Research staff.’¹⁴ At the meeting, the ‘staff were advised that agreement was required to three (3) key documents in order to resolve this issue’:¹⁵

1. SECA
2. Deed of Release (Peter Mac and Research Staff)

¹¹ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 874.

¹² Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 834.

¹³ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 834.

¹⁴ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 836. See also David Ellis, 14 August 2014, T20.27-T21.13.

¹⁵ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 836.

3. Deed of Release (Peter Mac and HSUA #3)

12. The fact that Peter Mac proposed to reimburse the HSU for its costs was discussed at the 4 September meeting, according to Dr Hillis' evidence to the Commission, though Dr Hillis could not recall whether the 'specifics' of the proposed payment to the union were disclosed.¹⁶ Dr Wellington had a 'very strong sense that there was discussion' of the payment at the 4 September meeting.¹⁷ Ms Jackson also recalled that the payment was disclosed at the meeting.¹⁸

D HSU AND PETER MAC ENTER INTO A DEED OF RELEASE

13. On 9 September 2003, the Board agreed to affix the Peter Mac seal to a Deed of Release between Peter Mac and the HSU.¹⁹ On that day, the HSU and Peter Mac executed a Deed of Release, which relevantly recited that the HSU alleged Peter Mac breached various industrial instruments; that Peter Mac denied those allegations; and that in 'negotiating' a proposed single employer certified agreement, the 'HSUA has incurred, and will continue to incur, significant expenses, both internally and externally, for which the HSUA seeks payment from the Peter Mac.'²⁰
14. Within 7 days of certification of the single employer certified agreement – the SECA – the HSU agreed to provide Peter Mac an 'itemised statement of its legal expenses and other expenses and expected future expenses incurred in relation to the matters referred to in the Recitals and the preparation of the Certified Agreement'. Peter Mac agreed to pay the 'total sum disclosed in the statement' provided the sum did not exceed \$250,000.²¹ In Dr Wellington's view, the \$250,000 maximum payment the Board agreed to pay the HSU was not 'an unrealistic estimate for the sort of effort that was put into the negotiation process' by the HSU.²²

¹⁶ David Ellis, 14 August 2014, T22.2, T22.29-30.

¹⁷ Heather Wellington, 28/8/14, T:855.31.

¹⁸ Katherine Jackson, 30/7/14, T:386.3.

¹⁹ Jackson MFI 30 July 2014 Vol 3, 30/7/14, p 837.

²⁰ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 37.

²¹ Jackson MFI 30 July 2014 Vol 1, 30/7/14, pp 37-8.

²² Heather Wellington, witness statement, 28/8/14, para 76.

15. In consideration of that payment, the HSU released and discharged Peter Mac:²³

from all suits, demands, losses and causes of action in relation to or arising from the alleged breaches [of the industrial instruments], including (but not limited to) any claims for alleged underpayment of wages, and any claims for alleged underpayment of wages, and any claims for breach of any award or certified agreement that allegedly occurred prior to that date of certification of the proposed certified agreement.

16. Further, the HSU agreed not to ‘encourage or assist its members to take up any cause of action in relation to or arising from the alleged breaches [of the industrial instruments]’ and agreed also not to assist ‘in any such action, brought.’²⁴

E HSU SENDS PETER MAC AN ITEMISED STATEMENT OF ITS LEGAL, OTHER AND EXPECTED FUTURE EXPENSES

17. On 22 October 2003, Ms Jackson wrote to Dr Hillis, enclosing an itemised statement of the HSU’s legal expenses, other expenses and expected future expenses.²⁵ One of the itemised ‘Legal Expenses’ was ‘Solicitors Costs’ in the amount of \$65,740.²⁶ Ms Jackson admitted that the HSU had not in fact incurred solicitors’ costs in that amount.²⁷ The actual costs the HSU incurred were \$1,122.²⁸ Ms Jackson admitted that she inflated the figure of \$1,122 to \$65,740 because she wished to claim a total in excess of \$250,000.²⁹

18. The total given in Ms Jackson’s letter for ‘expected future costs’ was \$89,460.³⁰ Ms Jackson admitted that these ‘expected future costs ... did not reflect a true claim for expected future costs’.³¹ She had ‘picked that figure of \$89,460 to bring the total of the amount claimed to an amount in excess of ... \$250,000’.³²

²³ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 38.

²⁴ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 38.

²⁵ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 97.

²⁶ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 98.

²⁷ Katherine Jackson, 28/8/14, T:786.36 – T:787.6.

²⁸ Toby Borgeest, witness statement 27/8/14, para 16 and Annexure C; see also Toby Borgeest, 27/8/14, T:690.36-45.

²⁹ Katherine Jackson, 28/8/14, T:787.8-11.

³⁰ Jackson MFI 30 July 2014 Vol 2, 30/7/14, p 98.

³¹ Katherine Jackson, 28/8/14, T:788.3-6.

³² Katherine Jackson, 28/8/14, T:788.8-11.

19. Dr Hillis did not ask Ms Jackson to provide materials to substantiate the expenses which she represented the HSU had incurred or to provide a breakdown for expected future expenses.³³ He gave evidence that he was ‘confident’ at the time that the HSU’s expenses were ‘real’.³⁴ In particular, the figures relating to the expenses the HSU had already incurred did not appear to him to be ‘disproportionate’; they seemed ‘reasonable’.³⁵ Dr Wellington also gave evidence that she had considered that the \$250,000 maximum amount the Peter Mac Board agreed to pay the HSU was a ‘reasonable estimate of what was likely to have been incurred’ by the HSU, particularly having regard to the length of the dispute and the costs that Peter Mac had itself incurred in its resolution.³⁶
20. Despite what was recorded in the terms of the Deed of Release, the Peter Mac Board considered the payment to the HSU a ‘settlement of a valid claim that the union had against’ it for alleged breaches of various industrial instruments.³⁷ But Dr Wellington did not accept that the amount included a component ‘notional or otherwise’ for the union not pursuing penalties.³⁸
21. Ms Jackson said that the settlement between Peter Mac and the HSU was expressed to cover legal, other and expected future expenses to render the settlement of the industrial dispute more ‘palatable’ to the Peter Mac Board.³⁹ She said the HSU gave Peter Mac a ‘dressed-up’ letter – referring to her letter of 22 October 2003 – for ‘comfort and cover’.⁴⁰ Ms Jackson added that Peter Mac did not ‘want to be exposed to penalties, and the union at that time did give Peter Mac cover and comfort that they weren’t going to go back to their board to say they’d stuffed it up, and that is how it all settled’.⁴¹

³³ David Ellis, 14/8/14, T:27.47 -T:28.24.

³⁴ David Ellis, 14/8/14, T:29.6.

³⁵ David Ellis, 14/8/14, T:27.34-45.

³⁶ Heather Wellington, 28/8/14, T:856.40 -T:857.5.

³⁷ Heather Wellington, 28/8/14, T:856.42 -43; see also T:858.5 – 12.

³⁸ Heather Wellington, 28/8/14, T:856.42-45, T:857.12-16, 38-40.

³⁹ Katherine Jackson, 30/7/14, T:397.13, T:398.5-8, T:400.19.

⁴⁰ Katherine Jackson, 30/7/14, T:416.15, 33-35.

⁴¹ Katherine Jackson, 30/7/14, T:416.9-13 and see 35-38.

22. In her supplementary statement to the Commission,⁴² Ms Jackson recounted a conversation with Mr Cook during which she claims he relevantly said words to the effect:⁴³

We understand that if this dispute isn't settled we have to deal with both the employees['] claims for outstanding entitlements and the union's claims for penalties. However, the Board does not want the reputation of Peter Mac damaged by any public acknowledgment that it would have been liable to pay fine. That is not a good look with the donors. We are happy to negotiate a settlement with the union for its claims over and above whatever is agreed with the employees, but we would like to characterise the payment as reimbursement of expenses.

23. And she replied:⁴⁴

You can call it what you like. But don't think that the members won't understand what has happened. We have explained the situation to them and they realise that if the dispute isn't settled we will be going for fines as well as their entitlements.

24. Mr Cook denied saying words to the effect attributed to him by Ms Jackson, and did not recall Ms Jackson replying in the terms just set out.⁴⁵

25. Ms Jackson also gave evidence that she recalled having 'similar discussions with other members of Peter Mac management and the BCOM about this request';⁴⁶ further she said that near the 'end of the negotiating period Mr Cook said words to the ... effect: "Could you please send us a list of expenses so that we can pay you the settlement figure."⁴⁷ Mr Cook recalled having a conversation with Ms Jackson about the HSU's 'expenses', but said that the conversation would have been 'back in June when Peter Mac had asked for details' of the expenses.⁴⁸

26. Finally, Ms Jackson said in her supplementary statement:⁴⁹

The Peter Mac Institute paid the union \$250,000 as it was a fair and moderate estimate of a possible fine the court may have imposed on Peter Mac for its negligence in breaching its

⁴² Katherine Jackson, witness statement, 28/8/14.

⁴³ Katherine Jackson, witness statement, 28/8/14, para 144.

⁴⁴ Katherine Jackson, witness statement, 28/8/14, para 144.

⁴⁵ Brian Cook, 27/8/14, T:695.19 – T:696.18.

⁴⁶ Katherine Jackson, witness statement, 28/8/14, para 145.

⁴⁷ Katherine Jackson, witness statement, 28/8/14, para 147.

⁴⁸ Brian Cook, 27/8/14, T697.2-5 and see earlier T696.28-36. See also Brian Cook, witness statement, 27/8/14, para 18.

⁴⁹ Katherine Jackson, witness statement, 28/8/14, para 149.

awards. In exchange the Union did not pursue the claim for which there was no defence. The union's expenses were real, the Deed was a legal agreement and it contains statements of truth – but underlying the way the payment was styled was the knowledge both parties had that should the matter not be settled by negotiation, the Act provided for significant potential penalties to be levied on ... Peter Mac and paid to the union.

27. The upshot of Ms Jackson's evidence was that those representing Peter Mac in fact knew that the amount claimed was not a genuine reimbursement of costs that the union had incurred, and reasonably expected to incur. That evidence ought not to be accepted. It is inconsistent with the available documentary evidence (summarised above), Dr Hillis' evidence,⁵⁰ Dr Wellington's evidence,⁵¹ and Mr Cook's evidence.⁵²

F PETER MAC PAYS HSU \$250,000, AS AGREED

28. On 11 November 2003, Dr Hillis wrote to Ms Jackson, enclosing a cheque in the amount of \$250,000.⁵³ The cheque was deposited into a Commonwealth bank account that was maintained by the HSU Victoria No 3 Branch under the control of the union's Branch Committee of Management.⁵⁴
29. Ms Jackson regarded the payment as a 'windfall' in the sense that it was not 'general revenue received by the Vic 3 Branch which would be budgeted income'.⁵⁵ Katharine Wilkinson also described the payment as a windfall.⁵⁶ Ms Wilkinson was the Vice President of the Victoria No 3 Branch and a member of the BCOM until the Victoria No 3 Branch merged with the Victoria No 1 Branch and the NSW Branch to form the HSU East Branch.⁵⁷ She said the money was 'above and beyond [the branch's] normal income'.⁵⁸

⁵⁰ David Hillis, 14/8/14, T:30.29 -T:32.38.

⁵¹ Heather Wellington, 28/8/14, T:856.40 – T:857.40.

⁵² Brian Cook, 27/8/14, T:695.19 – T:696.18; Brian Cook, 27/8/14, T:697.2-5 and see earlier T:696.28-36. See also Brian Cook, witness statement, 27/8/14, para 18.

⁵³ Jackson MFI 30 July 2014 Vol 1, 30/7/14, pp 99, 100.

⁵⁴ Katherine Jackson, 30/7/14, T:400.21-25, T:401.14-15.

⁵⁵ Katherine Jackson, witness statement, 28/8/14, para 9.

⁵⁶ Katharine Wilkinson, witness statement, 18/6/14, para 31.

⁵⁷ Katharine Wilkinson, witness statement, 18/6/14, paras 4-5.

⁵⁸ Katharine Wilkinson, 17/6/14, T:659.11-12.

G ISSUES ARISING FROM THE SETTLEMENT BETWEEN THE HSU AND PETER MAC

G1 Obtaining property or a financial advantage by deception

30. As appears from the matters set out above, Ms Jackson admitted that the statement she issued to Peter Mac in October 2003 misrepresented the ‘Solicitors Costs’ the HSU had incurred and the ‘future costs’ the HSU expected to incur. Relying on that itemised statement, Peter Mac paid the HSU \$250,000 in November 2003 in the form of a cheque.

31. As at October and November 2003, it was an indictable offence against s 81 and s 82 of the *Crimes Act* 1958 (Vic) to obtain either property or a financial advantage by deception.⁵⁹ At the relevant time, the elements of obtaining property by deception were:

(1) a person by any deception

(2) dishonestly obtains property belonging to another

(3) with the intention of permanently depriving the other of it.

32. ‘Property’ includes money⁶⁰ and has been held to include a cheque.⁶¹ By s 81(2) a ‘person is to be treated as obtaining property if he obtains ownership, possession or control of it, and ‘obtain’ includes obtaining for another or enabling another to obtain or to retain.’⁶²

33. A person ‘dishonestly’ obtains property belonging to another (or a ‘financial advantage’) if he or she knows he or she had no legal right to the property or financial advantage.⁶³

⁵⁹ See version 170 of the *Crimes Act* 1958 (Vic). The word ‘deception’ in s 82 has the same meaning as in s 81 of the Act: see s 82(2).

⁶⁰ Section 71 of the *Crimes Act* 1958 (Vic).

⁶¹ *Parsons v The Queen* (1999) 195 CLR 619, 632 [35] – 633 [36] (the Court).

⁶² Emphasis in original.

⁶³ *R v Todo* [2004] VSCA 177 at [24] and [26], following *R v Salvo* [1980] VR 401 (Charles JA with whom Winneke P ([1]) and Ormiston JA ([2]) relevantly agreed).

34. The elements of obtaining a financial advantage by deception generally overlap with the elements of obtaining property by deception. At the relevant time, they were:

(1) a person by any deception

(2) dishonestly obtains for himself (or herself) or another

(3) a financial advantage.

35. 'Financial advantage' is undefined. The words carry their 'plain meaning'.⁶⁴

G2 On the evidence, are the elements of s 81 and s 82 satisfied?

G2.1 Deception

36. Ms Jackson falsely represented to Peter Mac that the HSU had incurred, or would incur, costs that she knew it had not, and would not, incur. That false representation constitutes the relevant deception. For the reasons given above, Ms Jackson's evidence that Peter Mac in fact knew that the itemised statement of expenses she presented was not genuine ought not to be accepted. Had Peter Mac known that the expenses which Ms Jackson represented the HSU had incurred or would incur were not genuine, it would have followed that there was no deception or, put differently, that the property or financial advantage the HSU obtained was not 'by any deception'.

G2.2 Was property or a financial advantage obtained 'by' deception?

37. Ms Jackson's deception caused Peter Mac to draw a cheque in the HSU's favour for \$250,000, and send it to Ms Jackson. Thus, *by*⁶⁵ her deception she obtained property – the cheque – of Peter Mac or a financial advantage since, once the HSU received the cheque, it conferred on the HSU an entitlement to be paid the amount shown on its face.⁶⁶

⁶⁴ *R v Walsh* (1990) 52 A Crim R 80 at 81.

⁶⁵ See, for example, *R v Clarkson* (1987) 25 A Crim R 277 at 297. Also, for a helpful discussion of the element of causation, see CR Williams, *Property Offences* (3rd ed, 1999) at 158-16, 172.

⁶⁶ See the observations of the High Court at 630 [29] in *Parsons v The Queen* (1999) 195 CLR 619.

G2.3 *Was the property or financial advantage obtained dishonestly?*

38. Ms Jackson made the false representation knowing that under the Deed of Release executed by the HSU and Peter Mac the *only* legal right the HSU had was to payment of its 'legal expenses and other expenses and expected future expenses' up to a maximum of \$250,000. In other words, she knew that the HSU only had a right to payment of up to \$250,000 for expenses that the HSU in fact had incurred or would incur. Therefore, the property or financial advantage the HSU obtained was obtained dishonestly.

G2.4 *Was Peter Mac permanently deprived of its property?*

39. Once banked, the cheque had been put to a use which left it 'spent and deprived of [the] characteristics which led or significantly contributed to [its] classification as property'.⁶⁷ That satisfies the third element of obtaining property by deception.

40. It is submitted that there is sufficient evidence to warrant Ms Jackson being referred to the Victorian Director of Public Prosecutions so that the Director can consider whether to prosecute her for possible contraventions of the *Crimes Act 1958* (Vic).

NATIONAL HEALTH DEVELOPMENT ACCOUNT

41. Ms Jackson gave evidence that the Branch Committee of Management passed a resolution to earmark the money paid by Peter Mac as a 'discretionary fund that [she] was authorised to expend to advance the interests of the union, and to do so in conjunction with the No. 1 Branch'.⁶⁸ Ms Jackson said she was also authorised to use \$4,000 annually for her own 'personal benefit on the basis that [she] had not been receiving sitting fees.'⁶⁹

⁶⁷ *Parsons v The Queen* (1999) 195 CLR 619, 634 [41], the High Court rejecting an argument that the appellant did not intend to permanently deprive the drawer of various cheques because, once paid, would be returned to the drawer.

⁶⁸ Katherine Jackson, witness statement, 18/6/14, para 423.

⁶⁹ Katherine Jackson, witness statement, 18/6/14, para 423. See also Katherine Jackson, 30/7/14, T:400.44 - T:401.3.

42. In her written statement to the Commission, Ms Wilkinson said:⁷⁰

The BCOM discussed the settlement money and decided that the money should be kept to further benefit the interests of members. I recall that the BCOM passed a resolution approving the earmarking of the Peter Mac money **as a fund that could be expended by Ms Jackson on a discretionary basis for union purposes including advancing the industrial and political interests of the union.** I also recall that Ms Jackson was also authorised to spend for her own personal purposes because she had not been receiving sitting fees (emphasis added).

43. Reuben Dixon was a member of the HSU Victoria No 3 BCOM from late 1998 to May 2010.⁷¹ After having a discussion with Ms Wilkinson, he recalled that ‘No 3 Branch received a payment from Peter Mac’ which he believed was a ‘settlement payment or some kind of payment which was made following the underpaying of their staff for a long period of time’.⁷² But he could not ‘precisely recall what the payment was for’.⁷³ He could not recall the quantum of the payment, but believed it was about \$160,000.⁷⁴

44. Mr Dixon believed that ‘after the money was paid to No 3 Branch, Ms Jackson put it into an education fund, however [he could not] be sure of this’, adding that he could not recall ‘the details, how it was set up, or who was signatory to the fund’.⁷⁵ He said he recalled ‘discussion at a BCOM meeting that the settlement money would be invested into a fund for research purposes, as the payment represented a large part of [the branch’s] assets’.⁷⁶ He did not recall a resolution authorising the transfer of money out of the Branch’s account into an account conducted by Ms Jackson.⁷⁷ Although Mr Dixon’s recollection was not as clear as Ms Jackson’s and Ms Wilkinson’s recollections, and the detail of his evidence did not precisely match what Ms Jackson and Ms Wilkinson said, his evidence was nevertheless broadly consistent with Ms Jackson’s and Ms Wilkinson’s evidence.

45. The evidence of Ms Jackson, Ms Wilkinson and Mr Dixon constitutes the only evidence before the Commission of the existence and content of the 2003 BCOM resolution. In

⁷⁰ Katharine Wilkinson, witness statement, 17/6/14, para 32 and see Katharine Wilkinson, 17/6/14, T:659.10 - T:660.47.

⁷¹ Reuben Dixon, witness statement, 17/6/14, para 5; Reuben Dixon, 27/8/14, T:768.24-27.

⁷² Reuben Dixon, witness statement, 17/6/14, para 32.

⁷³ Reuben Dixon, witness statement, 17/6/14, para 32.

⁷⁴ Reuben Dixon, witness statement, 17/6/14, para 36.

⁷⁵ Reuben Dixon, witness statement, 17/6/14, para 37.

⁷⁶ Reuben Dixon, witness statement, 17/6/14, para 38.

⁷⁷ Reuben Dixon, 27/8/14, T:770.11-14.

fact, the Commission only has available to it a limited set of minutes of BCOM meetings. As explained elsewhere, the Commission sought: ‘All minutes of Branch Committee of Management meetings for the No 3 Branch of the HSU in respect of the period 1 January 1997 to 1 April 2010.’⁷⁸ Relevantly, the HSU has not been able to locate any minutes for 2003.

46. However, there is no reason to doubt Ms Wilkinson’s evidence of the existence, and content, of the 2003 BCOM resolution. Mr Dixon’s evidence was broadly consistent with Ms Wilkinson’s evidence. It was not put to either that their evidence was knowingly false. It follows that it is possible to find that in early 2003 the BCOM passed a resolution to the effect (drawing on the evidence of Ms Wilkinson set out above) that the money paid by Peter Mac would comprise a ‘fund that could be expended by Ms Jackson on a discretionary basis for union purposes including advancing the industrial and political interests of the union.’

47. In December 2003, Ms Jackson opened a Commonwealth bank account, the National Health Development Account, into which, on Ms Jackson’s evidence, money from the Peter Mac Fund could be ‘transferred progressively for use at [her] discretion in accordance with the BCOM approval.’⁷⁹

48. It is difficult to identify the precise legal basis on which Ms Jackson was operating the NHDA. No-one on the BCOM sought, nor for that matter did Ms Jackson seek, to give consideration to this question at the time. The question was simply not addressed. In evidence to the Commission, Ms Jackson initially agreed that whatever rights and discretionary powers she had in relation to the National Health Development Account were rights and powers exercised in her capacity as Secretary of the HSU Victoria No 3 Branch.⁸⁰

49. Later, she changed her position. She said:⁸¹

⁷⁸ Notice to Produce 157, 13/6/14.

⁷⁹ Katherine Jackson, witness statement, 18/6/14, para 426. See also Katherine Jackson, 30/7/14, T:401.17-27 and Jackson MFI 4, 19/6/14, p 3.

⁸⁰ Katherine Jackson, 30/7/14, T401.29-32.

⁸¹ Katherine Jackson, 30/7/14, T:408.38-42.

...as far as I was concerned, once the NHDA was set up, the NHDA was not an account of the union, it was a separate account, and I was authorised to use that account and to disburse money from that account regardless of whether I was branch Secretary or not.

50. Subsequently she said:⁸²

Once the money had left the Union ... I believed that it was legally held [by] me in the NHDA account but that I held that money subject to my duties as an official to deal with the money in accordance with the BCOM Approval and only spent it on purposes that I genuinely believed advanced the industrial or political interests of the Union and its members.

51. Ms Wilkinson recalled that 'over the years' Ms Jackson informed the BCOM of her intention to spend 'some of the Peter Mac money for a particular purpose and secured the consensus of the BCOM for that expenditure'.⁸³ But no formal resolutions were passed authorising the expenditure 'on the basis that the original resolution continued to operate in relation to the Peter Mac money'.⁸⁴

52. There is evidence that the BCOM was aware of transfers into the NHDA. Ms Wilkinson gave evidence that BCOM would, aside from the annual auditor's financial report, 'get financial statements throughout the year at BCOM meetings' which would show how much money BCOM had; she described these 'loosely' as 'profit and loss statements'.⁸⁵ In her evidence to the Commission, Ms Holt said:⁸⁶

In relation to the financial material which went to BCOM, I provided a year to date Profit and Loss report with a comparison to the same period for the previous financial year. I provided a brief cash flow statement, and sometimes a short document highlighting financial matters to be considered, for example, comments on unusual transactions, such as, trading in old for new vehicles.

53. Ms Holt provided to the Commission examples of that material for the period 2004 to 2010.⁸⁷ Relevantly, that material showed payments to the NHDA.⁸⁸ Having been shown some of the reports Ms Holt prepared, Ms Wilkinson agreed that they were the 'sorts of reports that Ms Holt would prepare'; that Ms Jackson would bring reports of that kind with her to BCOM meetings; that they would be discussed at meetings; and that BCOM

⁸² Katherine Jackson, witness statement, 28/8/14, para 10(d).

⁸³ Katharine Wilkinson, witness statement, 17/6/14, para 34.

⁸⁴ Katharine Wilkinson, witness statement, 17/6/14, para 34 and see Katharine Wilkinson, 17/6/14, T:661.26-46. See also Katharine Wilkinson, 27/8/14, T:764.24.

⁸⁵ Katharine Wilkinson, witness statement, 17/6/14, paras 15-16; Katharine Wilkinson, 17/6/14, T:657.33-41.

⁸⁶ Jane Holt, witness statement, 17/6/14, para 45.

⁸⁷ Jane Holt, MFI-1, 17/6/14, pp 3-15.

⁸⁸ Jane Holt, MFI-1, 17/6/14, pp 4, 6, 7, 8, 9, 11 and 14.

would approve the reports.⁸⁹ That was the position throughout Ms Wilkinson's time on the BCOM.⁹⁰

54. Ms Jackson said that she 'kept a record of all monies spent out of the NHDA (date, payee, amount and purpose) as a hand written list in a simple exercise book' which she says was taken, after her office was 'ransacked', around 7 September 2011.⁹¹ Ms Holt recalled a discussion (or discussions) with Ms Jackson concerning the missing exercise book.⁹² She remembered Ms Jackson 'being extremely upset about this loss, the theft, or whatever of', relevantly, the exercise book.⁹³ On any view, maintaining as the only record of the expenditure of significant sums a handwritten exercise book is entirely unsatisfactory from a governance perspective. After the loss of the exercise book, Ms Jackson did not keep a written record of money paid into or out of the NHDA.⁹⁴
55. The Commission issued a Notice to Produce to the Secretary of the HSU Victoria No 3 Branch requiring the Secretary to produce all minutes of meetings of the BCOM for the period 1 January 1997 to April 2010. The HSU was only able to produce a limited number of minutes. By other means, the Commission has been able to obtain additional copies of BCOM minutes or a record of their content. Nevertheless, the Commission still only has a limited set of BCOM minutes, or a record of the content of those minutes, available to it.⁹⁵ The Commission has copies of minutes (or at least a partial record of the content of minutes) of meetings held on:⁹⁶ 24 March 1999, 12 May 1999, 3 July 2008, 19 August 2008, 25 September 2008, 10 October 2008, 11 December 2008, 11 February 2009, 27 March 2009, 12 May 2009, 24 June 2009, 29 September 2009, 21 December 2009, 9 February 2010, 25 February 2010, 23 March 2010, 9 April 2010.

⁸⁹ Katharine Wilkinson, 17/6/14, T:657.12-31. See also Katharine Wilkinson, 17/6/14, T:649.21 – T:650.26, T:653.4-10, T:654.30-36, T:655.37; Jane Holt, 17/6/14, T:688.9-24; Katherine Jackson, 19/6/14, T:863.10, 23-36.

⁹⁰ Katharine Wilkinson, 17/6/14, T:657.31.

⁹¹ Katherine Jackson, witness statement, 18/6/14, para 439-440. See also Katherine Jackson, 19/6/14, T:846.6-13, T:864.3.

⁹² Jane Holt, 27/8/14, T:776.43 – T:777.42.

⁹³ Jane Holt, 27/8/14, T:777.40-41.

⁹⁴ Katherine Jackson, 28/8/14, T:800.46.

⁹⁵ John Agostinelli, MFI-1, 17/6/14, pp 172-199; Craig McGregor, MFI-2, 17/6/14; Katherine Jackson, MFI-1, 30/7/14, p 105.

⁹⁶ Craig McGregor, MFI-2, 17/6/14; John Agostinelli, MFI-1, 17/6/14, pp 172-199; John Agostinelli, MFI-3, 17/6/14, pp 741-743; Katherine Jackson, MFI-1, 30/7/14, p 106.

56. The minutes of the 3 July 2008 BCOM meeting show that BCOM agreed that the ‘HSU Vic 3 Branch fund the NHDA up to \$90,000 per annum, for the next 3 financial years.’⁹⁷ The Commission also has a record of the content of a meeting held on 25 February 2010, which notes the BCOM resolved: ‘That the Vic No 3 Branch fund the NHDA up to \$90,000 for the next financial year.’⁹⁸

G3 Payments to and withdrawals from the National Health Development Account

57. In the period February 2004 to 13 October 2010, Ms Holt, the HSU’s bookkeeper, transferred a total of \$284,500 into the National Health Development Account, acting on Ms Jackson’s instructions.⁹⁹ The following table is reproduced from Ms Holt’s statement to the Commission:¹⁰⁰

#	Date	Transaction description	Amount	Reference
1	February 2004	“Payment to NHDA out of settlement”	\$80,000	Holt MF1, Tab 3, p. 2.
2	23 June 2005	National Health Development	\$20,000	Holt MF1 Tab 14, # 2.
3	6 January 2006	National Health Development Account	\$10,000	Holt MF1, Tab 14, # 3
4	30 June 2006	NATIONAL HEALTH DEVELOPMENT ACCOUNT	\$8,000	Holt MF1, Tab 14, # 4.
5	29 June 2007	National Health Development Account	\$5,000	Holt MF1, Tab 14, # 5.
6	6 December 2007	NHDA	\$8,000	Holt MF1, Tab 14, # 6.
7	21 December 2007	NHDT	\$8,000	Holt MF1, Tab 14, # 7.
8	27 June 2008	National Health Development Fund	\$7,000	Holt MF1, Tab 14, # 8.
9	4 September 2008	NATIONAL HEALTH DEV ACCOUNT	\$8,000	Holt MF1, Tab 14, # 9.
10	5 December 2008	NHDA	\$5,000	Holt MF1, Tab 14, # 10.

⁹⁷ Katherine Jackson, MFI-1, 30/7/14, p 106.

⁹⁸ John Agostinelli, MFI-3, 17/6/14, p 742.

⁹⁹ Jane Holt, witness statement, 17/6/14, para 78; see also Jane Holt MFI 1, 17/6/14, pp 4, 329-337, Jane Holt, 17/6/14, T:692.25-27, Katherine Jackson, 30/7/14, T:406.46 – T:407.18.

¹⁰⁰ Jane Holt, witness statement, 17/6/14, para 78. For a collection of bank statements relating to the NHDA, see Katherine Jackson, MFI-5, 28/8/14, 1059-1111.

11	7 January 2009	NHDA	\$12,000	Holt MF1, Tab 14, # 11.
12	23 March 2009	N H D A	\$50,000	Holt MF1, Tab 14, # 12.
13	1 July 2009	NHDA	\$7,500	Holt MF1, Tab 14, # 13.
14	3 October 2009	N H D A	\$8,000	Holt MF1, Tab 14, # 14.
15	27 October 2009	NHDA	\$8,000	Holt MF1, Tab 14, # 15.
16	7 April 2010	NATIONAL HEALTH DEVELOPMENT ACCOUNT	\$22,000	Holt MF1, Tab 14, # 16.
17	27 May 2010	NHDA	\$12,000	Holt MF1, Tab 14, # 17.
18	13 October 2010	NHDA	\$6,000	Holt MF1, Tab 14, # 18.
	TOTAL		\$284,500	

G3.1 Overseas trips

58. As appears from the above table, on 27 February 2004, Ms Holt transferred \$80,000 from the HSU Victoria No 3 Branch account to the NHDA.¹⁰¹ Ms Jackson said she drew on those funds in part in connection with a study trip to the United States in early 2004,¹⁰² and, in the period up to about 2006, a number of other overseas trips.¹⁰³ Generally, Ms Jackson could not recall the detail of specific withdrawals.¹⁰⁴ Nor could she recall the purpose of a trip to Hong Kong in October 2004 or a trip to the United States in March 2006.¹⁰⁵

G3.2 Withdrawals from late 2008, and the \$50,000 payment to Jeff Jackson

59. Ms Jackson gave evidence that most of the cash withdrawals from the NHDA from late 2008 were 'devoted' to costs associated with resisting Ms Pauline Fegan's attempt to gain control of the HSU Victoria No 1 Branch.¹⁰⁶ Ms Fegan was the president of the HSU Victoria No 1 Branch.¹⁰⁷ There were a number of withdrawals from the NHDA in the latter half of 2008, including a \$3,000 withdrawal on 23 July 2008, a further \$3,000 withdrawal on 23 September 2008, a \$7,000 withdrawal on 26 November 2008 and a

¹⁰¹ Jane Holt, witness statement, 17/6/14, para 78; see also Jane Holt MFI 1, 17/6/14, p 4, Jackson MFI 5, 28/8/14, p 1065 and Katherine Jackson, 28/8/14, T:788.40.

¹⁰² Katherine Jackson, 28/8/14, T:789.9.

¹⁰³ Katherine Jackson, 28/8/14, T:791.20.

¹⁰⁴ Katherine Jackson, 28/8/14, T:789.28, T:790.45, T:791.8.

¹⁰⁵ Katherine Jackson, 28/8/14, T:790.22-24, T:791.22-31.

¹⁰⁶ Katherine Jackson, witness statement, 28/8/14, para 97.

¹⁰⁷ Katherine Jackson, witness statement, 28/8/14, para 13.

\$5,000 withdrawal on 24 December 2008.¹⁰⁸ Ms Jackson agreed that at ‘various times’ during the period when those transactions occurred she provided sums withdrawn from the NHDA to Mr Jeffrey Jackson, her former husband.¹⁰⁹ Although some withdrawals from the NHDA were used to meet requests for money for political purposes from persons other than Mr Jackson, Ms Jackson’s evidence was that the ‘bulk of the withdrawals’ in the relevant time period were provided to Mr Jackson for him to use in his ‘battle against Ms Fegan’.¹¹⁰

60. On 23 March 2009, Ms Holt transferred \$50,000 from the HSU Victoria No 3 Branch account to the NHDA.¹¹¹ The next day, 24 March 2009, Ms Jackson authorised the withdrawal of \$50,000 from the NHDA,¹¹² and a cheque for that amount was drawn in favour of Mr Jackson. Mr Jackson was at that time separated from Ms Jackson. He was also at that time an officer of the HSU Victoria No 1 Branch.¹¹³ Ms Jackson and Mr Jackson separated permanently in March 2008.¹¹⁴
61. Mr Jackson deposited that money into an account which was jointly in his and Ms Jackson’s names.¹¹⁵ However, it is not in dispute that Ms Jackson left the ‘conduct and maintenance’ of the account to Mr Jackson; he controlled the account.¹¹⁶
62. On 30 July 2014, Ms Jackson stated that her belief at the time of making the payment was that it was ‘to do with a fight that was going on in the No 1 Branch’ which involved Ms Fegan.¹¹⁷ Following that examination, Ms Jackson reiterated in a supplementary statement that the \$50,000 was paid to Mr Jackson ‘to help pay a range of costs incurred

¹⁰⁸ Jackson MFI-5, 28/8/14, pp 1084, 1086-1087; Katherine Jackson, 28/8/14, T:792.39-44.

¹⁰⁹ Katherine Jackson, 28/8/14, T:793.15.

¹¹⁰ Katherine Jackson, 28/8/14, T:793.17-31; Katherine Jackson, witness statement, 28/8/14, para 97.

¹¹¹ Jane Holt, witness statement, 17/6/14, para 78; see also Jane Holt MFI 1, 17/6/14, p 334.

¹¹² Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 190.

¹¹³ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 191; Katherine Jackson, 30/7/14, T:410.12-27; Katherine Jackson, witness statement, 28/8/14, para 13.

¹¹⁴ Katherine Jackson, witness statement, 28/8/14, para 12. See also Katherine Jackson, 28/8/14, T:795.26 and Katherine Jackson, 30/7/14, 410.22.

¹¹⁵ Katherine Jackson, 28/8/14, T:791.47 -T:792.2; Jeffrey Jackson MFI-1, 27/84, pp 22, 7; Jeffrey Jackson, 27/8/14, T:704.18-28.

¹¹⁶ Katherine Jackson, 28/8/14, T:792.5-27. See also Katherine Jackson, 29/8/14, T:987.29-45 and Jeffrey Jackson, 27/8/14, T:704.28-36, T:721.10-25.

¹¹⁷ Katherine Jackson, 30/7/14, T:411.24-27, T:412.9-11.

in relation to the attempts by [him] and his supporters to resist what may be described as a “hostile takeover” of the HUS Victoria No 1 Branch by Ms Fegan in late 2008.¹¹⁸

63. Asked whether she had disclosed to the Branch Committee of Management that she proposed to ‘pay over \$50,000 to Mr Jackson’, Ms Jackson’s initial response was: ‘I may have raised it with certain people on BCOM ...’¹¹⁹ She then added: ‘Just from memory, probably, yes.’¹²⁰
64. Ms Jackson did not disclose the payment in the accounts of HSU Victoria No 3 Branch as a ‘related party transaction’. She said that was because, in her view, the payment was not a ‘related party transaction because the NHDA was not an account of the HSU’.¹²¹ Ms Jackson accepted that the payment would have constituted an ‘impermissible use of union money’ had the money been paid directly from the HSU Victoria No 3 Branch account to Mr Jackson.¹²²
65. However, Ms Jackson’s evidence was that the payment did not bear that character because the money was paid through the NHDA.¹²³ That followed, on Ms Jackson’s evidence and contention, because once funds were transferred from the HSU Victoria No 3 Branch account into the NHDA, the funds ceased to be ‘union funds’.¹²⁴ Ms Jackson also denied the proposition that the payment from the HSU Victoria No 3 Branch account to the NHDA ought to have been disclosed as a related party transaction if, as appeared to follow from her evidence, the money was being transferred to her to do with ‘in effect’ as she saw fit.¹²⁵

¹¹⁸ Katherine Jackson, witness statement, 28/8/14, para 97; Katherine Jackson, 28/8/14, T:791.41-45.

¹¹⁹ Katherine Jackson, 30/7/14, T:412.45-47.

¹²⁰ Katherine Jackson, 30/7/14, T:413.12.

¹²¹ Katherine Jackson, 30/7/14, T:413.25-26.

¹²² Katherine Jackson, 30/7/14, T:413.413.37-43.

¹²³ Katherine Jackson, 30/7/14, T:413.45 -414.1.

¹²⁴ Katherine Jackson, 30/7/14, T:415.12-15.

¹²⁵ Katherine Jackson, 30/7/14, T:414.3-8, T:415.17-23.

G3.3 *Ms Jackson's and Mr Jackson's property settlement in March 2010*

66. On 18 March 2010, the Family Court made orders, by consent, which reflected a property settlement agreed between Ms Jackson and Mr Jackson.¹²⁶ Relevantly, order 8 provided:

8. The Wife pay to the Husband the sum of \$120,000 (“the payment”) and the payment be made as follows:
 - (a) By the Husband retaining the sum of \$102,000 already received from the Wife since separation;
 - (b) The balance, being \$18,000, within 30 days of the date of these orders.

67. In the period from March 2008, when the Jacksons separated,¹²⁷ to December 2009, shortly before the March 2010 settlement, at least \$107,800 was withdrawn from the NHDA.¹²⁸ That figure excludes amounts in the hundreds.¹²⁹ Ms Jackson denied that the ‘sum of \$102,000 already received’ by Mr Jackson from Ms Jackson reflected ‘moneys that had come across to Mr Jackson from the NHDA’.¹³⁰ She said the funds she paid to Mr Jackson referred to in the Family Court orders came from other sources, including her own personal bank account, and she provided to the Commission a bundle of bank statements relating to her own account.¹³¹ On 22 January 2009, Ms Jackson transferred \$8,000 from her personal account to Mr Jackson; she transferred a further \$7,000 on 20 July 2009.¹³²

68. On 7 April 2010, close to a month after the Family Court orders were made, Ms Jackson caused \$22,000 to be transferred from the HSU Victoria No 3 Branch account to the NHDA.¹³³ Ms Jackson denied that she contemplated that the funds transferred into the NHDA would be paid to Mr Jackson in compliance with the obligation imposed by

¹²⁶ Jackson MFI-5, 28/8/14, p 1164.

¹²⁷ Katherine Jackson, witness statement, 28/8/14, para 12. See also Katherine Jackson, 28/8/14, T:795.26 and Katherine Jackson, 30/7/14, T:410.22.

¹²⁸ Jackson MFI-5, 28/8/14, pp 1161-1162. See also Katherine Jackson, 28/8/14, T:795.28-39.

¹²⁹ Katherine Jackson, 28/8/14, T:796.11-12.

¹³⁰ Katherine Jackson, 28/8/14, T:795.13-15 and see also T:796.19; Katherine Jackson, 29/8/14, T:898.37-40.

¹³¹ Katherine Jackson, 28/8/14, T:796.22 -T:797.17, T:892.41. See Jackson MFI-7, 28/8/14.

¹³² Jackson MFI-7, 28/8/14 and see T:892.41 -T:893.16. See also Jeffrey Jackson MFI-1, 27/8/14, p 21.

¹³³ Jackson MFI-5, 28/8/14, p 1092 and Katherine Jackson, 28/8/14, T:800.16-32.

order 8(b) to pay Mr Jackson \$18,000 ‘within 30 days of the date of [the] orders’.¹³⁴ In fact, her evidence to the Commission was that she had never paid \$18,000, or any amount towards that figure, pursuant to order 8(b).¹³⁵

69. Ms Jackson admitted that from late 2008 she provided funds from the NHDA to Mr Jackson.¹³⁶ This included the amount of \$50,000 in March 2009 (see above).¹³⁷
70. Mr Jackson gave evidence that the \$50,000 he received in March 2009 was ‘in relation to a property settlement’.¹³⁸ However, there are real difficulties with Mr Jackson’s evidence. His memory, by his own admission, was unreliable. He suffered ‘memory dysfunctions’ as a result of a four to five month coma he fell into in his late 30s.¹³⁹ He explained that, particularly in the ‘last few years’, the fault in his memory had come to the fore and that ‘parts of [his] memory just completely dissipate’.¹⁴⁰ Further, medication he takes to treat diabetes also adversely affects his memory.¹⁴¹
71. Under cross-examination by Ms Jackson’s counsel, Mr Jackson accepted that he probably did need money in the first part of 2009 for ‘political electioneering purposes’ relating to the HSU Victoria No 1 Branch, and that it was probable that he had asked Ms Jackson for funding for those purposes.¹⁴² He could not deny that the payment of \$50,000 he received in March 2009 from Ms Jackson was ‘in relation to political electioneering purposes for the No 1 Branch’.¹⁴³
72. Although he recalled an ‘allocation of moneys for [his] property settlement’,¹⁴⁴ he could not be certain whether he received ‘hard money’ for the property settlement or a

¹³⁴ Katherine Jackson, 28/8/14, T:800.32.

¹³⁵ Katherine Jackson, 29/8/14, T:899.9.

¹³⁶ Katherine Jackson, 28/8/14, T:793.15.

¹³⁷ Jackson MFI 30 July 2014 Vol 1, 30/7/14, p 191; Katherine Jackson, 30/7/14, T:410.12-27.

¹³⁸ Jeffrey Jackson, 27/8/14, T:703.37.

¹³⁹ Jeffrey Jackson, 27/8/14, T:721.37-42.

¹⁴⁰ Jeffrey Jackson, 27/8/14, T:721.44-45.

¹⁴¹ Jeffrey Jackson, 27/8/14, T:721.46 -722.3.

¹⁴² Jeffrey Jackson, 27/8/14, T:726.21-29.

¹⁴³ Jeffrey Jackson, 27/8/14, T:727.6-16.

¹⁴⁴ Jeffrey Jackson, 27/8/14, T:731.32-34.

‘notional allocation [of] moneys’.¹⁴⁵ The figure of \$102,000 was notional in the sense that it reflected payments already made by Ms Jackson relating, for example, to the care of their children.¹⁴⁶

73. Ultimately, Mr Jackson accepted that what he ‘reconstructed’ or what he had ‘come to recall’ was the product, at least in part, of what he had read in *The Australian* newspaper.¹⁴⁷ Further, during an interview on 20 August 2014 with Commission staff, Mr Jackson was asked whether he remembered why Ms Jackson drew a cheque in his favour in March 2009 for \$50,000. He responded: ‘I’ve been thinking I’d run up bills in terms of my involvement in [a] campaign, et cetera, whether it was legal expenses and other things’.¹⁴⁸ This earlier answer, which is inconsistent with Mr Jackson’s later evidence to the Commission that the payment he received was in connection with the property settlement between him and Ms Jackson, further reinforces the unreliability of Mr Jackson’s memory.
74. There is documentary evidence to suggest Mr Jackson spent the \$50,000 Ms Jackson paid to him on personal, as opposed to campaign, expenses.¹⁴⁹ However, that evidence does not conclusively tell against Ms Jackson’s evidence that the \$50,000 she paid to Mr Jackson was to aid his campaign against Ms Fegan. Ms Jackson may have paid the money to Mr Jackson for that purpose, and Mr Jackson may have spent the money, unbeknownst to her, for a different purpose.
75. The \$50,000 transferred to the NHDA in March 2009, and indeed the operation by Ms Jackson of the NHDA account generally, has now been raised or sought to be raised in Federal Court Proceedings VID1042/2013 (Federal Court Proceedings). In particular, in the Federal Court proceedings the HSU alleges that between February 2004 and 24 May 2010 there was a transfer of \$246,500 of branch funds of the Victorian No 3 Branch to the NHDA, particularising a series of transfers in similar though not identical form to the transfers identified by Ms Holt in her evidence as set out in paragraph 58 above.¹⁵⁰

¹⁴⁵ Jeffrey Jackson, 27/8/14, T:731.36-40.

¹⁴⁶ Jeffrey Jackson, 27/8/14, T:730.26-29, 41-47.

¹⁴⁷ Jeffrey Jackson, 27/8/14, T:731.45 -T:732.3.

¹⁴⁸ Jeffrey Jackson MFI-3, 27/14, p 9.

¹⁴⁹ Jackson MFI-5, 28/8/14, pp 1141-1157.

¹⁵⁰ Amended Statement of Claim at para 70.

The HSU alleges in summary that the BCOM did not approve of or give informed consent to these transfers and that each of the transfers involved an improper use by Ms Jackson of her position as Branch Secretary. Since these matters are before, and will be determined in, the Federal Court proceedings, they are not considered further in these submissions (as to which see Chapter 1.1 above).

G3.4 *Payments to the NHDA after the amalgamation of the Victoria No 1 Branch, the Victoria No 3 Branch and the NSW Branch of the HSU*

76. On 24 May 2010, the Victoria No 3 Branch merged with the Victoria No 1 Branch and the NSW Branch of the HSU to form the HSU East Branch.¹⁵¹ Until then, Ms Jackson was Secretary of the Victoria No 3 Branch.¹⁵² Upon the merger of the branches, she became Executive President of the HSU East Branch.¹⁵³ Michael Williamson became the General Secretary of the HSU East Branch, a position he held until September 2011.¹⁵⁴ Relevantly, the ‘assets, funds and property of, and the debts and liabilities incurred by’, the Victoria No 3 Branch became the ‘assets, fund and property of, and the debts and liabilities of, the HSU East Branch.’¹⁵⁵
77. But even after she ceased to be the Secretary of the Victoria No 3 Branch – since it no longer existed – Ms Jackson continued to cause money to be transferred to the NHDA, including an amount of \$12,000 on 27 May 2010.¹⁵⁶ Ms Jackson said that in making these transfers she continued to rely on the authorisation she had been given by the BCOM in 2003 even though the BCOM had ceased to exist since the Victoria No 3 Branch itself no longer existed.¹⁵⁷ Although the branch no longer existed, Ms Jackson said the ‘accounts of the organisation hadn’t properly been merged’ by 24 May 2010,¹⁵⁸

¹⁵¹ Christopher Brown, witness statement, 27/8/14, para 22.

¹⁵² Christopher Brown, witness statement, 27/8/14, para 22.

¹⁵³ Christopher Brown, witness statement, 27/8/14, para 24 and Annexure 1C at 241. See also Katherine Jackson, 28/8/14, T:837.3.

¹⁵⁴ Christopher Brown, witness statement, 27/8/14, para 27. See also Katherine Jackson, 28/8/14, T:836.46.

¹⁵⁵ Christopher Brown, witness statement, 27/8/14, Annexure 1C at 242. Katherine Jackson, 28/8/14, T:838.12.

¹⁵⁶ Katherine Jackson, 28/8/14, T:798.8 and Jackson MFI-5, 28/8/14, p 1093.

¹⁵⁷ Katherine Jackson, 28/8/14, T:797.44 and Katherine Jackson, witness statement, 28/8/14, para 155.

¹⁵⁸ Katherine Jackson, 28/8/14, T:798.27-39.

and she advised Mr Williamson that she was going to transfer the \$12,000 amount to the NHDA.¹⁵⁹

78. On 13 October 2010, nearly 5 months after the merger of the HSU branches, Ms Jackson caused a further \$6,000 to be transferred from the Victoria No 3 account to the NHDA.¹⁶⁰ To withdraw money from any account of the union, Ms Jackson, who at this stage was Executive President of the HSU East Branch, needed the authority of that branch.¹⁶¹ She did not obtain that authority.¹⁶² Nevertheless, she did not agree that there was ‘no legal basis on which [she] could cause funds to be withdrawn [from the No 3 Branch account] on 13 October 2010’.¹⁶³ She said in evidence to the Commission:¹⁶⁴

I would say that at that time, while we were still consolidating our affairs, the understanding between the parties was that it was business as usual in relation to off-line accounts, slush funds, whatever you’d like to call them.

79. However, she added that payments into or out of the NHDA still needed to be consistent with the ‘original reason for setting up the account’.¹⁶⁵

G3.5 Payments from the NHDA after ceasing to hold office

80. On 21 June 2012, Flick J made orders providing for the HSU East Branch to be reconstituted as three separate branches, and requiring all the offices in the HSU East Branch – including, relevantly, the office held by Ms Jackson as Executive President – to be vacated. The separate branches would be those that had merged in May 2010 to form the HSU East Branch – the NSW Branch, the Victoria No 1 Branch and the

¹⁵⁹ Katherine Jackson, 28/8/14, T:798.28 -T:799.16.

¹⁶⁰ Katherine Jackson, 28/8/14, T:799.18-22 and Jackson MFI5 28 August 2014 at 1094.

¹⁶¹ Katherine Jackson, 28/8/14, T:799.24-27, 35.

¹⁶² Katherine Jackson, 28/8/14, T:799.39.

¹⁶³ Katherine Jackson, 28/8/14, T:799.41-44.

¹⁶⁴ Katherine Jackson, 28/8/14, T:799.44 -T:800.1.

¹⁶⁵ Katherine Jackson, 28/8/14, T:800.12-13.

Victoria No 3 Branch.¹⁶⁶ In November 2012, Mr McGregor became the Secretary of the reconstituted Victoria No 3 Branch, and he continues to hold that position.¹⁶⁷

81. On 6 September 2012, \$9,000 was withdrawn from the NHDA.¹⁶⁸ Ms Jackson said that that amount was provided to Mr Bolano, Ms Behrens and Ms Hart for their election campaigns.¹⁶⁹
82. On 26 November 2013, the NHDA was closed.¹⁷⁰ Ms Jackson retained the residual balance of \$1422.83 as reimbursement for expenses she had incurred.¹⁷¹

H GOVERNANCE ISSUES

83. The above evidence paints a stark picture of poor governance in the Victoria No 3 Branch. The governance of the Branch failed in multiple respects, and at multiple levels. First, on the available evidence, the 2003 BCOM resolution authorising expenditure of the Peter Mac money was drafted in broad and vague terms. For all intents and purposes it conferred on Ms Jackson an almost unlimited discretion to spend. The limitation it did impose – that the expenditure ‘advance the interests of the union’ – was so uncertain in its content that it simply could not practically have operated as a meaningful restraint on Ms Jackson’s authority.
84. Second, once the Peter Mac money left the Branch’s account, there existed no Branch record – apart from an exercise book – of when money was being withdrawn from the NHDA, to whom it was being paid, and for what purpose it was being expended. Expenditure from the account was simply unaccounted for in the records of the Branch. The only means by which Ms Jackson kept track of expenditure from the NHDA – the exercise book – can only be described as inadequate.

¹⁶⁶ *Brown v Health Services Union* [2012] FCA 644. See also Christopher Brown, witness statement, 27/8/14, para 59.

¹⁶⁷ Craig McGregor, witness statement, 17/6/14, para 7.

¹⁶⁸ Jackson MFI-5, 28/8/14, p 1106.

¹⁶⁹ Katherine Jackson, 28/8/14, T:801.2-7 and Katherine Jackson, 28/8/14, para 97. See also Katherine Jackson, 19/6/14, T:869.36-38.

¹⁷⁰ Jackson MFI-5, 28/8/14, p 1111.

¹⁷¹ Jackson MFI- 5, 28 /14, p 1111; Katherine Jackson, witness statement, 28/8/14, para 97 and Katherine Jackson, 28/8/14, T:801.20.

85. Third, the evidence demonstrates the danger of reposing blind trust in a single, powerful individual – in this case, Ms Jackson. Transfers to the NHDA were not hidden from the BCOM, and there is some limited evidence that, on occasion, proposed expenditure from the NHDA was discussed at BCOM meetings. But there seems to have been no requirement that Ms Jackson seek BCOM approval before spending money in the NHDA.
86. Fourth, and consistently with what is said elsewhere in these submissions, the NHDA case study illustrates the significant risk that relevant entities set up by union officials ostensibly to advance the interests of their members will be used instead simply as a vehicle to circumvent the law.

I AUDITS OF THE HSU VICTORIA NO 3 BRANCH'S ACCOUNTS

11.1 Requirement for financial reports of the HSU Victoria No 3 Branch to be audited

87. The HSU Victoria No 3 Branch was required to prepare a 'general purpose financial report' in accordance with the Australian Accounting Standards as soon as practicable after the end of each financial year.¹⁷² The Branch's auditor was required to audit the financial report of the Branch for each financial year and 'make a report in relation to the year to the reporting unit' stating whether 'in the auditor's opinion the general purpose financial report [was] presented fairly in accordance with' specified requirements (to the extent they applied), including the Australian Accounting Standards.¹⁷³ The form and content of the report needed to be 'in accordance with the Australian Auditing Standards',¹⁷⁴ defined as 'the auditing and assurance standards

¹⁷² Section 253(1) of the 'Registration and Accountability of Organisations' schedule (the **RAO schedule**) of the *Workplace Relations Act 1996* (later, s 253(1) of the *Fair Work (Registered Organisations) Act 2009*; see Sch 22 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* which came into force on 1 July 2009 (see s 2)). See also the definition of 'reporting unit' in s 242.

¹⁷³ Section 257(1), (5) of the RAO schedule of the *Workplace Relations Act 1996* (Cth) (see later s 257(1), (5) of the *Fair Work (Registered Organisations) Act 2009* (Cth)).

¹⁷⁴ Section 257(8) of RAO schedule of the *Workplace Relations Act 1996* (Cth) (later s 257(8) of the *Fair Work (Registered Organisations) Act 2009* (Cth)).

issued by CPA Australia and the Institute of Chartered Accountants in Australia as in force, or applicable, from time to time.’¹⁷⁵

88. Until February 2006, CPA Australia and The Institute of Chartered Accountants Australia developed professional standards that applied to members of those professional bodies.¹⁷⁶ The Accounting Professional and Ethical Standards Board, formed by CPA Australia as well as the Institute of Chartered Accountants and later joined by the National Institute of Public Accounts (subsequently the Institute of Public Accountants), then took over that function.¹⁷⁷ Standards developed by the Accounting Professional and Ethical Standards Board are mandatory for accounting professionals who are members of CPA Australia, The Institute of Chartered Accountants Australia or the Institute of Public Accountants.¹⁷⁸

11.2 Professional standards applying to auditors

89. CPA Australia and The Institute of Chartered Accountants Australia issued APS 1.1 (‘Conformity with Auditing Standards’) in October 1995, which required members of those bodies to comply with the standards issued by the Australian Accounting Research Foundation on behalf of the Australian Society of Certified Practising Accountants and The Institute of Chartered Accountants in Australia.¹⁷⁹ Later, the Accounting Professional and Ethical Standards Board issued APES 410 (‘Conformity with Auditing and Assurance Standards’), which replaced APS 1.1 with effect from 1 July 2006.¹⁸⁰ APES 410 was then reissued as APES 210 (‘Conformity with Auditing and Assurance Standards’) on 30 September 2008.¹⁸¹ (That standard was then updated and reissued in November 2011,¹⁸² but that version of the standard is irrelevant for present purposes.)

¹⁷⁵ See the definition of ‘Australian Auditing Standards’ in s 6 of the RAO schedule of the *Workplace Relations Act 1996* (Cth) (see later s 6 of the *Fair Work (Registered Organisations) Act 2009* (Cth)).

¹⁷⁶ Accounting Professional and Ethical Standards Board: <http://www.apesb.org.au/superseded-pronouncements>.

¹⁷⁷ Accounting Professional and Ethical Standards Board: <http://www.apesb.org.au/apesb-content/47/about-us>.

¹⁷⁸ Accounting Professional and Ethical Standards Board: <http://www.apesb.org.au/apesb-content/76/standards-and-guidance>.

¹⁷⁹ See paras 2 and 5 of APS 1.1 (‘Conformity with Auditing Standards’): HSU Supplementary Tender Bundle, 31/10/14, p 408.

¹⁸⁰ See para 1.1-1.2, 4.1 of APES 410 (‘Conformity with Auditing and Assurance Standards’): HSU Supplementary Tender Bundle, 31/10/14, pp 411-412; Stephanie Kemp (Ed), *Auditing and Assurance Handbook 2012* (2012), 1834.

¹⁸¹ Stephanie Kemp (Ed), *Auditing and Assurance Handbook 2012* (2012), 1834.

¹⁸² Stephanie Kemp (Ed), *Auditing and Assurance Handbook 2012* (2012), 1834.

The standards issued by the Accounting Professional and Ethical Standards Board apply to members of professional bodies who have adopted the relevant standard ‘as applicable to their membership, as defined by that professional body’.¹⁸³ As appears above, members of each of CPA Australia, The Institute of Chartered Accountants Australia and the Institute of Public Accountants (formerly the National Institute of Public Accounts) are required to comply with the standards issued by the Accounting Professional and Ethical Standards Board.

90. Both APES 410 and APES 210 required members of those bodies to comply with standards issued by the Auditing and Assurance Standards Board. The Auditing and Assurance Standards Board, as it currently exists and has existed since 1 July 2004, is a statutory body established under s 227A of the *Australian Securities and Investments Commission Act 2001* (Cth).¹⁸⁴ Before then, there was a body known as the Auditing and Assurance Standards Board of the Australian Accounting Research Foundation which developed Australian auditing standards and statements.¹⁸⁵
91. For the financial years ending 30 June 2004, 30 June 2005, 30 June 2006, 30 June 2007, 30 June 2008, 30 June 2009 and 24 May 2010 (when the HSU Victoria No 3 Branch merged with the Victoria No 1 Branch and the NSW Branch) there were in force a number of auditing standards, issued by the Auditing and Assurance Standards Board of the Australian Accounting Research Foundation and later the Auditing and Assurance Standards Board as constituted under statute. Relevantly for present purposes, one of those standards dealt with ‘Audit Documentation’. Among other things, it addressed the length of time for which auditors ought to retain audit documentation. This was at least 6 or 7 years (depending on the applicable standard).¹⁸⁶

¹⁸³ APES 210 (‘Conformity with Auditing and Assurance Standards’), issued 30 September 2008, para 1.4 together with the definition of ‘Member’ in para 2; see previously, Accounting Professional and Ethical Standards Board, APES 410 (‘Conformity with Auditing and Assurance Standards’), paras 1.2, 2.1 and the definition of ‘Member’ in para 3.1: HSU Supplementary Tender Bundle, 31/10/14, 411-412.

¹⁸⁴ Section 227A of the *Australian Securities and Investments Commission Act 2001* was inserted by the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* (Cth) (see it 18 in Sch 1, which commenced on 1 July 2014: see s 2).

¹⁸⁵ See, for example, AUS208 (‘Documentation’).

¹⁸⁶ For the financial years ending 30 June 2007, 30 June 2008, 30 June 2009 and 24 May 2010, see para 33 of Auditing Standard ASA 230 (‘Audit Documentation’). For the financial years ending 30 June 2004, 30 June 2005 and 30 June 2006, see para 13 of AUS 208 (‘Documentation’).

92. Another standard dealt with ‘Audit Evidence’. That standard relevantly addressed the requirement to ‘obtain sufficient appropriate audit evidence’ to enable an auditor to ‘draw reasonable conclusions’ on which to base an audit opinion.¹⁸⁷ For most of the relevant financial years, the relevant standard provided that ‘enquiry alone ordinarily does not provide sufficient audit evidence to detect a material misstatement at the assertion level’.¹⁸⁸ In short, ‘assertions’ refer to the representations made in a financial report by those responsible for the governance of an entity.¹⁸⁹ Also, for most of the relevant financial years, the relevant standard provided that an auditor needed to ‘test the operating effectiveness of controls in preventing, or detecting and correcting, material misstatements at the assertion level’ if their risk assessment included an expectation of the effectiveness of an entity’s controls.¹⁹⁰ This is known as ‘test of controls’.

11.3 HSU Victoria No 3 Branch’s auditors

93. Iaan Dick and John Agostinelli were auditors of the HSU Victoria No 3 Branch.

94. Mr Dick was the auditor of the HSU Victoria No 3 Branch between 2002 and 2008.¹⁹¹ He described the audits he conducted in that period as ‘quite low-level’.¹⁹² He explained:¹⁹³

I would normally obtain a copy of the MYOB database from Ms Holt and I would take it off-site and review it for about three to four hours. I would also print out the transaction log (**general ledger**) for the year and go through the transactions. I undertook this primarily to look for and identify any misallocations.

¹⁸⁷ For the financial years ending 30 June 2007, 30 June 2008, 30 June 2009 and 24 May 2010, see para 5 of Auditing Standing ASA 500 (‘Audit Evidence’) issued April 2006 (see para 3 for operative date). For the financial year ending 30 June 2006, see para 2 of AUS 502 (‘Audit Evidence’) issued February 2004 (see para 39 for operative date). For financial years ending 30 June 2004 and 30 June 2005, see para 2 of AUS 502 (‘Audit Evidence’) issued October 1995 (see para 26 for the operative date).

¹⁸⁸ See para 37 of Auditing Standing ASA 500 (‘Audit Evidence’) issued April 2006; para 32 of AUS 502 (‘Audit Evidence’) issued February 2004. Compare para 22 of AUS 502 (‘Audit Evidence’) issued October 1995.

¹⁸⁹ See para 19 of Auditing Standing ASA 500 (‘Audit Evidence’) issued April 2006; para 15 of AUS 502 (‘Audit Evidence’) issued February 2004; and para 13 of AUS 502 (‘Audit Evidence’) issued October 1995.

¹⁹⁰ See paras 24(b), 26 of Auditing Standing ASA 500 (‘Audit Evidence’) issued April 2006; paras 19(b), 21 of AUS 502 (‘Audit Evidence’) issued February 2004. See also para 11 of AUS 502 (‘Audit Evidence’) issued October 1995.

¹⁹¹ Iaan Dick, witness statement, 19/6/14, para 17.

¹⁹² Iaan Dick, witness statement, 19/6/14, para 22.

¹⁹³ Iaan Dick, witness statement, 19/6/14, para 24 (emphasis in original); Iaan Dick, 19/6/14, T:873.3-12.

95. That was his practise throughout the period he was the auditor of the HSU Victoria No 3 Branch.¹⁹⁴ In his statement to the Commission Mr Dick explained:¹⁹⁵

It was not a high-level transaction audit, for example, I didn't go into much paper to check transactions. I would only do this if some particular expense account looked a bit odd and I would then go and look at it more thoroughly. Most of the time, however, I was not digging very deeply.

96. He went on to say later: 'most of the expenditure transactions in the No.3 Branch were not major items, so I only queried a small percentage of the transactions.'¹⁹⁶ His understanding, he explained, was that BCOM 'approved the accounts and the expenditure at various stages during the year.'¹⁹⁷ He said: 'If the BCOM had approved an item of expenditure, I would not dig much further to check those transactions.'¹⁹⁸ He believed that, generally, he would not have asked for an invoice from Ms Holt or Ms Jackson if they had given him an explanation for expenditure.¹⁹⁹

97. Mr Dick did not retain copies of BCOM minutes he reviewed during the course of his audits; he retained only a particular subset of documents from his audits.²⁰⁰ He said in his statement to the Commission that, at the time of his audits, he 'would have annotated the queries [he] had on the hard copy general ledger [he] had printed out',²⁰¹ adding: 'I would have disposed of those documents shortly after the audit, maybe keeping them for a period of approximately one year or until I started undertaking the next audit.'²⁰²

98. Mr Dick identified that \$80,000 had been paid to the NHDA during the financial year ending on 30 June 2004 (**2004 financial year**); \$20,000 was paid during the financial year ending 30 June 2005 (**2005 financial year**); \$18,000 was paid during the financial year ending 30 June 2006 (**2006 financial year**); and \$5,000 was paid during the financial year ending 30 June 2007 (**2007 financial year**).²⁰³ There were also transfers

¹⁹⁴ Iaan Dick, 19/6/14, T:873.11-12.

¹⁹⁵ Iaan Dick, witness statement, 19/6/14, para 30.

¹⁹⁶ Iaan Dick, witness statement, 19/6/14, para 37.

¹⁹⁷ Iaan Dick, witness statement, 19/6/14, para 45.

¹⁹⁸ Iaan Dick, witness statement, 19/6/14, para 46.

¹⁹⁹ Iaan Dick, witness statement, 19/6/14, para 60.

²⁰⁰ Iaan Dick, witness statement, 19/6/14, para 79; Iaan Dick, 19/6/14, T:878.18-20.

²⁰¹ Iaan Dick, witness statement, 19/6/14, para 81.

²⁰² Iaan Dick, witness statement, 19/6/14, para 82.

²⁰³ Iaan Dick, witness statement, 19/6/14, para 57.

totalling \$25,000 into the NHDA from the Victoria No. 3 account in the 2008 financial year.²⁰⁴

99. But Mr Dick recorded payments to the NHDA in the financial reports of the HSU Victoria No 3 Branch inconsistently. The report for the 2004 financial year included the \$80,000 paid to the NHDA in ‘Other expenses from ordinary activities’.²⁰⁵ The report for the 2005 financial year expressly identified the amount paid to the NHDA in that year – \$20,000 – and in the previous financial year – \$80,000.²⁰⁶
100. For the 2006 financial year, Mr Dick took the approach of ‘netting off’ – or offsetting – the payment to the NHDA against the ‘other’ or ‘sundry’ income of the branch.²⁰⁷ He did the same for the 2007 financial year.²⁰⁸ He explained that it was his ‘normal practice to net off all minor items of sundry income and expenditure in the financial statements in order to reduce the volume of accounts that the BCOM had to absorb.’²⁰⁹ Australian Accounting Standard 101, with which the HSU Victoria No 3 Branch was required to comply in the preparation of its general purpose financial report,²¹⁰ provides that income and expenses ‘shall not be offset unless required or permitted by an Australian Accounting Standard’.²¹¹ It relevantly states:²¹²

It is important that assets and liabilities, and income and expenses, are reported separately. Offsetting in the income statement or the balance sheet, except when offsetting reflects the substance of the transaction or other event, detracts from the ability of users both to understand the transactions, other events and conditions that have occurred and to assess the entity’s future cash flows.

101. Mr Dick’s rationale for ‘netting off’ in the 2006 and 2007 financial year cannot be reconciled with this statement in the Australian Accounting Standard. He said: ‘As an

²⁰⁴ Jane Holt, witness statement, 17/6/14, para 78.

²⁰⁵ Iaan Dick, MFI-1, 19/6/14, p 3; Iaan Dick, 19/6/14, T:875.2-4.

²⁰⁶ Iaan Dick, MFI-1, 19/6/14, 47; Iaan Dick, 19/6/14, T:875.25-28.

²⁰⁷ Iaan Dick, 19/6/14, T:876.33-46. Iaan Dick, witness statement, 19/6/14, para 63.

²⁰⁸ Iaan Dick, witness statement, 19/6/14, para 63.

²⁰⁹ Iaan Dick, witness statement, 19/6/14, para 65.

²¹⁰ Section 253 of the RAO schedule of the *Workplace Relations Act 1996* (Cth) (see later s 253 of the *Fair Work (Registered Organisations) Act 2009* (Cth)).

²¹¹ See para 32 of Australian Accounting Standard 101 as in force for the financial year beginning 1 July 2005 and ending 30 June 2006 and the financial year beginning 1 July 2006 and ending 30 June 2007.

²¹² See para 33 of Australian Accounting Standard 101 as in force for the financial year beginning 1 July 2005 and ending 30 June 2006 and the financial year beginning 1 July 2006 and ending 30 June 2007.

auditor, you are trying to make the accounts appear meaningful. By having many little categories, the accounts become less meaningful.²¹³ Contrary to Mr Dick's evidence, offsetting would, except in the circumstances contemplated by the Accounting Standard, appear to make an entity's accounts less meaningful. In the case of transfers to the NHDA, it removed the existence of these payments entirely from mention in the audited accounts.

102. Mr Dick believes that he would have queried the initial payment of \$80,000 to the NHDA because he would not have been 'aware of what the NHDA was'.²¹⁴ His recollection was that he 'just checked out what [the NHDA] was and that it was approved by BCOM.'²¹⁵ He later added:²¹⁶

Generally if I had seen a payment to the NHDA of anything less than \$20,000 after investigating the initial \$80,000 payment I would, I suspect not have investigated it further. I would have been satisfied by being convinced that BCOM had approved the payment, and I would not have gone any further looking for a receipt.

103. Mr Dick was not aware that the NHDA was an account operated by Ms Jackson.²¹⁷
104. Judged by reference to the professional standards summarised above, Mr Dick's audit practices were deficient in a number of respects. First, he did not retain all audit documentation for the period – at least 6 or 7 years – that may reasonably be expected of an auditor. Second, as appears from his evidence, he relied heavily on BCOM approval of expenditure. In other words, his audits depended on the effectiveness of the BCOM as a 'control' mechanism. Although it is legitimate to rely on controls as a source of evidence to draw reasonable conclusions on which to base an audit opinion, the 'operating effectiveness of controls in preventing, or detecting and correcting, material misstatements at the assertion level' cannot – and ought not to be – assumed. However, by Mr Dick's own admission, if 'the BCOM had approved an item of expenditure, [he] would not dig much further to check those transactions.'²¹⁸ Finally, as also appears from Mr Dick's evidence, if he queried an item of expenditure and either Ms Holt or

²¹³ Iaan Dick, witness statement, 19/6/14, para 70.

²¹⁴ Iaan Dick, witness statement, 19/6/14, para 58.

²¹⁵ Iaan Dick, witness statement, 19/6/14, para 58.

²¹⁶ Iaan Dick, witness statement, 19/6/14, para 78.

²¹⁷ Iaan Dick, 27/8/14, T:780.24-26.

²¹⁸ Iaan Dick, witness statement, 19/6/14, para 46.

Ms Jackson had given him an explanation, he generally would not have asked for an invoice. The deficiency in that approach is obvious. It is the reason the relevant standard provides that, ordinarily, ‘enquiry alone ... does not provide sufficient audit evidence to detect a material misstatement at the assertion level’.

105. Mr Agostinelli completed an audit for the financial year ending on 30 June 2009 (**2009 financial year**), and an exit audit around May 2010 when the HSU Victoria No 3 Branch merged with the Victoria No 1 Branch and the NSW Branch.²¹⁹ Mr Agostinelli and his audit team used an audit program, ‘Caseware’, which he explained ‘acts as a document manager to collate all audit documentation prepared during the course of the audit and provides tools such as standard templates and sample calculators based on Australian Auditing Standards’.²²⁰ Mr Agostinelli provided to the Commission three volumes of audit documentation.²²¹
106. For each of the financial years ending 30 June 2009 and 24 May 2010, Mr Agostinelli performed a ‘substantive audit’, which he explained does not ‘rely on the internal controls of the organisation’ but rather involves substantiating balance sheet items as well as sample testing income and expenditure for accuracy.²²² He explained:²²³
- We would write to third parties, such as banks and solicitors, to verify bank accounts. We would sample test the expenses and income areas against records of the organisation such as member records, transactions that go into the bank account, invoices and various other authorisations.
107. His audit documentation shows, for example, that he conducted expenditure testing. For the financial year ending 30 June 2009, he randomly selected 30 items, above a ‘certain material amount’, to test.²²⁴
108. If Mr Agostinelli made inquiries in relation to particular items of expenditure, he required supporting documents to resolve the inquiry. Generally, he required an invoice.²²⁵

²¹⁹ John Agostinelli, witness statement, 17/6/14, para 4; John Agostinelli, 17/6/14, T:695.41 -T:696.2.

²²⁰ John Agostinelli, witness statement, 17/6/14, para 11.

²²¹ John Agostinelli, MFI-1, MFI-2 and MFI-3, 17/6/14.

²²² John Agostinelli, witness statement, 17/6/14, 17/6/14, para 10; John Agostinelli, 17/6/14, T:696.4-14.

²²³ John Agostinelli, 17/6/14, T:696.16 -T:696.22; John Agostinelli, witness statement, 17/6/14, para 10.

²²⁴ John Agostinelli, 17/6/14, T:702.4 -T:702.16.

109. For the financial year ending 30 June 2009, Mr Agostinelli identified 15 issues during the course of his audit.²²⁶ This evidence is indicative of the thoroughness of Mr Agostinelli's audit.
110. For the 2009 financial year, and for the period ending 24 May 2010, payments to the NHDA were recorded as 'Campaign expenses'.²²⁷ Mr Agostinelli queried the cumulative payment of \$75,000 to the NHDA in the 2009 financial year.²²⁸ His notes also indicate that he raised a query about 'COM' – Committee of Management – minutes.²²⁹ Mr Agostinelli reviewed minutes of BCOM meetings held in the 2009 financial year.²³⁰ He also reviewed minutes of BCOM meetings held in the year ending 24 May 2010. He noted, in relation to a meeting held on 25 February 2010, that BCOM authorised the branch to 'fund the NHDA up to \$90,000 for the next financial year'.²³¹
111. In relation to payments to the NHDA for the period ending 24 May 2010, Mr Agostinelli noted:²³²

Amounts are paid at the discretion of Kathy, no invoice or supporting documentation to support amount being paid.

NHDA is the National Health Development Account. All branches contribute to this account for research/campaign purposes. Payments are made at the discretion of the Branch Secretary whereby they determine the amount and timing of the payment. As per minutes they can only contribute up to a \$90K limit. The payments are made at the discretion of the Branch Secretary or when the National office requests it.

Last year the NHDA expense was \$75K due to more contributions being made for the election campaign. This year no such campaign was run and therefore contribution decreased.

112. Mr Agostinelli later noted: 'Based on discussion with Branch Secretary, Kathy Jackson, she confirmed that the amount of \$45,500 was authorised by her for payment in to the

²²⁵ John Agostinelli, witness statement, 17/6/14, paras 28-29; John Agostinelli, 17/6/14, T:708.26 -T:708.28.

²²⁶ John Agostinelli, 27/8/14, T:750.8 -T:750.16.

²²⁷ John Agostinelli, witness statement, 17/6/14, para 34; John Agostinelli, 17/6/14, T:697.24-34.

²²⁸ John Agostinelli, MFI-2, 17/6/14, p 601; see earlier, 475, querying a payment on 4 September 2008 to the NHDA; John Agostinelli, 17/6/14, T:702.39 -703.5.

²²⁹ John Agostinelli, MFI-2, 17/6/14, 601; John Agostinelli, 17/6/14, T:703.5.

²³⁰ John Agostinelli, MFI-2, 17/6/14, p 621; John Agostinelli, 17/6/14, T:703.16-14. The minutes are at John Agostinelli, MFI-1, 17/6/14, pp 172 – 199.

²³¹ John Agostinelli, MFI-3, 17/6/14, p 742.

²³² John Agostinelli, MFI-3, 17/6/14, p 903; John Agostinelli, 17/6/14, T:710.16-46.

NHDA'.²³³ \$45,500 is the amount transferred to the NHDA in the period from 1 July 2009 to 24 May 2010.²³⁴

113. Like Mr Dick, Mr Agostinelli was not aware – because he was not informed – that the NHDA was an account held in Ms Jackson's name.²³⁵
114. Mr Agostinelli's audit practices stand in marked contrast to Mr Dick's. The sheer volume of audit documentation which, unlike Mr Dick, Mr Agostinelli retained, demonstrates the thoroughness of the audits he conducted. Further, the robustness of Mr Agostinelli's approach, in contrast to Mr Dick's, is evidenced by his insistence that items of expenditure be substantiated – generally, by provision of invoices – and the testing, including expenditure testing, he performed.

²³³ John Agostinelli, MFI-3, 17/6/14, p 905; John Agostinelli, 27/8/14, T:749.22.

²³⁴ John Agostinelli, MFI-3, 17/6/14, pp 903-904.

²³⁵ John Agostinelli, 27/8/14, T:749.31-33.