

**ROYAL COMMISSION INTO TRADE UNION
GOVERNANCE AND CORRUPTION**

SUBMISSIONS OF COUNSEL ASSISTING

AWU: CHAPTER 4

PAID EDUCATION

Subject	Paragraph
A THE CONCEPT	1
B PAID EDUCATION LEAVE IN ENTERPRISE AGREEMENTS	7
C PAID EDUCATION LEAVE IN AWU ACCOUNTING RECORDS	14
D CONCLUSIONS ON PAID EDUCATION LEAVE	26

A THE CONCEPT

1. 'Paid education leave' was described in similar terms by a number of union officials. Mr Ben Davis described paid education leave in the following terms:¹

Paid education leave was a clause we sought to negotiate in agreements for a period of time in which the employer would pay to the union a sum of money per employee, that we would then put towards training – not training in a particular workplace; training across the branch.

2. Mr Shorten's description of the paid education arrangement with ACI was a 'levy used to help facilitate the education and training of our members and activists across the union'.² Mr Frank Leo gave a similar description of the concept:³

3. The concept described by the officials above appears to have been introduced to the AWU by Mr Shorten in around 2001. The minutes of the Victorian Branch Committee of Management of 9 October 2001 record as item 7 the following report:⁴

7. Paid Education Leave – Alcoa, One Steel, Cleanevent

The AWU is currently negotiating with the above companies to secure paid education leave for AWU activists to do further training. The model for the negotiations is based upon the Canadian Auto Workers who receive an amount for ever house worked by their members from the employer of the members into a union education trust account. It is proposed that the employers would pay 5 cents for every hour worked by an AWU member into the special fund.

¹ Ben Davis, 4/6/15, T:634.30-35.

² Bill Shorten, 9/7/15, T:154.15-18.

³ Frank Leo, witness statement, 15/9/14, para 15.

⁴ Shorten MFI-11, 9/7/15, p 9.

4. A recommendation was moved and carried that AWU Officers be authorised to open an additional bank account titled 'AWU Victoria Branch Paid Education Leave' to receive payments from employers under PEL clauses and agreements and to expend monies under the terms of those clauses and agreements.⁵ It is apparent from a speech given by Mr Shorten to the Industrial Relations Society Annual Dinner at Newcastle that the contribution of 5 cents for every hour worked was taken to be roughly equivalent to 1% of the total payroll of employees.⁶

5. A similar report was made by Mr Shorten in his capacity as national secretary to the national executive on 28 May 2002. Item 33 of the minutes of the executive meeting record that a resolution was carried for the opening of a national office bank account for paid education leave, and the establishment of a PEL Education Trust and Trust Account and PEL training company under the control of AWU officers.⁷

6. Mr Shorten's evidence that the above resolutions were never implemented: no separate trust account or training company were established.⁸

⁵ Shorten MFI-11, 9/7/15, p 9.

⁶ Shorten MFI-1, 8/7/15, p 215.

⁷ Shorten MFI-11, 9/7/15, p 93.

⁸ Bill Shorten, 9/7/15, T:141.10-47, 142.1-36.

B PAID EDUCATION LEAVE IN ENTERPRISE AGREEMENTS

7. Although the above resolutions were not implemented, it is clear that the AWU was seeking paid education leave contributions from employers in enterprise agreement (**EBA**) negotiations. In the case of two companies, Ausreo Pty Ltd (**Ausreo**) and Potters Industries Pty Ltd (**Potters**), the AWU succeeded in that endeavour.
8. An EBA between Ausreo and the AWU of 2003 contained a clause requiring the company to pay into a 'special education trust' 5 cents per hour per employee for all compensated hours of work. The clause required those monies to be used to fund training programs and education for financial members of the AWU. Provision was made for decisions concerning the allocation of those trust monies by a committee comprising of AWU and Ausreo representatives.⁹ Similar clauses were contained in the 2005 and 2008 Ausreo EBAs.¹⁰
9. EBAs between the AWU and Potters are further examples. An EBA certified in 2003 required the payment of an amount equal to \$3.80 per week per employee into a nominated fund. This fund was stated to be for the purpose of developing training programs and providing paid education leave for 'employees' (presumably, employees of Potters). Provision was made for the fund to be managed by the Victorian Branch Executive of the AWU and for reports to be made to a joint advisory committee on the operation of the program. The AWU and Potters were to nominate representatives to that committee.¹¹ The

⁹ Shorten MFI-1, 8/7/15, p 19.

¹⁰ Shorten MFI-1, 8/7/15, pp 39, 55.

¹¹ Shorten MFI-1, 8/7/15, p 92.

reference to \$3.80 per week is equivalent, in a 38 hour week, to 10 cents per hour. A similar provision was contained in the 2005 Potters Industries certified agreement. However, this clause referred not to an amount of \$3.80 per week but rather to '1% of weekly wages per week per employee of the Company'.¹²

10. Invoices were issued by the AWU to Ausreo pursuant to these EBAs. The invoices to Ausreo appear to have been issued on an annual basis. Each is coded 'PAID EDUC' and each is described as an invoice for paid education leave with the formula contained in the EBA in question.¹³ The structures contemplated in the Ausreo EBAs were never established: that is, there do not appear to have been any separate trust funds or committees established to administer monies paid pursuant to the paid education leave clause. The monies paid by Ausreo were paid into the AWU's general bank accounts. They were recorded as paid education in the AWU's ledgers and financial statements.¹⁴

11. The position in respect of payments under the Potters' EBAs is similar. Invoices were issued on an annual basis, with the same item code and with a formula including an amount of \$3.80 per week.¹⁵ The formula of 1% of payroll referred to in the 2005 Potters EBA was not used. Like the payments made by Ausreo, these monies were paid into AWU bank accounts and recorded in general ledgers as paid education.¹⁶

¹² Shorten MFI-1, 8/7/15, p 110.

¹³ Shorten MFI-1, 8/7/15, pp 59, 63, 71, 74A, 74C, 74D, 74E.

¹⁴ Shorten MFI-1, 8/7/15, pp 75-82.

¹⁵ Shorten MFI-1, 8/7/15, pp 136, 142, 150, 155, 157.

¹⁶ Shorten MFI-1, 8/7/15, pp 165A-170.

The advisory committee referred to in the EBAs does not appear to have been established.

12. The Ausreo and Potters EBAs appear to be the only examples of AWU EBAs containing a ‘paid education leave’ clause in the sense of the concept introduced to the AWU by Mr Shorten. More commonly, the label ‘paid education leave’ was included in other EBAs in a very different way. For example, in the 2003 ACI Operations Pty Ltd EBA (discussed in the next chapter) there appeared a clause headed ‘paid trade union training leave’. This clause obliged the company to pay delegates during the time at which they attended trade union sponsored training courses. The obligation was one to pay the delegate, and not the union. The clause caps the company’s obligation to make these payments at 10 days’ full pay per delegate. The cap is expressed in the following way:¹⁷

15.5 The total paid education leave utilised by any one union shall not exceed the equivalent of ten days’ full pay per shop steward as established under paragraph (vi) hereof.

13. A number of witnesses gave evidence that this is how they understood the phrase ‘paid education leave’. For example, Mr Agostino,¹⁸ Mr Mitchell,¹⁹ Mr Cooper,²⁰ and Mr Minniti.²¹

¹⁷ Shorten MFI-12, 9/7/15, pp 194-195 (clause 15).

¹⁸ Joseph Agostino, 18/9/14, T:170.10-23.

¹⁹ Brendan Mitchell, 14/10/15, T:338.34-47, 339.1-6.

²⁰ Cooper MFI-1, 15/10/15, pp 6.23-47, 7.1-8.

²¹ Mario Minniti, 15/10/15, T:421.47, 422.1-16.

C PAID EDUCATION LEAVE IN AWU ACCOUNTING RECORDS

14. Paid education was a separate line item in AWU Victorian Branch financial statements from the 2002- 2003 financial year until the 2013-2014 financial year. Consistently with this, the AWU Victorian Branch General Ledgers contained separate paid education income and paid education expense ledgers for each of these financial years.
15. It is apparent from the AWU ledgers that since 1 July 2002 the only significant²² payments ever recorded in the AWU Vic Branch financial records as paid education income have been: the payments from Ausreo and Potters, referred to above; payments from ACI Operations Pty Ltd and Chiquita Mushrooms Pty Ltd (discussed to in the next two chapters), and payments from Huntsman Chemicals Pty Ltd (**Huntsman**).²³ It is convenient to say something briefly about Huntsman payments.
16. Mr Alan Bugg was an employee at Huntsman who was given notice that he would be made redundant.²⁴ Mr Bugg's position was described as that of a full time shop steward. Before the time for his redundancy came, the AWU and Huntsman entered into an arrangement under which Mr Bugg would remain at Huntsman, but as a contractor supplied by the AWU.²⁵ The AWU and Huntsman entered into a

²² There were, in addition, the following amounts: a payment of \$981.82 from Adecco on 28 May 2005, two payments referenced as 'Victorian Ch' for \$500 and a payment for \$1,000 made by Cognis Australia on 28 October 2003 pursuant to its EBA.

²³ Shorten MFI-15, 9/7/15, pp 275-297.

²⁴ Shorten MFI-15, 9/7/15, p 5.

²⁵ Shorten MFI-15, 9/7/15, p 7-9.

written agreement each year from 2001 for the payment by Huntsman to the AWU of a fee for the services of Mr Bugg.²⁶ Mr Bugg invoiced the AWU for his services and the AWU invoiced Huntsman. The amounts which the AWU charged Huntsman exceeded the amounts that Mr Bugg charged the AWU, by different amounts in different years. There does not appear to have been a written agreement between the AWU and Mr Bugg.

17. The relationship between the payments received by the AWU pursuant to the above arrangement and 'paid education leave' in the sense described above by AWU officials is tenuous. 'Paid education leave' as referred to in the opening section of these submissions involved payments to the union to be used for the purposes of training 'across the board'. The Huntsman payments were for specific services provided to a particular company. They were more akin to the payments made pursuant to the arrangement entered into by Mr Melhem and Mr Lockyer in respect of Mr Lance Wilson than they were, for example, to the payments made under the Potters and Ausreo arrangements. Mr Shorten's explanation for the inclusion of the Huntsman payments as 'paid education' was that the role that Mr Bugg performed at Huntsman related to the provision of education and training.²⁷
18. The only monies ever recorded in AWU accounting records as paid education expenses are the payments to Mr Bugg pursuant to the above arrangement.²⁸ That is curious not only because the arrangement with

²⁶ Shorten MFI-15, 9/7/15, pp 1-30.

²⁷ Bill Shorten, 9/7/15, T:191.13-36.

²⁸ Robinson MFI-2, 14/10/15, pp 99-104, 17.

Mr Bugg appears unrelated to paid education in any sense of that term but also because of the claims of numerous AWU officials that monies paid pursuant to ‘paid education’ arrangements were deployed for the purposes of training AWU members.

19. To evaluate claims of the latter kind, and in anticipation of the evaluation in the following chapters of the evidence before the Commission on the ACI and Chiquita case studies, it is necessary to make further observations about the AWU accounts. The AWU Victorian Branch accounts for the financial years 2001 to 2006 recorded the income and expenditure for education leave and training as follows:²⁹

	2001	2002	2003	2004	2005	2006
Training Courses & Seminars Income	\$212,555	\$212,357	\$157,943	\$273,351	\$49,500 ³⁰	\$134,868
Red Card Training	N/A	N/A	N/A	N/A	\$106,591	\$66,909
OHS Training	N/A	N/A	74,205	\$80,331	\$99,436	\$136,261
Paid education income	Nil	Nil	113,643	\$327,008	\$221,540	\$89,782
Training & Tuition expenditure (total)	\$197,238	\$192,284	\$165,810	\$254,109	\$211,383	\$158,602
OH&S Expenses ³¹			\$45,834	\$25,317	\$27,192	\$28,762
Delegates and shop stewards ³²	\$79,130	\$48,918	\$4,666	\$3,652	\$2,836	\$4,457
Paid education expenses ³³	Nil	Nil	\$16,750	\$73,476	\$74,557	\$75,742

²⁹ Melhem MFI-8, 2/6/15, pp 19-20 (2001-2002), 34-35 (2002-2003), 60-61 (2003-2004), 82-83 (2004-2005), 103-104 (2005-2006).

³⁰ Described as seminar income. From 2005 AWU separately accounted for Seminar and Red Card training income.

³¹ These include expenses incurred in connection with projects for which government grants were received. Only OH&S training expenses have been included in this table (since the income from those grants has not been included)

³² Recorded as a separate line item included in the total expenditure for training and tuition.

20. No separate line item appears in the AWU financial statements for wages paid to staff dealing with training. However the AWU general ledgers indicate that the following amounts were paid in that regard in these financial years:

	2001	2002	2003	2004	2005	2006
Wages - Training	No ledgers produced	No ledgers produced	\$43,678.86	\$81,849.43	\$52,279.53	\$105,639.73

21. The accounts of the Victorian Branch do not support Cesar Melhem's assertions that:

- (a) The AWU on average spend about \$500,000 to \$600,000 on training for members;³⁴ or
- (b) The AWU spends far more on training than they ever receive, whether through paid education or invoicing for services.³⁵

22. Further, the accounts do not support Mr Melhem's assertion³⁶ that the AWU itself paid for any significant training of ACI employees, discussed in the following chapter. Although the AWU appears to have conducted significant training for delegates and shop stewards,

³³ Recorded as a separate line item included in the total expenditure for training and tuition.

³⁴ Cesar Melhem, 22/10/15, T:971.7-10.

³⁵ Cesar Melhem, 22/10/15, T:976.19-27.

³⁶ Cesar Melhem, 22/10/15, T:961.2-11.

including at ACI, that training was paid for separately by the employers of the delegates (including ACI).

23. The AWU financial records also do not support Mr Shorten's evidence that 'anything that we raised in terms of paid education was always spent for education and training of members'.³⁷ There are two difficulties with assertions of this kind. First, apart from the payments made to Mr Bugg, no attempt ever was made to account separately for the expenditure of monies recorded as paid education income. Those monies formed part of AWU general revenue. In the following chapter, it will be seen that two payments of about \$145,000.00 each from ACI were in fact deposited into the AWU long service leave account and monies from that account were lent to the AWU national office.
24. The second difficulty with the assertion that monies received as paid education were deployed for the purposes of training is that the AWU Victorian Branch accounts do not suggest that any increase in paid education income resulted in an increase in training expenditure. Those accounts do not disclose any material increase in training that was not being funded by the income received for that training. Further, the AWU has produced to the Commission minutes of Branch Committee Meetings for the period 1999 – 2015. Those minutes do not record any consideration by the Branch Committee of how to expend any monies actually received as 'paid education'.³⁸
25. The above matters point to one of the many difficulties with the paid education leave concept if the arrangement to make paid education

³⁷ Bill Shorten, 9/7/15, T:193.27-29. See also at 193.41-47.

³⁸ Shorten MFI-11, 9/7/15.

leave payments was not disclosed to employees of the company in question. A member who happened to find out that his or her employer was making paid education contributions would need to look at the ledgers to ascertain the breakdown of paid education income. If he or she wanted to know about how paid education payments had been deployed, the AWU financial records would be of no assistance: the only paid education expenses recorded are the payments to Mr Bugg.

D CONCLUSIONS ON PAID EDUCATION LEAVE

26. 'Paid education', in the way that that concept was implemented by the AWU, was capable of covering more or less any kind of payment made to the AWU. Mr Melhem accepted as much.³⁹
27. For the most part, payments of 'paid education' amounted to no more than donations from employers. The ACI and Chiquita Mushrooms case studies provide examples of this, but the same is true of the payments made pursuant to the Potters and Ausreo EBAs referred to above. There appears to have been no attempt to abide by the requirements in those EBAs in relation to the payment of funds into trusts and ensuring that it was deployed for the purposes of training. Payments for paid education leave, of any kind, were simply treated as part of the union's general revenue.

For the reasons given in the ACI and Chiquita case studies, in some circumstances the making and receipt of payments of this kind may amount to breaches of fiduciary and possibly criminal offences. For present purposes, it is

³⁹ Cesar Melhem, 22/10/15, T:977.22-30.

sufficient to note that the basic difficulty with the concept, as actually implemented by the AWU, is that payments of this kind from employers fundamentally weaken the union's capacity to represent the interests of its members. Such payments are not substantively different, in this respect, from many of the other improper payments considered in AWU case studies. Indeed, the descriptions given at times to other payments bear resemblance to payments for paid education. For example, the fee payable under the Cleanevent Side Letter was perceived, at least at one point in negotiations, to amount to about 1% of the payroll of the company.⁴⁰ That is the same formula as appears in the Potters EBA and which, according to a speech given by Mr Shorten to the Industrial Relations Society Annual Dinner at Newcastle,⁴¹ represented about 5c per hour per employee. Similarly, the description on the invoices for some of the payments made in the Thiess case study was 'services'. This is how Mr Melhem and Mr Gilhome at times characterised the payments considered in the next chapter in the ACI case study and also how Mr Melhem said he thought of the payments made by Cleanevent. All of these payments share a common capacity to compromise the union. The payments of membership fees in the Winslow case study had the same effect. Mr Davis' statement that the Winslow payments 'profoundly weaken us in the workplace'⁴² is applicable also to the payments for paid education considered in the following two chapters of these submissions.

⁴⁰ See for example, Cleanevent MFI-1, 19/10/15, p 175.

⁴¹ Shorten MFI-1, 8/7/15, p 215.

⁴² Ben Davis, 4/6/15, T:625.44-626.12.