

18 February 2016

Chris Enright
Director
Regulatory Compliance Branch
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001

Dear Mr Enright

Health Services Union Queensland Branch: non-lodgement of financial reports for years ending 30 June 2000 to 30 June 2010

I refer to your correspondence dated 9 February 2016 regarding the above matter and I acknowledge receipt of that correspondence.

Your sincerely



Chris Brown
National Secretary





9 February 2016

Mr Chris Brown
National Secretary
Health Services Union
Suite 1
Level 3, 377 Sussex Street
SYDNEY NSW 2000

via email: chrisb@hsu.net.au
jonathan.milman@hsu.asn.au

Dear Mr Brown

Health Services Union Queensland Branch: non-lodgement of financial reports for years ending 30 June 2000 to 30 June 2010

I refer to previous correspondence and discussion with you regarding outstanding financial reports for the Queensland Branch of the Health Service Union (**HSU**) for the financial years ending 30 June 2000 to 2010.

As you are aware, the *Fair Work (Registered Organisations) Act 2009 (RO Act)* requires the Queensland Branch of the HSU to lodge audited financial reports with the Fair Work Commission (**the Commission**) within six months and 14 days of the end of its financial year (that is, no later than 15 January). It is a requirement of the RO Act that:

- a General Purpose Financial Report (**GPFR**) and an operating report be prepared as soon as practicable after the end of the financial year (ss.253, 254);
- that the full report (consisting of the GPFR, operating report and auditor's report) be presented to a general meeting of members, or to a meeting of the branch Committee of Management, within six months after the end of the financial year (s.266); and
- a copy of the full report must be provided to members at least 21 days before the general meeting or if presented to a branch Committee of Management meeting within five months after the end of the financial year (s.265(5)).

You have advised that, due to the failure by the then Queensland Branch Committee of Management to keep proper or adequate financial records, financial reports for the years ending 30 June 2000 to 30 June 2010 are not able to be prepared, in breach of the above requirements of the RO Act.

It also appears that the Health Services Union failed to lodge the required information for the Queensland Branch in the annual returns for the years 2006 to 2013 as required by s.233.

I consider the prolonged non-compliance by the Queensland Branch to be a serious matter. The standards set out in the RO Act are directed to ensuring that registered organisations are: accountable to their members; efficiently managed and operate effectively; and enable participation by members in the affairs of the organisation. The consequence of the

contraventions is that the Branch has not been accountable to its members and members have been deprived of the opportunity to be informed of the financial position of the Branch and to otherwise participate in the affairs of the organisation, contrary to the objects of the RO Act.

Officers of an organisation are also held to high standards and must comply with the general duties in relation to the financial management of the organisation. The failure by the then Branch Secretary to comply with these requirements and the lack of oversight by then National Executive, may also amount to a breaches of the general duties of officers as set out in Part 2 of Chapter 9 of the RO Act.

However, I also acknowledge the extensive and voluntary action taken by the current National Executive and new Branch Committee of Management to rectify these matters. In particular, that the National Executive has taken steps to reconstitute the Branch and has put in place internal governance mechanisms to ensure proper oversight of the Queensland Branch. As a result, the Branch now has a new Committee of Management, and has lodged the outstanding financial reports for the financial years ending 30 June 2011 to 30 June 2013 and complied with its reporting requirements for the financial year ending 30 June 2014 and 30 June 2015.

It is also a relevant consideration that: both the former Queensland Branch office holders and National Secretaries are no longer officers of the union; that the number of members of the Branch is small; and the current National Executive has been fully cooperative.

Having regard to these matters, it is not considered it would be in the public interest to commence a formal investigation into these matters and I advise that the Commission will close off the financial reports for the Queensland Branch of the HSU for the years 30 June 2000 to 30 June 2010 and annual returns for the years 2006 to 2013.

However, the Commission will continue to closely monitor the Queensland Branch and will take prompt action in response to any further contraventions. You are on notice that any future non-compliance by the Queensland Branch will be treated very seriously, with the earlier non-compliance taken into account in deciding what action to take.

I also note that in a meeting on 16 September 2015, you raised the possibility of an amendment to the HSU Rules to abolish the Queensland Branch and have the Tasmanian Branch look after the interests of members in Queensland. Please note that until such change to the HSU Rules is approved, the Queensland Branch must adhere to all requirements under Part 3 of Chapter 8 of the RO Act. I would request that you continue to keep the Commission updated regarding the status of the Queensland Branch.

If you would like to discuss any aspect of the above, please contact me on 8656 4680 or Joanne Fenwick, Financial Reporting Specialist on 8656 4681.

Please acknowledge your receipt of this correspondence by Friday 19 February 2016.

Yours sincerely



Chris Enright
Director
Regulatory Compliance Branch

cc. Jonathan Milman, Queensland Branch Secretary

Ailsa Carruthers
Acting Director
Organisations, Research and Advice Branch
Fair Work Commission
GPO Box 1994
MELBOURNE VIC 3001



By Email: orgs@fwc.gov.au
Ailsa.Carruthers@fwc.gov.au

Dear Ms Carruthers

I refer to correspondence dated 13 February 2013 from the Regulatory Compliance Branch (FR2012/411) regarding the failure of the Queensland Branch of the Health Services Union (HSU) to lodge audited financial reports for the financial year ended 30 June 2012 and for other years.

I note that the correspondence is addressed to the Branch Secretary of the HSU Queensland Branch. For reasons evident below, the HSU National Executive has asked me to respond to that correspondence.

By way of background I provide the following summary.

On 25 June 2010 Justice Jessup in the Federal Court in matter VID459/2010 made an order in which he declared that the Queensland Branch has ceased to function effectively and placed the Branch under a scheme of Administration pursuant to s 323 of the FWRO Act.

The Court appointed Katherine Jackson as the Administrator of the Queensland Branch and under the Scheme of Administration vested powers in the administrator including the powers of the officers of the Branch and the Branch Committee. In accordance with the Scheme of Administration, the Administrator was required to compile a register of members of the Branch and request the General Manager of Fair Work Australia to arrange for the conduct of an election of all officers in the Branch by the Australian Electoral Commission (AEC). The General Manager was so advised on 5 April 2012.

Arrangements were made for the conduct of an election by the AEC and on 14 June 2012 the AEC declared the results of the election which resulted in no candidates being elected as there were no nominations for any of the officer positions required to be elected.

On the declaration of the Election by the AEC the Administrator position ceased.

The HSU National Executive deliberated on what course of action should be taken to address the situation facing the Queensland Branch. The National Executive resolved that it would embark on the following course of action:

1. Make applications under sections 246 and 271 of the Act to regularise the position concerning the Queensland Branch. However an application under section 246(1)(a) and an application under section 271 both require an application by the Reporting Unit. Regulation 153(1)(d) requires that a section 246 application be supported by a

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resolution made by the Committee of Management of the Branch (BCOM). The relevant Reporting Unit is the Queensland Branch. As there is no Branch BCOM and no Branch officials in place, the Union cannot currently progress our proposed applications under sections 246 and 271 of the Act.

2. The National Executive has determined that an application will be made to Justice Jessup for a new scheme of Administration to be made under section 323 of the Act. I anticipate that it will be filed shortly. The scheme that we propose to have His Honour adopt an order that until elections in 2014 the Queensland Branch Committee of Management consists of the National Officers of the Union. These are the Officers defined in Rule 19 of the Rules of the HSU. If His Honour approves this scheme, the National Officers will have the power to pass the necessary resolutions to support applications pursuant to sections 246 and 271.
3. The National Executive has committed to providing resources to enable the Queensland Branch to be strengthened so that come the scheduled 2014 HSU elections there will be the capacity for the members of that Branch to take over the democratic control of the Branch.

I have recently written to the members of the Queensland Branch advising them of the intended course of action by the National Executive and inviting them to both comment and/or seek further information.

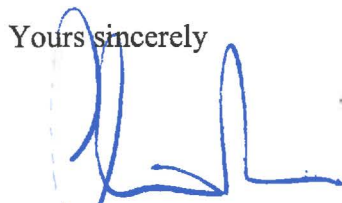
Regarding the issue of outstanding audited financial reports for the Queensland Branch, the National Executive has recently engaged the National Unions auditor to construct the accounts of the Queensland Branch based on the information that is available. This work is currently underway.

The correspondence from your office dated 13 February 2013, addressed to the Queensland Branch Secretary, indicated that the Reporting Unit (i.e. the Queensland Branch) is required to lodge its outstanding audited financial response by no later than 14 March 2013.

For the reason outlined above it is not possible for the Branch to meet that deadline and I therefore request that an extension of time is given in order to:

1. Ascertain the Federal Courts position in relation to the HSU application foreshadowed above, and;
2. Allow for the National Union's auditor to prepare, to the extent possible, outstanding financial reports.

Yours sincerely



Chris Brown
National President

17 March 2013



FAIR WORK
AUSTRALIA

10 January 2012

Mr Clem O'Shannessy
Branch Secretary
Health Services Union-Queensland Branch
By email: clemoshannessy@yahoo.com.au

Dear Mr O'Shannessy

**Health Services Union-Queensland Branch
Annual Return of Information for 2012 [AR2012/348]**

This is a courtesy letter to remind you of the obligation to lodge an Annual Return of Information for 2012 in respect of the above by **31 March 2012**.

A signed and dated declaration certifying matters prescribed in the *Fair Work (Registered Organisations) Act 2009* [the "RO Act"] must be lodged with Fair Work Australia [FWA] by that date. The matters to be included in the declaration are set out in the attached Checklist.

The declaration must be signed by the secretary, or where applicable, such other elected official who is required under the rules or by resolution of the organisation, to keep the relevant records (the "other prescribed officer"). A declaration signed by a non-elected person does not meet this requirement.

The secretary or other prescribed officer must also notify FWA within 35 days of any changes to such records.

Failure to comply with these obligations is subject to a civil penalty provision – see s305 of the RO Act.

Once an Annual Return or change of records has been lodged, a copy will be posted on the FWA website at www.fwa.gov.au – under *Registered organisations - List of registered organisations*. To protect the privacy of the relevant office holders listed in declarations, you may wish to list their postal, rather than home addresses.

FWA encourages you to lodge all returns electronically (e.g. as pdf files) at orgs@fwa.gov.au. Alternatively, you can forward the documents by fax to (03) 9655 0410.

Please ensure that emailed documents include signatures where required e.g. by scanning the signed documents into a PDF or TIF format.

Please do not hesitate to contact me on (03) 8661 7817 or by e-mail at robert.pfeiffer@fwa.gov.au if you wish to discuss the requirements outlined in this correspondence.

Yours sincerely,

Robert Pfeiffer
Organisations, Research & Advice
Fair Work Australia

Obligation to lodge Annual Return of Information by 31 March

A copy of each of the following records must be lodged with Fair Work Australia [FWA] between 1 January and 31 March each year. They must be certified by a declaration stating that it is a correct statement of the information contained in that record, signed by the secretary or such other elected official who is required under the rules, or by resolution of the organisation, to keep the relevant records (the “other prescribed officer” see RO Regulation 150).

For full details see ss230-233 of the Fair Work (Registered Organisations) Act 2009 [the “RO Act”], and Regulations 147-151 of the Fair Work (Registered Organisations) Regulations 2009 [the “RO Regulations”].

Failure to comply with these obligations is subject to a civil penalty provision – see s305 of the RO Act.

Requirement	Details of requirement
Maintenance of Register of Members	A declaration by the secretary or other prescribed officer certifying that the register of members has, during the immediately preceding calendar year, been kept and maintained as required by ss230(1)(a) and (2) <i>[s233(1)(a)]</i>
List of Offices	A list of the offices in the organisation and each branch (note the definition of “office” and “officer” in ss6 and 9) <i>[s230(1)(b)]</i>
List of Office holders	A list of the names, postal addresses and occupations of the persons holding the offices (note the definition of “office” and “officer” in ss6 and 9) <i>[s230(1)(c)]</i>
List of Branches	A record of the name of each branch of the organisation <i>[s230(1)(d) and reg. 147(a)]</i>
New Branches	A record of the name of each branch that commenced operation in the previous 12 months <i>[s230(1)(d) and reg. 147(b)]</i>
Old Branches	A record of the name of each branch that ceased operation in the previous 12 months <i>[s230(1)(d) and reg. 147(c)]</i>
Addresses of Organisation and Branches	A record of the address of the office of the organisation and the address of the office of each branch <i>[s230(1)(d) and reg.147(d)]</i>
Elections in Organisation and Branches	A record of each election that must, under the rules of the organisation, be held during the year commencing 1 January of the year in which the return is lodged, for any offices in the organisation and branches of the organisation . <i>[s230(1)(d) and reg. 147(e)]</i> Note: this provision does not relieve an organisation or branch from the separate requirement to lodge prescribed information prior to each election, as required by s189 of the RO Act
Statement concerning number of members	<ul style="list-style-type: none"> • A record of the number of members on 31 December in the previous year, and: • if the organisation has entered into an agreement relating to members of State unions under s151(1) of the RO Act - a record of the number of members of the organisation who were (on 31 December in the previous year) ineligible State members in relation to the organisation within the meaning of s150 of the RO Act. <i>[s230(1)(d) and reg. 147(f) and (g)]</i>

Obligation to notify of changes within 35 days

If there are any changes during the year to the list of offices, list of officeholders, list of branches (where relevant) and the address of the organisation and/or its branches an organisation must, within 35 days of the change, lodge with FWA, a notification of such changes certified by declaration signed by the secretary or other prescribed officer of the organisation to be a correct statement of the changes made [*RO Act s233(2) and RO reg. 151* refer].