

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

**AWU**

Level 5, 55 Market Street, Sydney, NSW 2000

On Tuesday, 9 September 2014 at 10.00am

Before the Commissioner: The Hon. John Dyson Heydon AC QC

Counsel Assisting: Mr Jeremy Stoljar SC  
Mr Michael Elliott

Instructed by: Minter Ellison, Solicitors

1 THE COMMISSIONER: Yes, Mr Stoljar.

2

3 MR STOLJAR: Commissioner, in May and June of this year,  
4 the Commission received evidence from a range of witnesses  
5 in relation to bank accounts controlled by former officers  
6 of the AWU, Mr Wilson and Mr Blewitt, in the name of the  
7 Australian Workers Union Workplace Reform Association and  
8 the AWU Members Welfare Association. Further evidence on  
9 these topics will be received today and tomorrow.

10

11 The AWU Workplace Reform Association was incorporated  
12 by Mr Wilson and Mr Blewitt in April 1992. Ms Gillard,  
13 then a solicitor at Slater & Gordon, provided them with  
14 advice on the matter. The association issued Thiess with  
15 invoices for sums totalling in excess of \$380,000 and  
16 Thiess paid those invoices.

17

18 The invoices related to two different projects: the  
19 Dawesville Channel Project in Western Australia and the  
20 Melbourne Water Project in Victoria. Mr Blewitt has  
21 admitted that no services were provided to Thiess in return  
22 for these payments and that the invoices in question were  
23 false. Mr Wilson, for his part, has accepted that no  
24 services were provided in return for many of these  
25 payments.

26

27 A large portion of the moneys paid by Thiess to the  
28 AWU Workplace Reform Association were spent on the purchase  
29 of a property at Kerr Street, Fitzroy, in Mr Blewitt's name  
30 in 1993. Mr Wilson signed the contract for the purchase of  
31 the land and various other conveyancing documents on  
32 Mr Blewitt's behalf. He did so acting under a power of  
33 attorney prepared by Ms Gillard. Questions have been asked  
34 as to how the remaining funds of the association were  
35 applied. One issue is whether some of the funds were used  
36 to pay for renovations undertaken to Ms Gillard's home in  
37 Abbotsford. Ms Gillard was, at the time, in a personal  
38 relationship with Mr Wilson.

39

40 As for the AWU Members Welfare Association account,  
41 documents already in evidence indicate that payments from  
42 various building companies totalling in excess of \$150,000  
43 were deposited into the account. The payments were for  
44 amounts owed by those companies to the AWU, including for  
45 union membership dues.

46

47 After complaints were made in relation to Mr Wilson's

1 maintenance of this and other accounts, he left the employ  
2 of the union along with Mr Blewitt and a number of others.  
3 They received redundancy payments over the opposition of  
4 Mr Cambridge, one of the AWU National Secretaries.

5  
6 At about the same time, the money that had been  
7 deposited into the Members Welfare Association account was  
8 repaid to the employers rather than being transferred to  
9 the AWU.

10  
11 The witnesses who will give evidence today fall into  
12 a number of categories. Justice Murphy will be called. He  
13 was at the relevant time a partner at Slater & Gordon. He  
14 has provided a statement to the Commission in which he  
15 indicates he was not involved in the establishment of the  
16 AWU Workplace Reform Association.

17  
18 Ms Bob Smith and John Cain will then give evidence in  
19 relation to a range of matters, including the circumstances  
20 surrounding the payment of the redundancy payments to  
21 Mr Wilson and others and the repayment of moneys in the  
22 Members Welfare Association account back to the employers.  
23 Following that, Mr Darrouzet, Mr Ainsworth and Ms McLeod  
24 will give evidence in relation to the Melbourne Water  
25 Project and the relationship between the AWU and Thiess on  
26 that project.

27  
28 Their evidence will be directed to the nature, purpose  
29 and extent of the payments made by Thiess to the AWU  
30 Workplace Reform Association and their knowledge or  
31 otherwise of the existence of that association.

32  
33 Mr Trio and Mr Jukes, who were senior executives of  
34 Thiess at the time, will give evidence in relation to  
35 various matters concerning the relationship between Thiess  
36 and the Workplace Reform Association on the  
37 Dawesville Channel project.

38  
39 Finally, Mr Robert Elliott and Ms Kaye Darveniza have  
40 been summonsed and will be examined in relation to any  
41 conversations they may have had with Ms Gillard in relation  
42 to the possible establishment of an association to be  
43 controlled by certain officers of the HSU. It is  
44 anticipated that Ms Gillard's evidence will be taken  
45 tomorrow.

46  
47 There are some appearances, Commissioner.

1  
2 THE COMMISSIONER: Yes. Mr Hutley, you appear for  
3 Justice Murphy?  
4  
5 MR N HUTLEY: Yes. I, together with Mr Prince, seek leave  
6 to appear.  
7  
8 THE COMMISSIONER: Yes, Mr Galbally?  
9  
10 MR GALBALLY: I seek leave again to appear on behalf of  
11 Ralph Blewitt.  
12  
13 THE COMMISSIONER: Yes, that is granted. Yes,  
14 Mr Clelland, as before?  
15  
16 MR CLELLAND: Leave has already been granted for our  
17 appearance on behalf of Ms Gillard.  
18  
19 THE COMMISSIONER: Yes.  
20  
21 DR HANSCOMBE: Commissioner, I believe leave has been  
22 granted to appear for Mr Wilson.  
23  
24 THE COMMISSIONER: Yes, that is so.  
25  
26 MR D GUIDOLIN: If the Commission pleases, my name is  
27 Guidolin. I seek leave to appear on behalf of Mr Smith.  
28  
29 THE COMMISSIONER: Yes, that is granted.  
30  
31 MR GUIDOLIN: If the Commission pleases.  
32  
33 MS M RICHARDS SC: If the Commission pleases, my name is  
34 Richards and I seek leave to appear for Robyn McLeod.  
35  
36 THE COMMISSIONER: That is granted. Is Mr Mewing here?  
37  
38 MR STOLJAR: I believe Mr Mewing may be outside conferring  
39 with his clients, Commissioner.  
40  
41 THE COMMISSIONER: I think we can proceed without him.  
42 What is the name of the first witness?  
43  
44 MR STOLJAR: Justice Murphy.  
45  
46 THE COMMISSIONER: Very well.  
47

1 <BERNARD MICHAEL MURPHY, sworn: [10.10am]

2

3 <EXAMINATION BY MR STOLJAR:

4

5 MR STOLJAR: Q. Your full name is Bernard Michael  
6 Murphy?

7 A. Yes.

8

9 Q. You are a resident of Victoria?

10 A. Yes.

11

12 Q. You are a judge of the Federal Court of Australia?

13 A. Yes.

14

15 Q. You have prepared a witness statement for the  
16 Commission dated 20 August 2014?

17 A. Yes.

18

19 Q. Do you have a copy of that statement with you? I can  
20 provide you with one?

21 A. I have one.

22

23 Q. Is the content of that statement true and correct?

24 A. It is.

25

26 MR STOLJAR: Commissioner, I would ask that  
27 Justice Murphy's statement be received into evidence

28

29 THE COMMISSIONER: Any objection to that course? Justice  
30 Murphy's statement will be received into evidence

31

32 **#EXHIBIT STATEMENT OF BERNARD MICHAEL MURPHY**  
33 **DATED 20/08/2014**

34

35 MR STOLJAR: Q. Justice Murphy, you say at paragraph 1.1  
36 of your statement that you started work in industrial law  
37 and employment matters in about 1987. You at that time had  
38 already been a solicitor at Slater & Gordon for a number of  
39 years. Ms Gillard started working at the firm in the same  
40 year, 1987?

41 A. Yes.

42

43 Q. At that time the two of you comprised the industrial  
44 law section?

45 A. Yes.

46

47 Q. Later there were employed solicitors working under

1 your combined supervision?  
2 A. Yes.  
3  
4 Q. As at 1995, you and Ms Gillard were the only two  
5 partners in the industrial law section?  
6 A. Yes. I was an equity partner and she was a salaried  
7 partner.  
8  
9 Q. You say at 1.4 of your statement that by the early  
10 1990s, Ms Gillard was conducting a practice within the  
11 industrial law section with many clients who went to her  
12 directly rather than being allocated by you. Was she able  
13 to practice in an unsupervised capacity at that time?  
14 A. She was and she did.  
15  
16 Q. I mean by that, pursuant to her practising certificate  
17 were there any conditions in respect of supervision?  
18 A. No.  
19  
20 Q. How did the office work physically? Were you near  
21 each other?  
22 A. Next door.  
23  
24 Q. You describe it as the industrial law section. Were  
25 the premises of the industrial law section also in  
26 Little Bourke Street?  
27 A. They were. We were on a separate floor but we were in  
28 the same building.  
29  
30 Q. There were gardens about a block away on  
31 Latrobe Street?  
32 A. Two blocks away. I think you are talking about  
33 Flagstaff Gardens?  
34  
35 Q. Yes.  
36 A. It's a fair way.  
37  
38 Q. Anyway, you entered the premises off Little Bourke  
39 Street and then did you go up some stairs to a reception  
40 area?  
41 A. Not to our section.  
42  
43 Q. How did you --  
44 A. You entered - it's on the ground floor and there was  
45 no real reception area.  
46  
47 Q. There was just a glassed off area, was there?

1 A. Yes. They had a desk there for a receptionist which  
2 wasn't staffed.  
3  
4 Q. You mentioned that your offices were next to each  
5 other. I take it you spoke to each other regularly?  
6 A. Yes, we did.  
7  
8 Q. You had a close working relationship?  
9 A. We did.  
10  
11 Q. That was the position for the whole of the time that  
12 Ms Gillard was there at the firm from 1987 through to about  
13 1995?  
14 A. Yes. We became friends.  
15  
16 Q. At paragraph 2.1 of your statement, you say that  
17 Slater & Gordon acted for the Victorian Branch of the AWU  
18 from about 1988 or 1989. Was the Victorian Branch of the  
19 AWU your client or Ms Gillard's, or both?  
20 A. Well, either of us could have acted for them, but my  
21 recollection is mostly I did.  
22  
23 Q. So you did more work for the Victorian Branch of the  
24 AWU than Ms Gillard?  
25 A. It's a long time ago, but I think so.  
26  
27 Q. You say in 2.2 that Mr Wilson became Secretary of the  
28 WA Branch of the AWU and he was introduced to the firm as  
29 a client by Ms Gillard. Did you have any understanding as  
30 to why the WA Branch of the AWU wanted to use a Melbourne  
31 firm?  
32 A. Not that I recall now why they chose us. I've read  
33 some statements which - but I don't recall personally why  
34 they chose us.  
35  
36 Q. I really want to focus in on what happened at the  
37 time. Do you remember any discussions with Ms Gillard  
38 about that?  
39 A. No. I'm not - he was - so far as I recall, he was  
40 introduced to the firm by Julia Gillard as a client.  
41  
42 Q. When you say "he", you mean --  
43 A. Mr Wilson.  
44  
45 Q. But his Branch of the AWU which at that time was the  
46 WA Branch?  
47 A. Yes.

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Q. You say at paragraph 2.2 of your statement, and particularly going over to the top of page 2, that you do not recall or you have no recollection of going to WA in 1991 to meet officials of the AWU WA Branch:

*... but there is no particular reason for me to recall whether I did or did not.*

Do I draw from that that is it possible that you made that trip but given the lapse of time you don't recollect, as you sit here today, whether you did or not?

A. I don't recall. I have read the statements, they seem plausible, but I have no recollection of going there.

Q. At 2.3, you say that Mr Wilson, by the time he came across to the Victorian Branch, commenced to instruct Slater & Gordon. Did he tend to give instructions to you or to Ms Gillard?

A. Both.

Q. So you have a recollection of carrying out work for the Victorian Branch as instructed by Mr Wilson?

A. Yes.

Q. Was there any division of labour between yourself and Ms Gillard?

A. Not an organised division.

Q. Could you go to paragraph 3.1. You are now dealing with the Workplace Reform Association. You say:

*I had no involvement whatsoever in the legal work in relation to the creation of the ... Association.*

Did you have informal discussions with Ms Gillard about it?

A. No.

Q. Did you have any awareness that she had set up an incorporated association?

A. No.

Q. Not until a later date?

A. Not until after it became controversial.

Q. Which was in about 1995?



1 A. It was in August/September '95.  
2  
3 Q. Did you have any discussions with Mr Wilson about  
4 setting up an incorporated association?  
5 A. No, I didn't.  
6  
7 Q. Mr Blewitt?  
8 A. No, I didn't.  
9  
10 Q. You did work for Mr Blewitt in 1993; is that right?  
11 A. Yes, I did.  
12  
13 Q. And you didn't have any discussion with him about an  
14 association that had been set up?  
15 A. No.  
16  
17 Q. Did it come as a surprise to you in 1995 when you  
18 learnt about it?  
19 A. Yes, it did.  
20  
21 Q. Could you go back to paragraph 3.1. You mention in  
22 the penultimate line of 3.1 that Ms Gillard did not open  
23 a file at the firm in relation to that work. Would the  
24 usual practice in Slater & Gordon at the time have been to  
25 set up a file?  
26 A. There was no written procedure, the firm was not  
27 a large firm in those days, but within the industrial  
28 division, the industrial unit, if you were going to charge  
29 for something you opened a file. If there were going to be  
30 disbursements incurred you opened a file. If there was  
31 going to be substantial work you opened a file, but within  
32 that division, for example, I had a miscellaneous file for  
33 each union which I don't think was opened on the system  
34 because there were no disbursements or bills where there  
35 were small jobs performed. I also had a BM miscellaneous  
36 file in which I kept miscellaneous pieces of advice that  
37 I provided or file notes of conversations I'd had where  
38 I didn't want to lose the records but where there was no  
39 intention to charge. I'm not sure what practice  
40 Julia Gillard followed.  
41  
42 Q. You mentioned opening a file on the system. I take it  
43 there was some computerised mechanism pursuant to which  
44 files were opened and maintained?  
45 A. We had a time costing system which - actually,  
46 I think, sitting here thinking about it now, I'm not sure  
47 we had a time costing system. What we had was an

1 accounting package which meant that if you were going to  
2 incur disbursements or send a bill, it had to be opened on  
3 the accounting system and given a file number.  
4

5 Q. You gave as the circumstances in which a file would be  
6 opened, charging for it or sending a bill. You also  
7 mentioned doing substantial work. There were cases, were  
8 there, where files were opened because substantial work was  
9 being done?

10 A. Yes.

11  
12 Q. I take it that's simply because that meant that all  
13 the papers relating to that matter would be collected in  
14 one repository?

15 A. Yes, and I mean I had circumstances where when I first  
16 was asked to provide some advice and I thought it was going  
17 to go nowhere, it would be on the miscellaneous file and  
18 later on if it turned into something, I would take those  
19 papers off it and create a file.  
20

21 Q. The practical --

22 A. And open it on the system.  
23

24 Q. The practical reason being, among other things, that  
25 if there is a problem down the track, one can get hold of  
26 the original file and see what advice was given?

27 A. Yes.  
28

29 Q. Was there a managing partner at the time?

30 A. Yes, he wasn't titled that, but the CEO was  
31 Geoff Shaw.  
32

33 Q. Did the CEO keep an eye on work that was being done  
34 across the firm?

35 A. No.  
36

37 Q. Was there any way of monitoring what files had been  
38 opened on the system?

39 A. I don't know. There likely was but I'd never seen it  
40 used.  
41

42 Q. Did the partnership regard it as a safeguard to  
43 monitor what files were opened and what files hadn't been?

44 A. I don't think we ever looked at that.  
45

46 Q. You indicated that a file might be opened in  
47 circumstances in which substantial work had been carried

1 out. Would incorporating an entity and engaging in  
2 negotiations with a Government department fall within the  
3 rubric of carrying out substantial work, to your  
4 understanding?

5 A. It would. I would have opened a file in those  
6 circumstances.

7

8 Q. Could you have a look at paragraph 3.2 of your  
9 statement. You say:

10

11 *Contrary to Blewitt's evidence before the*  
12 *Commission I did not attend a meeting with*  
13 *Wilson, Blewitt and Gillard regarding the*  
14 *AWU WRA in 1992.*

15

16 The evidence that you gave at paragraph 2.2 in respect of  
17 the trip to WA was to the effect, understandably enough,  
18 that you don't have any specific recollection as to whether  
19 you travelled to WA or not. Is the position the same with  
20 regard to the conference to which you make reference in  
21 3.2, namely, you don't have any particular recollection, as  
22 you sit here today, whether you attended that meeting or  
23 not?

24

A. No, my position is different.

25

26 Q. Right.

27

A. I do not accept that I attended such a meeting.

28

29 Q. You have a definite recollection, do you?

30

A. I've read the evidence about that meeting. It's said  
31 to have taken two hours. It's said to have involved  
32 discussions about the creation of the AWU Workplace Reform  
33 Association. I did not attend any such meeting.

34

35 Q. Is it possible you might have dropped in on a meeting  
36 of that kind for some shorter period than the two hours and  
37 then left again?

38

A. All I can say is I have no recollection of doing so.

39

40 Q. But you wouldn't deny that latter proposition, that  
41 you might have dropped in and left again?

42

A. Well, because I was surprised when I heard about the  
43 existence of the Workplace Reform Association, I'm inclined  
44 to say I didn't attend any such meeting, even dropping in  
45 on it in the way you describe.

46

47 Q. If you come to paragraph 3.4, you say:

1  
2           *As I recall I first became aware of the*  
3           *existence of the AWU WRA in the weeks*  
4           *between 8 August and early September*  
5           *1995 ...*  
6

7           You say that occurred "after I ceased to act for Wilson."  
8           And you go on to say:

9  
10           *... as concerns began to be aired by some*  
11           *partners of the firm about Ms Gillard's*  
12           *involvement in the conveyance of the*  
13           *property at 85 Kerr Street, Fitzroy.*  
14

15           And then going over to the next page you say:

16  
17           *At the same time rumours were circulating*  
18           *that some of Julia Gillard's home*  
19           *renovations had been paid for by the AWU.*  
20

21           You make reference here to two different matters: firstly,  
22           Ms Gillard's involvement in the conveyance of the property  
23           at 85 Kerr Street and secondly, rumours circulating about  
24           Ms Gillard's home renovations. If I can take those in  
25           turn. Looking at the third line of 3.4, you make reference  
26           to "concerns" being aired by some partners of the firm  
27           about involvement in the conveyance. Do you recollect when  
28           you first heard those concerns?

29           A. Well, not exactly but in that period, so after  
30           8 August and before I last worked there in  
31           earlyish September 1995.

32  
33           Q. Who were the partners to whom you make reference as  
34           being the ones airing the concerns?

35           A. I don't recall the partner that told me, but my  
36           recollection of the main source of the complaint was that  
37           Mr Styant-Browne, Nick Styant-Browne, was very concerned  
38           about Julia Gillard's involvement in the conveyance.  
39

40           Q. Just to be clear, in the third line of 3.4 you make  
41           reference to partners, plural, and you have told us about  
42           Mr Styant-Browne?

43           A. I am not trying to suggest that Mr Styant-Browne was  
44           alone in his concern. It is a long time ago, but my  
45           recollection is that he was - he was the person who was  
46           hottest about that issue. I think the people I likely  
47           spoke to at the time were people including

1 Nick Styant-Browne, Peter Gordon and Geoff Shaw, but  
2 I don't recall.

3

4 Q. The mere fact, of course, that a partner had some  
5 involvement in a conveyance of itself and without more is  
6 not a matter that would give rise to a concern. What  
7 exactly were the concerns that Mr Styant-Browne aired with  
8 you?

9 A. As I said, I don't recall Mr Styant-Browne saying it  
10 precisely. I just recall him being the primary source of  
11 it, but the concern that was conveyed was that  
12 Julia Gillard had created an association which might have  
13 been set up corruptly and might have involved corrupt  
14 moneys and it involved the firm in a conveyance involving  
15 those moneys.

16

17 Q. That raises a number of issues, but picking up the  
18 latter one first, I think you made reference to corrupt use  
19 of the moneys. What you are talking about in 3.4 is  
20 a concern about Ms Gillard being involved in a conveyance  
21 of a property at 85 Kerr Street?

22 A. Yes.

23

24 Q. When just then you mentioned corrupt use of the money,  
25 were you indicating that part of the problem that had come  
26 to light was the source of the funds to acquire the  
27 Kerr Street property?

28 A. I think so. It is a long time ago and it's sometimes  
29 hard to recall exactly when you learnt particular things.

30

31 Q. Yes. Had it come to light by this stage, so  
32 August/September, that some \$90,000 had come from the  
33 Workplace Reform Association to acquire the Kerr Street  
34 property?

35 A. I don't remember.

36

37 Q. Was it put to you that some of the funds to acquire  
38 the property had come from the slush fund, if I can call it  
39 that, that Ms Gillard had set up?

40 A. I don't remember.

41

42 Q. Was the real problem that was being raised the concern  
43 that union money may have been diverted into the  
44 incorporated association?

45 A. I think that was one of the concerns.

46

47 Q. You use the word "corruptly", corrupt use of the

1 money. What was said to you to develop that proposition?  
2 Why was that suspicion --

3 A. The other thing which occurred at the same time were  
4 the matters that I dealt with later in my statement about  
5 which I cannot inform you because of privilege.  
6

7 Q. Yes.

8 A. That too was informing the discussion about what  
9 Julia Gillard did or didn't do.  
10

11 Q. But that really, without delving into the detail of  
12 the advice which, for the reason you have indicated, you  
13 don't want to travel into, that really dealt with  
14 a different matter, didn't it? That related to the  
15 possibility that funds had been moved in a particular way  
16 in 1995 or later. The point that you were adverting to in  
17 3.4 is a concern that had begun to be aired by some  
18 partners of the firm about Ms Gillard's involvement in the  
19 conveyance of the property at 85 Kerr Street, Fitzroy, and  
20 what I was endeavouring to explore with you is what  
21 precisely was the concern in relation to that conveyance  
22 that was aired.

23 A. Well, I think all I can say is if Mr Wilson had been  
24 involved in wrongdoing later, what was - what had occurred  
25 earlier was the question that was swirling around Slater &  
26 Gordon at that point.  
27

28 Q. What had occurred earlier was the question swirling  
29 around Slater & Gordon?

30 A. Well --  
31

32 Q. Well, what was the question swirling around Slater &  
33 Gordon?

34 A. You are inquiring into privilege matters.  
35

36 Q. No, I'm not. The privilege matters relate to what  
37 occurred in 1995. I am actually asking you about the  
38 concern about the conveyance which was in 1993?

39 A. What you can't do, I don't think, Mr Stoljar, is  
40 separate the two because what was concerning the partners  
41 was the relationship of Julia with Mr Wilson and what  
42 Mr Wilson may or may not have been up to.  
43

44 Q. In 1993 as distinct from 1995?

45 A. Well, I don't know whether the distinction was drawn  
46 as neatly - in fact, I'm sure it wasn't drawn as neatly as  
47 that.

1  
2 Q. Had there been an investigation within the firm into  
3 these matters?  
4 A. Not that I was aware of.  
5  
6 Q. Were the concerns ventilated by Mr Styant-Browne  
7 communicated orally or in writing?  
8 A. I never saw anything in writing and I don't recall  
9 Mr Styant-Browne communicating it to me. I do recall being  
10 told of his concerns.  
11  
12 Q. Was there any document that you are aware of created  
13 by Slater & Gordon recording these concerns or the outcome  
14 of any investigation?  
15 A. I've seen a transcript of an interview but other than  
16 that, no.  
17  
18 Q. You mean the interview of Ms Gillard?  
19 A. Yes.  
20  
21 Q. Were part of the concerns that were ventilated with  
22 you by Mr Styant-Browne or others the fact, for example,  
23 that Mr Wilson had executed the documentation using a power  
24 of attorney?  
25 A. I don't mean to say that those concerns weren't aired,  
26 but I don't believe they were aired to me.  
27  
28 Q. I'm still focusing on the conveyancing issue. Did  
29 that cause you some consternation?  
30 A. No.  
31  
32 Q. The conveyancing issue didn't?  
33 A. No.  
34  
35 Q. It was the other matters or - I am sorry, did other  
36 matters cause you consternation?  
37 A. Yes.  
38  
39 Q. Did you discuss the conveyancing issue with  
40 Ms Gillard?  
41 A. I don't recall a conversation, but given that  
42 I reached the view that she hadn't done anything wrong,  
43 I must have.  
44  
45 Q. The second matter to which you make reference in  
46 paragraph 3.4 is rumours circulating that some of  
47 Ms Gillard's home renovations had been paid for by the AWU.

1 Who told you about those rumours?  
2 A. Well, I recall being told of one incident by  
3 Andrew Watson who was a former barrister who had become an  
4 industrial officer of another union. He told me about  
5 a builder turning up at the AWU and asking for payment and  
6 I told Julia about that, but that wasn't the only occasion  
7 to which I'm referring. There were wider rumours. I can't  
8 recall their source at the time, but it wasn't - they were  
9 being discussed more widely than that. It wasn't that much  
10 longer before Phillip Gude raised them in State Parliament.

11

12 Q. Were they being discussed among the partnership at  
13 Slater & Gordon?

14 A. I don't know. I wasn't attending partners' meetings  
15 at the time because of the Harris Smith dispute, but I must  
16 say I presume they were because they were raised with  
17 Gillard in the interview that was transcribed.

18

19 Q. Was it a matter that Nick Styant-Browne raised with  
20 you?

21 A. No.

22

23 Q. Just pausing at the top of page 3, the last part of  
24 3.4, you say some of Julia Gillard's home renovations had  
25 been paid for by the AWU. Did you hear rumours to the  
26 effect that funds had come from the incorporated  
27 association to pay for those renovations?

28 A. No.

29

30 Q. It was always the AWU?

31 A. Yes.

32

33 Q. In 3.5 you say:

34

35 *In my conversations with Julia Gillard at*  
36 *the time she denied any impropriety in*  
37 *respect of the ...*

38

39 And I interpolate here, firstly, the AWU Workplace Reform  
40 Association and secondly, her home renovations?

41 A. Yes.

42

43 Q. So you questioned her, did you, about the Workplace  
44 Reform Association?

45 A. I don't know whether "questioned her" would be right,  
46 but I had conversations with her about whether she'd done  
47 anything wrong and she assured me she hadn't and I believed



1 her.  
2  
3 Q. Did you ask her about why she hadn't set up a file,  
4 for example?  
5 A. No, I didn't.  
6  
7 Q. You didn't raise that at all?  
8 A. I don't think so. It is a long time - I can't recall  
9 the conversation.  
10  
11 Q. Did you have conversations with her at the time about  
12 the circumstances in which the Workplace Reform Association  
13 was set up?  
14 A. No.  
15  
16 Q. When you say:  
17  
18 *In my conversations with Julia Gillard at*  
19 *the time she denied any impropriety in*  
20 *respect of the AWU WRA ...*  
21  
22 What was the content of those conversations?  
23 A. I don't recall the content but she was being - she was  
24 being accused of wrongdoing by others within the firm and  
25 I asked her, to the best of my - I asked her what was in it  
26 and she assured me there was nothing in it. I can't recall  
27 the detail of the conversations. I left it, left those  
28 conversations, believing that she'd done nothing wrong.  
29  
30 Q. Did you give consideration to what options were  
31 available to you and the rest of the firm at that time?  
32 A. I don't know what you mean.  
33  
34 Q. Did you consider the option, for example, of advising  
35 the AWU of the concerns that were being expressed by  
36 various persons?  
37 A. I didn't. I was - I left there within several weeks  
38 of this.  
39  
40 Q. You mean you didn't give it consideration or you  
41 didn't inform the AWU?  
42 A. I didn't inform the AWU.  
43  
44 Q. Did you consider that as an option?  
45 A. No.  
46  
47 Q. Did you discuss it? So you didn't discuss it at all

1 with Ms Gillard or anyone else?

2 A. No.

3

4 Q. You said that Mr Styant-Browne, in your evidence this  
5 morning, had raised concerns about corruption. Did you  
6 have discussions about taking the matter any further with  
7 him or anyone else?

8 A. No, I didn't. I wasn't attending partners' meetings  
9 at the time.

10

11 Q. So is this your evidence: that you had the discussion  
12 to which you make reference with Ms Gillard and she denied  
13 any impropriety and you didn't take the matter any further?

14 A. That's correct.

15

16 Q. In 4.1 you say that you had no involvement whatsoever  
17 in Slater & Gordon's work in 1993 in respect of the  
18 conveyance and that really has developed, in a bit more  
19 detail, the evidence you have given orally this morning.  
20 Can I come down to paragraph 5. You are now dealing with  
21 the advice to Mr Wilson to which you have already made  
22 reference in your evidence. We will need to be careful  
23 here, Justice Murphy, not to travel into privilege matters,  
24 but in 5.3, you say that:

25

26 *... Wilson instructed me to act for him in*  
27 *relation to allegations by Smith that*  
28 *Wilson had misappropriated union monies.*  
29 *The allegations related to an account held*  
30 *at the Commonwealth Bank in Carlton,*  
31 *Victoria, which was titled, to the best of*  
32 *my recollection, the AWU Members Welfare*  
33 *Account. No written retainer agreement was*  
34 *entered into.*

35

36 You mean between Slater & Gordon and Mr Wilson?

37 A. That's correct.

38

39 Q. Was your client Mr Wilson or the Victorian Branch of  
40 the AWU?

41 A. Mr Wilson.

42

43 Q. Did he come to you after first seeking advice from  
44 Ms Gillard?

45 A. I don't know.

46

47 Q. In any event, he first approached you in about

1 mid-July 1995, did he?

2 A. I've said June/July because I don't recall the exact  
3 date.

4  
5 Q. Did you keep any notes or anything like that?

6 A. Yes.

7  
8 Q. Those, if they were retained at all, would be with  
9 Slater & Gordon?

10 A. Yes.

11  
12 Q. In paragraph 5.6 you say that you ceased to act for  
13 Mr Wilson, in respect of the allegations made against him,  
14 immediately following the conference. You are making  
15 reference there to a conference on 8 August 1995?

16 A. Yes.

17  
18 Q. Without telling us what they were, he told you certain  
19 things at that conference, did he?

20 A. Yes.

21  
22 Q. On 14 August 1995, as you say in 5.8, you sent  
23 a letter to Mr Wilson which set out his instructions with  
24 regard to the 8 August conference and confirmed the firm  
25 would no longer act for him. A list of privileged  
26 documents has been provided to the Commission by Slater &  
27 Gordon and a letter was sent - I can show you the list if  
28 need be, but on 14 August a letter was sent from you to  
29 Mr Wilson headed, "Possible Criminal Prosecution". Is that  
30 the letter to which you make reference?

31  
32 DR HANSCOMBE: I object to that. That does call for part  
33 of the content of the document. The document is the  
34 subject of a contested claim for privilege.

35  
36 THE COMMISSIONER: There appears to be some force in that  
37 objection.

38  
39 MR STOLJAR: I am only talking about the heading. I was  
40 not aware any objection was being raised in respect of the  
41 heading.

42  
43 DR HANSCOMBE: Commissioner, in my submission, the  
44 heading is part of the document. The document in its  
45 entirety is the subject of the claim for privilege. That  
46 privilege claim is contested in the courts of Victoria and  
47 is yet to be determined.

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THE COMMISSIONER: Technically, the privilege protects communications and the heading may not be a communication, but doesn't it have a tinge of summary of the contents of the matter proper?

MR STOLJAR: If it does, Commissioner, in my submission the ship has sailed. There has been a list of documents that has been circulated with that heading with, as I understand it, no objection taken up until now.

THE COMMISSIONER: Do you have that list to hand?

MR STOLJAR: I don't have it to hand. I might have to come back to it, Commissioner.

THE COMMISSIONER: Yes, it may be necessary.

MR STOLJAR: Q. Yes. I will come at it in a different way for the time being, Justice Murphy. In paragraph 5.3 you say that the matters which Mr Wilson raised related to an account held at the Commonwealth Bank in Carlton titled, "The AWU Members Welfare Account". Pausing there, this is a separate issue from the Workplace Reform Association?

A. Yes.

Q. And the allegation, as you understood it, was that Mr Wilson had misappropriated union moneys. You had your conference on 8 August, to which you make reference in 5.5, and then at 5.8, you sent the letter that I referred to earlier. Don't worry about the title, but you sent a letter saying that the firm would no longer act for him. Can I just take you back to 5.6. You say:

*I ceased to act for Wilson ... immediately following the conference.*

That is on 8 August. However, you then say: Wilson

*Wilson ... requested that I seek a redundancy payment ...*

And you telephoned Mr Cain about that. What was the position? You were still doing some work for him?

A. I ceased to act for him in relation to the allegations, but I, at that point, agreed that I would act for him in relation to seeking the redundancy.

1  
2 Q. Were the two connected?  
3  
4 MR HUTLEY: I object. That could call implicitly for  
5 implied privileged information.  
6  
7 THE COMMISSIONER: I am sorry, I didn't quite get that,  
8 Mr Hutley.  
9  
10 MR HUTLEY: That implicitly calls for the disclosure of  
11 privileged information in that form  
12  
13 MR STOLJAR: Yes. I don't press that question,  
14 Commissioner.  
15  
16 Q. Did Mr Wilson give you instructions as to the basis on  
17 which he was seeking a redundancy payment?  
18 A. He said he was leaving.  
19  
20 Q. He was simply leaving?  
21 A. Leaving the union and he wanted a redundancy.  
22  
23 Q. In any event, you then say in 5.7 that a few days  
24 later, you also ceased to act for Mr Wilson in relation to  
25 the redundancy claim?  
26 A. Yes.  
27  
28 Q. Did any further event occur between 8 August and your  
29 ceasing to act for Mr Wilson in the redundancy claim which  
30 gave rise to the latter event?  
31 A. Well, at around the same time that I told Mr Wilson  
32 I wouldn't act for him in relation to the redundancy,  
33 I also informed John Cain that I was no longer acting in  
34 the redundancy. I don't recall the date of that  
35 conversation, but it was in the same time period.  
36  
37 Q. What caused you to change your mind about continuing  
38 to act for Mr Wilson in that limited capacity?  
39 A. I thought I was in a position of conflict.  
40  
41 Q. You mean by that that Mr Wilson's interests and those  
42 of the AWU were in conflict?  
43 A. Yes.  
44  
45 Q. And that precluded your ability to continue to act for  
46 him?  
47 A. Yes.

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Q. You communicated to Mr Wilson that the firm would no longer act for him. You have said that in 5.8?

A. Yes.

Q. Did you give the same communication to the AWU?

A. No, I didn't.

Q. You say in 5.10 that you no longer acted for the AWU after you ceased acting for Mr Wilson. That was on or about 14 August, but in fact, as I think you have already made reference to earlier, you went on leave in about early September 1995?

A. I did, but effectively we'd already ceased acting for the AWU because Mr Smith had become the new Secretary of the new AWU FIME Branch. He instructed other solicitors. The National Construction Branch was no more because Wilson was leaving and Blewitt was leaving and Slater & Gordon had no clients from the AWU.

Q. When you say, "I no longer acted", in 5.10, "after I ceased acting for Wilson", do you mean by that that you did not do any work for the AWU in the period 14 August to early September 1995?

A. I didn't do any further work for the AWU in that period.

Q. So you made a determination yourself that you wouldn't act for the AWU, but you didn't communicate that to anyone at the AWU?

A. No, I didn't.

Q. After the three weeks or so from 14 August through to early September, you went on leave and the short point is you never returned to Slater & Gordon?

A. No, I didn't.

MR STOLJAR: I have nothing further. Thank you, Commissioner.

THE COMMISSIONER: Mr Galbally?

MR GALBALLY: Thank you, Commissioner.

**<EXAMINATION BY MR GALBALLY:**

MR GALBALLY: Q. Did you yourself prepare this statement

1 or was it prepared with the assistance of Commission staff?  
2 A. No, I prepared it.  
3  
4 Q. You have indicated at the outset that you did that by  
5 mainly memory, without resort to any documentation?  
6 A. Yes.  
7  
8 Q. Did it not cross your mind that you could have  
9 accessed the Slater & Gordon file to assist you in the  
10 preparation of this statement?  
11 A. I was not allowed access to Slater & Gordon's files.  
12  
13 Q. You did ask?  
14 A. I did.  
15  
16 Q. Who denied you the request to access those?  
17 A. I didn't make it personally, my lawyers made it, but  
18 I was informed that they would not provide me with  
19 documentation.  
20  
21 Q. You have had resort to some documentation in compiling  
22 this statement. I assume you have looked at the transcript  
23 of the various press conferences of Ms Gillard in 2012?  
24 A. I have.  
25  
26 Q. Any other documentation apart from the transcripts of  
27 those two press --  
28 A. I read Ms Gillard's exit interview.  
29  
30 Q. That's it?  
31 A. I've read a lot of newspapers.  
32  
33 Q. But primarily those three documents in order to  
34 compile the statement?  
35 A. Yes.  
36  
37 Q. I want to go back in time to the late '80s and  
38 early '90s, so far as it is relevant to the terms of this  
39 inquiry. You worked with Slater & Gordon for 17 years  
40 after starting your articles there in '78; is that right?  
41 A. Yes.  
42  
43 Q. You were aware that Slater & Gordon had an office in  
44 Perth, Western Australia, from 1987?  
45 A. Yes.  
46  
47 Q. You were primarily operating in Melbourne?

1 A. Yes.  
2  
3 Q. Did you have much to do with the Western Australian  
4 office  
5 A. Yes.  
6  
7 Q. Did it have an industrial unit?  
8 A. No.  
9  
10 Q. After Ms Gillard joined the firm, you and Ms Gillard  
11 were really the only two lawyers in the industrial unit in  
12 Melbourne?  
13 A. Yes.  
14  
15 Q. But I suppose being entrepreneurial, you wanted to  
16 extend your industrial influence into Western Australia?  
17 A. Yes.  
18  
19 Q. That office in Western Australia was primarily  
20 concerned with compensation matters?  
21 A. Asbestos claims largely.  
22  
23 Q. Correct me if I'm wrong, but did you not meet  
24 Bruce Wilson in Melbourne when he was having a stopover  
25 here from Western Australia?  
26 A. I don't recall.  
27  
28 THE COMMISSIONER: You mean for the first time?  
29  
30 MR GALBALLY: For the first time, yes.  
31  
32 THE WITNESS: I don't recall.  
33  
34 MR GALBALLY: Q. You don't recall?  
35 A. No.  
36  
37 Q. Do you remember as to whether he had been appointed  
38 the Branch Secretary of the AWU in Western Australia when  
39 you first met him?  
40 A. That's to the best of my recollection when I first met  
41 him when he came to Victoria.  
42  
43 Q. And you put that down as 1991?  
44 A. If that's when he came to Victoria: 1991-92.  
45  
46 Q. I am asking you about your evidence?  
47 A. Well, I don't know exactly what year it was, but in



1 that period.  
2  
3 Q. Do you not make reference to the fact of you meeting  
4 him in June 1991?  
5 A. I don't make that reference.  
6  
7 Q. You don't?  
8 A. No.  
9  
10 Q. Were you introduced by Julia Gillard?  
11 A. I believe so.  
12  
13 Q. At that time when you met him he was a client of  
14 Slater & Gordon?  
15 A. I believe so.  
16  
17 Q. Can you be a bit more accurate, your Honour, as to  
18 whether this is 1991 or early 1992?  
19 A. No.  
20  
21 Q. You can't? But when you are introduced to him, it's  
22 by Julia Gillard and he's already a client of the firm?  
23 A. Yes.  
24  
25 Q. At a later point in time, do you understand, or were  
26 you informed, I should ask, that they had established  
27 a romance?  
28 A. Yes.  
29  
30 Q. And that was when she was living in Melbourne and he  
31 was still in Perth?  
32 A. Yes.  
33  
34 Q. So after that point in time the solicitor in the firm  
35 and in the room next to you is acting on behalf of Wilson  
36 and the Australian Workers Union?  
37 A. Yes.  
38  
39 Q. And you become aware that they're having an affair?  
40 A. Yes.  
41  
42 Q. You've made reference to rumours swirling around the  
43 firm in 1995, but what about at this point in time, 1991,  
44 when Ms Gillard's acting on behalf of the Australian  
45 Workers Union and probably Wilson and there's a romance  
46 taking place?  
47 A. Well, there were no rumours circulating of improper

1 behaviour at that time.

2

3 Q. But you would have been aware of the ethical rules  
4 that lawyers were bound by in the early 1990s?

5 A. Yes.

6

7 Q. And it was regarded, I suggest to you, as  
8 unprofessional conduct for a solicitor to have an affair, a  
9 sexual affair, with a client?

10 A. I don't think it occurred in those circumstances.  
11 I think they were lovers first and then became  
12 solicitor/client.

13

14 Q. I asked you a little while ago when you were  
15 introduced to him was he a client already and you said that  
16 was the case, as you understood it?

17 A. Yes.

18

19 Q. Do you want to change your evidence?

20 A. No.

21

22 Q. Were you aware that Ms Gillard had written a letter to  
23 the Western Australian Branch of the Australian Workers  
24 Union as early as 20 August 1991 in relation to the rules  
25 of the AWU?

26 A. No, I was not.

27

28 Q. Have you seen that letter since?

29 A. I think so.

30

31 Q. But it's clear, isn't it, that during that period,  
32 1991, she was doing legal work for the Australian Workers  
33 Union and in Western Australia?

34 A. It seems so.

35

36 Q. And were the two of you, when there were only two  
37 lawyers in the industrial unit, keen to get a presence in  
38 Western Australia in the industrial area?

39 A. It wasn't the focus of ours, but there were more than  
40 two lawyers in 1991.

41

42 Q. How many were there?

43 A. Oh, four or five.

44

45 Q. Do you remember attending a branch committee meeting,  
46 a committee of management meeting in Perth for the  
47 Australian Workers Union around that time?

1 A. No, I don't recall attending but I have read the  
2 various statements saying that I did.  
3  
4 Q. Are you aware that, or do you recall, I should ask  
5 you, do you recall that Bruce Wilson actually introduced  
6 a resolution to that committee of management meeting to  
7 engage Slater & Gordon to act for the AWU in  
8 Western Australia? Does that ring a bell with you?  
9 A. It doesn't.  
10  
11 Q. Might it have happened?  
12 A. I have no reason to doubt it, but I don't have any  
13 recollection of it.  
14  
15 Q. You see, the AWU in early 1992 was an important client  
16 for Slater & Gordon, wasn't it?  
17 A. Not particularly.  
18  
19 Q. I want to put it to you that there was something like  
20 \$100,000 a year coming from the AWU to Slater & Gordon each  
21 year for a three-year period for legal fees?  
22 A. I very much doubt that.  
23  
24 Q. And that there was an average of about \$50,000 coming  
25 from the Victorian Branch of the AWU about that time?  
26 A. Well, I have no recollection of the fees that were  
27 charged, but those numbers you've just quoted I find  
28 a little surprising.  
29  
30 Q. In any event, they were a new client of yours and you  
31 were interested to pursue their goodwill?  
32 A. Yes.  
33  
34 Q. Slater & Gordon had taken the matter over from another  
35 firm only a short time before, isn't that right?  
36  
37 MR HUTLEY: I object, unless there is some indication of  
38 what "the matter" is.  
39  
40 THE COMMISSIONER: Yes.  
41  
42 MR GALBALLY: I will rephrase it.  
43  
44 Q. Did Slater & Gordon commence to act on behalf of the  
45 Australian Workers Union having taken over clients and  
46 files or the union itself earlier?  
47 A. Which branch are we talking about now?

1  
2 Q. Victoria.  
3 A. Well, my recollection is in Victoria we commenced to  
4 act for them in 1998-99 - '89 when a new leadership came  
5 into that union and chose to instruct Slater & Gordon  
6 rather than some other legal firm.  
7  
8 Q. Did Bruce Wilson become the main person that you were  
9 dealing with, the firm was dealing with, in relation to the  
10 Australian Workers Union?  
11 A. Not at that time. He wasn't even in Victoria at that  
12 time.  
13  
14 Q. So whilst Slater & Gordon had a presence in  
15 Western Australia before you met Wilson, it was through  
16 Wilson that more work developed, is that right, in the  
17 industrial area?  
18  
19 MR HUTLEY: I object to that. It is very unclear as to  
20 when. Is it from '88-89 or some time thereafter?  
21  
22 MR GALBALLY: Yes.  
23  
24 DR HANSCOMBE: Yes, I support that objection.  
25  
26 THE WITNESS: Well, in '88-89 we weren't acting for the  
27 Western Australia Branch of the AWU. Sorry, '98 - '88-89.  
28  
29 MR GALBALLY: Q. Just to clarify, you began acting in  
30 1991?  
31 A. It seems like it, yes.  
32  
33 Q. I want to ask you about the Workers Reform  
34 Association. You, prior to 1995, knew nothing about that  
35 association?  
36 A. No, I did not.  
37  
38 Q. No discussions with Julia Gillard over coffee or  
39 anything of that nature?  
40 A. No.  
41  
42 Q. So for a three-year period, '92 to '95, it's just not  
43 mentioned, full stop?  
44 A. No.  
45  
46 Q. So you weren't aware, as an equity partner, that no  
47 file had been opened?

1 A. No.  
2  
3 Q. You gave brief evidence earlier in relation to opening  
4 a file. Slater's had at that time, in the 1990s, a Wang  
5 system of dictation; is that the way it operated?  
6 A. That's my memory.  
7  
8 Q. That you would dictate to a central position and what  
9 you dictated would come back from that central position?  
10 A. It's a long time ago, Mr Galbally, but I think - well,  
11 the industrial unit had its own typists, so it didn't go to  
12 a central position, but I think the word processor was  
13 a Wang.  
14  
15 Q. Did that automatically open a file?  
16 A. No.  
17  
18 Q. What mechanically was necessary in order to open  
19 a file at Slater's?  
20 A. I can't recall what sort of requisition was used, but  
21 some form.  
22  
23 Q. You'd fill out a form?  
24 A. Yes.  
25  
26 Q. And request that a file be opened by administrative  
27 staff, is that the way it operated?  
28 A. Yes.  
29  
30 Q. At the beginning of a process you had an option to  
31 open a file or not?  
32 A. Yes.  
33  
34 Q. I suppose there must have been occasions when you  
35 thought it was a minor matter and no need for a file to be  
36 opened, but it starts to grow and grow and you need to open  
37 a file?  
38 A. Yes.  
39  
40 Q. So there's no magic in opening a file at the first  
41 interview in the process; one could open a file at a later  
42 point as the work developed; is that right?  
43 A. Yes, you could.  
44  
45 Q. As I understand it, at that time it was not uncommon  
46 for you to, in advance of goodwill, give advice pro bono?  
47 A. Very common with unions.

1  
2 Q. And do legal work pro bono?  
3 A. Yes.  
4  
5 Q. Which might mean that you open a file or you don't  
6 open a file?  
7 A. If it was a small matter, my practice was not to open  
8 a file. If it was likely to become or was going to be  
9 a big matter, I would open a file.  
10  
11 Q. And of course you can open a file, accumulate work in  
12 progress and write the fees off in any event, can't you?  
13 A. Yes, you could.  
14  
15 Q. At no stage did Ms Gillard come to you as a salaried  
16 partner, you, the equity partner, and ask any questions  
17 about the Workplace Reform Association or what was needed  
18 to be done legally in Western Australia?  
19 A. No, she did not.  
20  
21 Q. Do you recall that Mr Wilson moved to Melbourne in  
22 mid-1992?  
23 A. I don't recall the date, but I recall when he arrived.  
24  
25 Q. About that time?  
26 A. Yes.  
27  
28 Q. Did you know before that date, before his move to  
29 Melbourne, that Ms Gillard and he were having a romance?  
30 A. Yes, I did.  
31  
32 Q. Did she tell you about that or did that come by way of  
33 some other person?  
34 A. She told me.  
35  
36 Q. Did you give her any advice about the ethical risks  
37 involved in that?  
38 A. No, I didn't.  
39  
40 Q. Did you not think of it or --  
41 A. I don't recall.  
42  
43 Q. Is the position this, that it wasn't until three years  
44 later, 1995, that you, for the first time, are informed  
45 that she has done legal work in relation to the Workplace  
46 Reform Association and no file has been opened?  
47 A. That's correct.

1  
2 Q. Before you left Slater & Gordon, did you enquire from  
3 her as to why she'd conducted herself in that way?  
4 A. I don't think so. In the sense of opening the file?  
5  
6 Q. Mmm.  
7 A. I don't think so.  
8  
9 Q. Were you aware as to whether any of the other partners  
10 took an interest in this issue, that's prior to the exit  
11 interview?  
12 A. I wasn't aware.  
13  
14 Q. Is this the position, that you were not aware of the  
15 purchase of Kerr Street after a file was opened following  
16 an auction?  
17 A. I had no involvement in the transaction and I don't  
18 recall knowing at the time. I knew later that Wilson had  
19 a house at Kerr Street. I didn't know who owned it.  
20  
21 Q. So you weren't informed that Ms Gillard and he had  
22 attended the auction?  
23 A. No.  
24  
25 Q. Or that a file had been opened up days later?  
26 A. No.  
27  
28 Q. Or that legal work was being done by the conveyancing  
29 department?  
30 A. No.  
31  
32 Q. Did salaried partners have the power to write off  
33 legal fees?  
34 A. Yes.  
35  
36 Q. That wasn't exclusively the domain of an equity  
37 partner?  
38 A. No.  
39  
40 Q. Were you consulted about the writing off of fees in  
41 relation to this conveyancing file?  
42 A. No.  
43  
44 Q. Or the mortgage file?  
45 A. No. It was very common for the firm to provide free  
46 or discounted conveyances for staff and their loved ones.  
47

1 Q. Have you, yourself, ever done a conveyance?  
2 A. No.  
3  
4 Q. In the normal course of events, though, your Honour,  
5 if you were given instructions as a lawyer to act on behalf  
6 of a purchaser of a property, you should be taking proper  
7 instructions, shouldn't you?  
8 A. Yes.  
9  
10 Q. And would those sort of instructions revolve around  
11 issues like whose name the property is to be in?  
12  
13 MR HUTLEY: I object. This is really a matter of  
14 submission rather than any --  
15  
16 THE COMMISSIONER: Or is it trade evidence of how the  
17 profession of solicitor --  
18  
19 MR HUTLEY: His Honour has indicated he has never done  
20 a conveyance. It is a matter obviously for the Commission.  
21  
22 THE WITNESS: Common sense tells me, Mr Galbally, that you  
23 ought to take instructions from a client and this would  
24 include the important matters in relation to that  
25 transaction.  
26  
27 MR GALBALLY: Q. As to the name the property is to go  
28 into?  
29 A. Yes.  
30  
31 Q. Which name; whether it is an investment property?  
32 A. I don't know whether it is necessary, I have never  
33 done a conveyance, but --  
34  
35 Q. How long is the settlement period?  
36 A. Yes.  
37  
38 Q. Where is the money coming from? They are the sort of  
39 fundamental questions one would ask?  
40 A. I suspect so not having done one.  
41  
42 Q. In any event, in relation to Kerr Street, it wasn't  
43 yourself who authorised the writing off of any fees?  
44 A. No.  
45  
46 Q. And you weren't consulted on any issue at any time by  
47 Ms Gillard in relation to the Kerr Street conveyance?



1 A. No, I wasn't.  
2  
3 Q. Is that the same thing that applied to the mortgage  
4 that went through the Slater & Gordon mortgage arm, you  
5 know nothing about that?  
6 A. I didn't.  
7  
8 Q. I just wanted to ask you this question. In the early  
9 1990s, how many different unions would you have been  
10 representing, just approximately?  
11 A. Roughly in the order of 25.  
12  
13 Q. You would have had a comprehensive knowledge about the  
14 way in which they operate and how rules operate, elections,  
15 and so forth?  
16 A. Yes.  
17  
18 Q. Bandied around in the Commission here is the  
19 expression the "slush fund". A slush fund is or was  
20 essentially an election fund, isn't that right?  
21 A. I'd not heard it called a slush fund. The expression  
22 I used was election fund.  
23  
24 Q. Or payroll deduction fund?  
25 A. No, it was called an election fund. They were  
26 often - the moneys were often put into the fund through  
27 payroll deductions of the members of a particular team  
28 within the union.  
29  
30 Q. So an election fund is made up of a group of unionists  
31 who contribute to that fund from payroll deductions and the  
32 money is used for the purposes of elections?  
33 A. Yes.  
34  
35 Q. It wouldn't be possible to register one of an election  
36 fund per se as an incorporated association, would that be  
37 the position?  
38 A. I never tried. I don't know.  
39  
40 Q. You're not aware of any election fund being registered  
41 as an incorporated association?  
42 A. I never did.  
43  
44 Q. No. And apart from a bank account and some members  
45 and payroll deductions, there's not much more to an  
46 election fund than that, is there?  
47 A. Sometimes they required some short rules in the event

1 that the members of that team had a dispute. There had  
2 been occasions when in the course of an election campaign  
3 the members of the team fell out with each other and you  
4 needed some short rules to say whether the money was to be  
5 disbursed to each side of that dispute or whether they  
6 stayed with the, in a sense, trustee.

7

8 Q. And are you able to confirm that the word "slush", as  
9 in "slush fund", merely describes anonymous donors to that  
10 fund?

11

12 MR HUTLEY: I object. The witness said he didn't use it.

13

14 THE COMMISSIONER: I am sorry, Mr Hutley?

15

16 MR HUTLEY: The witness has said he didn't use it at the  
17 time. Is what this question is directed to is what he  
18 understands now or what he has heard from newspapers?  
19 What?

20

21 MR GALBALLY: What he understands now, Commissioner.

22

23 MR HUTLEY: That is of no assistance to you, Commissioner.

24

25 MR GALBALLY: It is an expression that has been used  
26 within these walls and it would be nice if everyone  
27 understood what it meant. May I go on?

28

29 THE COMMISSIONER: I think so.

30

31 THE WITNESS: What was the question, Mr Galbally?

32

33 MR GALBALLY: Q. You now know how a slush fund is  
34 defined?

35

36 A. I don't think it's defined. It's not an expression  
37 I used. I'm not comfortable with expressing a view as to  
38 what's within it.

38

39 Q. These election funds that are established can receive  
40 contributions from anyone --

41

42 A. Yes.

43

44 Q. -- to assist with the election of the candidates who  
45 make up the election fund?

46

47 A. Yes.

47

Q. That is a very different legal entity, isn't it, to an

1 incorporated association?  
2 A. Well, they're obviously different entities: one is  
3 unincorporated and one is incorporated.  
4  
5 Q. Precisely, but when it is incorporated there is a  
6 necessity, is there not, to have objectives and rules?  
7 A. Yes.  
8  
9 Q. Have you ever read the rules that were registered with  
10 the Workplace Reform Association?  
11 A. No.  
12  
13 Q. Could the witness be shown, Commissioner, just the  
14 first page of the rules of the Workplace Reform  
15 Association? As I understand it, it is Exhibit Blewitt  
16 MFI1 behind tab 5.  
17  
18 THE COMMISSIONER: I think we will have to throw  
19 ourselves --  
20  
21 MR GALBALLY: Page 60. I have a copy. I am not going to  
22 tender it in evidence, it is already there, but if I could  
23 show the witness this for the purposes of my brief  
24 questions.  
25  
26 Q. I only require you, your Honour, to look at the front  
27 page of that document.  
28 A. Yes.  
29  
30 Q. Do you see, "Objects of the Association"?  
31 A. Yes.  
32  
33 Q. Just confirm that you are reading that from "The Rules  
34 of the Australian Workers' Union, Workplace Reform  
35 Association", at the top?  
36 A. Yes.  
37  
38 Q. Not out loud, just read (a) to (h) to yourself?  
39 A. Yes.  
40  
41 Q. Thank you. I don't want to ask you about this  
42 association, but what I want to ask you about is this:  
43 there's no reference in those objects, is there, to  
44 elections, candidates, bank accounts? There are no key  
45 words that might apply to an election fund?  
46 A. It doesn't refer to elections.  
47

1 Q. No. They are aspirational objects, are they not, to  
2 a welfare entity?

3 A. They're aspirational objects.  
4

5 Q. But a reader of these objects would not be able to  
6 conclude that there was an election fund built into this  
7 association?

8 A. It wasn't clear to me reading them.  
9

10 Q. No. Thank you. Moving on to another topic,  
11 in February 1995 Slater & Gordon was retained by the  
12 Australian Workers Union National Construction Branch, is  
13 that the position?

14 A. Yes.  
15

16 Q. Did you personally do legal work in relation to the  
17 National Construction Branch?

18 A. Yes.  
19

20 Q. Receiving instructions from Bruce Wilson?

21 A. Yes.  
22

23 Q. Did you continue to act for him up until August of  
24 1995?

25 A. Yes.  
26

27 Q. Were you informed about his confession of criminality  
28 before August 1995?  
29

30 MR HUTLEY: I object.  
31

32 DR HANSCOMBE: I object to that. That calls for  
33 privilege communications to this witness.  
34

35 THE COMMISSIONER: In the first place I think the question  
36 is very unspecific as to time. Whether it calls for  
37 privilege communications might well depend on what took  
38 place.  
39

40 MR GALBALLY: Commissioner, I am not going to embark on  
41 asking this witness about the content of any discussions.  
42 My question is solely as to whether he had been informed  
43 about criminality, and he has given evidence about that,  
44 prior to the date of August 1995.  
45

46 THE COMMISSIONER: By?  
47

1 MR GALBALLY: Mr Wilson.  
2  
3 DR HANSCOMBE: Well --  
4  
5 MR HUTLEY: There is an assumption in it.  
6  
7 DR HANSCOMBE: Commissioner, I would --  
8  
9 THE COMMISSIONER: It sounds as though it could well be  
10 privileged. Perhaps Justice Murphy is the best judge of  
11 that  
12  
13 DR HANSCOMBE: If the Commission please.  
14  
15 THE COMMISSIONER: Q. Is there any non-privileged  
16 confession of criminality that Mr Wilson made to you in  
17 1995?  
18 A. None.  
19  
20 MR GALBALLY: Q. You acted on behalf of Ralph Blewitt in  
21 a defamation action commencing in December 1993?  
22 A. Yes.  
23  
24 Q. To your knowledge were those proceedings discontinued  
25 after you left Slater & Gordon?  
26 A. I don't know what happened to them after I left.  
27  
28 Q. But they were still running at the time you left?  
29 A. They were still running, yes.  
30  
31 Q. So you were acting on his behalf up until the time you  
32 left?  
33 A. Yes.  
34  
35 Q. Who was giving you instructions in relation to that  
36 defamation action?  
37 A. Mr Blewitt.  
38  
39 Q. Was it solely Mr Blewitt or was Mr Wilson also giving  
40 you instructions?  
41 A. No. I think what occurred is that Mr Wilson advised  
42 me about the matter and then I took instructions from  
43 Mr Blewitt.  
44  
45 Q. Again in relation to Bruce Wilson, you opened a file  
46 on his redundancy in, is it August 1995?  
47 A. I didn't open a file.

1  
2 Q. You didn't?  
3 A. No.  
4  
5 Q. Did you --  
6 A. I had a file on which I kept the notes of my  
7 instructions from him in relation to the allegations of  
8 misappropriation.  
9  
10 Q. You had negotiations with a lawyer, John Cain, who was  
11 then with Maurice Blackburn?  
12 A. I didn't have negotiations. I rang him and said  
13 Mr Wilson was going to leave the union and he wanted  
14 a redundancy. It was a very short conversation.  
15  
16 Q. Did you do anything further after that in pursuit of  
17 the redundancy?  
18 A. No.  
19  
20 Q. I want to ask you some questions about the year 1995.  
21 Are you aware as to how the partners became aware of the  
22 existence of the Workplace Reform Association?  
23 A. No.  
24  
25 Q. You can't recall as to whether it was yourself who --  
26 A. It wasn't me.  
27  
28 Q. It wasn't you?  
29 A. No.  
30  
31 Q. You may not be able to answer this either, but do you  
32 know how it came to the attention of the partners?  
33 A. No, I don't. It wasn't - I wasn't aware of it, so it  
34 didn't come from me, but --  
35  
36 Q. When it did come to you, did you yourself approach  
37 Ms Gillard and ask questions about the events?  
38 A. I don't recall the conversations that I had with her  
39 at the time and, in part, some of it's quite hard to work  
40 out what you know from newspaper reports and statements and  
41 commentary over the years compared to what you were told  
42 back in those years, but I had a conversation with her at  
43 the time in which I became satisfied she'd done nothing  
44 wrong and that's the stance that I took.  
45  
46 Q. You said that not only did you work with her in the  
47 adjoining room, but you were friends?

1 A. Yes.  
2  
3 Q. When in 1995 your partners were asking questions based  
4 on swirling rumours, the same subject matter was raised in  
5 State Parliament by Parliamentarian Gude at the time?  
6 A. Not until October 1995 after I'd --  
7  
8 Q. 1995. My point is this, it's 1995 that these  
9 allegations are first raised?  
10 A. Yes.  
11  
12 Q. And the allegations are hot money may have gone into  
13 Ms Gillard's renovations?  
14 A. Yes.  
15  
16 Q. And into the Kerr Street property?  
17 A. Yes.  
18  
19 Q. Wouldn't you have wanted to give her advice to collect  
20 whatever documentation existed that might support whatever  
21 response she had?  
22 A. I didn't give her advice but I had conversations with  
23 her in which she strenuously denied any wrongdoing in  
24 relation to the renovations.  
25  
26 Q. I accept what you say, but my point is this: if there  
27 are allegations being made in State Parliament and your own  
28 partners --  
29 A. Those allegations were made later, not at the time.  
30  
31 Q. Within three months?  
32 A. They were made in October. I left in September.  
33  
34 Q. Yes, but surely you would have become aware of what  
35 was being said in Parliament later that year?  
36 A. I'm not sure what you're saying, Mr Galbally. I don't  
37 understand the question.  
38  
39 Q. The rumours are going around before you leave Slater &  
40 Gordon?  
41 A. Yes.  
42  
43 Q. This is about August 1995?  
44 A. It's between 8 August and some date in  
45 early September.  
46  
47 Q. Those allegations within three months get an airing in

1 State Parliament?

2 A. Yes.

3

4 Q. You are a friend of Ms Gillard?

5 A. Yes.

6

7 Q. Even after you left the firm, did you have discussions  
8 with her?

9 A. No, I didn't. The discussions that I had with her  
10 were at the time and in which she said she'd paid for all  
11 of her own renovations and there was nothing in these  
12 rumours; they were being circulated by her enemies within  
13 the Labor Party.

14

15 Q. You didn't as a friend and lawyer say to her, "Look,  
16 you better get paperwork assembled so that it is available  
17 in order for you to meet these responses"?

18 A. I didn't give her advice.

19

20 Q. When she went off, did you leave the firm first or did  
21 she leave?

22 A. Well, I left to go on holidays and didn't return, so  
23 I didn't know I was leaving at that point. So I went on  
24 holidays in, I don't know, I think around 10 September and  
25 overseas for two weeks and then Noosa for two weeks or so  
26 and then I can't recall when I got back whether  
27 Julia Gillard was still working there or not.

28

29 Q. Just pardon me one moment.

30 A. Actually, Mr Galbally, thinking about it, she was  
31 still there because she attended my farewell.

32

33 Q. Did you have any discussions with her about her  
34 financial situation?

35 A. No.

36

37 MR GALBALLY: I have no further questions.

38

39 THE COMMISSIONER: Thank you, Mr Galbally. Mr Clelland?

40

41 <EXAMINATION BY MR CLELLAND:

42

43 MR CLELLAND: A couple of short matters, Commissioner, if  
44 I might.

45

46 Q. Justice Murphy, you have referred on a couple of  
47 occasions to some rumours swirling around the practice at



1 relevant times and some concerns that were raised and you  
2 have touched on those at paragraph 3.4 of your statement.  
3 Those matters that you became aware of in that way were the  
4 matters that were subsequently raised in the interview,  
5 sometimes described as the exit interview, between  
6 Ms Gillard and Mr Shaw and Mr Gordon in September 1995; is  
7 that correct?

8 A. Yes.

9

10 Q. The questioning of Ms Gillard reflected or raised  
11 those issues that had been identified as being of concern?

12 A. Yes.

13

14 Q. And when you spoke to Ms Gillard about those matters  
15 insofar as you can recall those conversations, she gave you  
16 an account of those matters; is that correct?

17 A. She did.

18

19 Q. Was that prior to the exit interview that took place  
20 in September 1995?

21 A. Yes.

22

23 Q. And what she told you in your conversations with her  
24 and which caused you to form the view that she'd done  
25 nothing wrong, her responses to you were consistent with  
26 her responses to Mr Shaw and Mr Gordon?

27 A. Exactly the same.

28

29 Q. And you accepted her account and continued to do so?

30 A. I do.

31

32 Q. Just coming to this issue of the relationship between  
33 Ms Gillard and Mr Wilson, I take it from your answers that  
34 you never censured her regarding that relationship?

35 A. No, I didn't.

36

37 Q. And nor to your knowledge did any of the other  
38 partners of the firm?

39 A. No-one censured her about having that relationship.

40

41 Q. The concept of opening a file, it was the practice, as  
42 I understand it, that a file could be opened but there was  
43 a separate question as to whether it was initiated on the  
44 Slater & Gordon system, whatever that was; is that correct?

45 A. Yes. There were files which carried a file number  
46 which were opened on the system and upon which  
47 disbursements could be charged and fees could be received,

1 but there were other files which just carried a name - this  
2 is at least in the industrial unit - which weren't opened  
3 on the system and for small items of work or work which  
4 wasn't being charged.

5  
6 Q. Was it to an extent within the individual discretion  
7 of both equity and salaried partners, in particular, as to  
8 whether or not they would charge for work done?

9 A. Yes.

10  
11 Q. And you had your own approach to the matter and it  
12 seems so did other partners?

13 A. I did. Throughout my entire career I'd never charged  
14 a relative for the work that I'd performed.

15  
16 Q. It has emerged that there seems to have been  
17 a practice at Slater & Gordon that work would be done  
18 without charge for unions and union officials?

19 A. Yes, depending on the size of the matter.

20  
21 Q. Quite. Was that because there was seen to be some  
22 collateral benefit to the firm in providing services of  
23 that kind without fee?

24 A. Yes.

25  
26 Q. And what was that benefit perceived to be?

27 A. Well, they were important clients who referred work  
28 which was work of value and it was really a practice  
29 development approach.

30  
31 Q. At that time did Slater & Gordon have or was it  
32 developing a substantial personal injury practice?

33 A. Yes.

34  
35 Q. What was the source of most of the personal injury  
36 work?

37 A. Probably 70 or 80 per cent of the work at least in the  
38 industrial accident area was from unions.

39  
40 Q. At least in part was that the rationale for providing  
41 free legal services to unions and unions officials on other  
42 matters?

43 A. Yes.

44  
45 MR CLELLAND: If the Commission pleases.

46  
47 THE COMMISSIONER: Thank you, Mr Clelland. Dr Hanscombe?

1  
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DR HANSCOMBE: If the Commission please

**<EXAMINATION BY DR HANSCOMBE:**

DR HANSCOMBE: Q. There are just two short matters. I am here for Bruce Wilson. There were two Bob Smiths, in the early '90s, in the AWU, weren't there?

A. Yes.

Q. One was Bob F Smith, that you have seen here this morning, and the another one was another Bob Smith and I don't know his middle initial. Can I call him "the other Bob Smith" and then you will know who I mean?

A. Why don't you call him "the first Bob Smith"?

Q. The first Bob Smith. Okay. The first Bob Smith was already a person giving instructions to Slater & Gordon back in 1989 or 1990?

A. Yes.

Q. I don't know what turns on it or not and I know it is a long time ago. It's possible, isn't it, that you have remembered wrongly who introduced Wilson to the firm; do you agree with that?

A. Absolutely.

Q. In fact, Mr Wilson will say that the first Bob Smith was the person that introduced Wilson to the firm, might that be right?

A. I read that statement and I thought it was plausible, but I have to give my recollection.

Q. Yes.

A. I don't recall that introduction, but --

Q. But he might be right?

A. Yes.

Q. And in fact Mr Wilson says - and again I don't know what turns on it, but Mr Wilson says that there was another matter that came up later that required Slater & Gordon to go to Perth to do some work and you couldn't go and you sent Ms Gillard to Perth to do that work or asked her to go. That might be right too, mightn't it?

A. It might be. I have no recollection of it.

1 Q. But it might be right?  
2 A. Yes.  
3  
4 Q. And Mr Wilson says in fact that was the first time  
5 that he met Ms Gillard and he might be right about that  
6 too?  
7 A. Yes, he might.  
8  
9 Q. In answer to some questions from Mr Galbally, it was  
10 put to you that Wilson was a client of Slater & Gordon. In  
11 fact, it was the AWU that was the client, wasn't it,  
12 strictly speaking?  
13 A. The AWU was the client until Mr Wilson instructed me  
14 in relation to the matter I refer to in my statement.  
15  
16 Q. In late 1995?  
17 A. Yes.  
18  
19 Q. And prior to that the AWU was the client?  
20 A. Yes.  
21  
22 Q. Not Mr Wilson, personally?  
23 A. That's correct.  
24  
25 Q. So the time for which you acted for Bruce Wilson was  
26 in fact a very short period of some weeks in 1995?  
27 A. Yes. I have said six weeks but it might have been  
28 shorter.  
29  
30 Q. It might have been shorter.  
31 A. Yes.  
32  
33 Q. You acted for Ralph Blewitt in respect of a defamation  
34 action?  
35 A. Yes.  
36  
37 Q. You have given the Commission evidence that Mr Blewitt  
38 gave you the instructions?  
39 A. Yes.  
40  
41 Q. And Mr Blewitt was quite able to give you clear and  
42 competent instructions on his own account, wasn't he?  
43 A. Yes.  
44  
45 Q. How many times did you see Mr Blewitt, can you recall?  
46 A. I'd be guessing; it's a small number.  
47

1 Q. It might be as many as five?  
2 A. Yes.  
3  
4 Q. On each occasion Mr Blewitt was there by himself?  
5 A. No, sometimes with Mr Wilson and sometimes by himself.  
6 I'm sorry, Dr Hanscombe, are we talking about the  
7 defamation case or are we talking generally?  
8  
9 Q. Yes, the defamation case. I am sorry for not being  
10 clear.  
11 A. I don't recall whether I saw Mr Blewitt in person or  
12 whether I took my instructions over the telephone. My  
13 recollection is I took them over the telephone.  
14  
15 Q. I see. In each of these conversations where you took  
16 those instructions, Mr Blewitt was giving you the  
17 instructions himself with no participation from Mr Wilson?  
18 A. Correct.  
19  
20 Q. No conference calls or anything like that?  
21 A. No.  
22  
23 Q. And he was quite able to give you clear instructions  
24 as to what he wanted to do and what he said?  
25 A. Yes.  
26  
27 Q. And you didn't have any impression, did you, that in  
28 any way he was under the sway of Bruce Wilson in that  
29 matter?  
30 A. Not in that matter, but I had the clear impression  
31 that Mr Wilson was the leader and Mr Blewitt was the  
32 follower; not so much in that matter but generally in terms  
33 of their relationship.  
34  
35 Q. That may be, but he was quite able to act on his own  
36 account?  
37 A. Of course.  
38  
39 Q. And indeed he was quite a forceful person, Mr Blewitt?  
40 A. I never found him forceful with me, but his  
41 instructions were clear.  
42  
43 Q. Mr Wilson was the State Secretary of the WA Branch  
44 before he moved to Victoria?  
45 A. Yes.  
46  
47 Q. Mr Blewitt was therefore, in a sense, his subordinate

1 in the sense that he was the industrial officer and  
2 Mr Wilson was the State Secretary?

3 A. Yes.

4

5 Q. The relationship was no more than that, was it? One  
6 worked for the other or reported to the other, to be more  
7 accurate?

8 A. When they were in Western Australia?

9

10 Q. When they were in Western Australia.

11 A. I have almost no recollection of what their  
12 relationship was in Western Australia and I saw them over  
13 the course of two or three years. Over the course of that  
14 period, Mr Wilson was the senior party of their  
15 relationship, in my view.

16

17 Q. I accept that, but there was no measure of  
18 intimidation --

19 A. No.

20

21 Q. -- or overbearing or anything like that, was there?

22 A. No.

23

24 Q. He was in fact the person to whom Blewitt reported?

25 A. Yes.

26

27 Q. That was as far as it went. You never saw any  
28 evidence that Blewitt was frightened of Wilson?

29 A. They appeared to me to be friends and allies.

30

31 Q. To be friends?

32 A. Yes.

33

34 Q. And he never evinced anything like fear or  
35 intimidation or anything of that nature, did he?

36 A. No. I saw them in social occasions and they got on  
37 perfectly well.

38

39 DR HANSCOMBE: If the Commission please.

40

41 THE COMMISSIONER: Yes, Ms Richards?

42

43 MS RICHARDS: I have nothing, Commissioner.

44

45 THE COMMISSIONER: Mr Guidolin?

46

47 MR GUIDOLIN: No, Commissioner.

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THE COMMISSIONER: Mr Mewing? Mr Stoljar?

**<EXAMINATION BY MR STOLJAR:**

MR STOLJAR: Q. Can I just ask one matter arising from Mr Clelland's examination. Justice Murphy, you will recollect that I asked you some questions about what Ms Gillard said when you raised with her the concerns that Mr Styant-Browne had put to you.

THE COMMISSIONER: Just one moment. We have forgotten one important thing. Mr Hutley, do you have any questions?

MR HUTLEY: Nothing, Commissioner.

THE COMMISSIONER: I apologise. Yes, Mr Stoljar.

MR STOLJAR: Q. And you said to me words to the effect that you couldn't recall the conversation that you had with Ms Gillard and then you were able, however, to recount or recollect to some extent what Mr Styant-Browne, or the concerns that he had aired with you and they were to the effect, as I recollect, that the Workplace Reform Association might have been set up corruptly, might have involved corrupt moneys, and might have involved the firm in a conveyance using corrupt moneys. That was your evidence this morning. When Mr Clelland asked you some questions about the exit interview, he said were the matters raised in the exit interview the same or similar as those that you had raised with Ms Gillard and were her answers the same, and I understood you to be agreeing with that proposition?

A. I did.

Q. Do you recollect what Ms Gillard said or not?

A. What Ms Gillard said when?

Q. When you raised with her the concerns that Mr Styant-Browne had raised? I understood you to say in answer to questions to me that you couldn't recall the conversation, but when Mr Clelland asked you about whether the responses were the same in the exit interview, you seemed to be saying yes?

A. Well, I don't remember the detail of the conversation. The concerns which are in the exit interview are the concerns which I recall floating around Slater & Gordon at

1 the time.

2

3 Q. The exit interview doesn't talk about - you have read  
4 the transcript, I take it?

5 A. I have. Not recently but --

6

7 Q. It doesn't certainly squarely raise a suggestion that  
8 there had been use of corrupt moneys and that the firm  
9 might have been involved in a conveyance using corrupt  
10 moneys. It certainly doesn't use that language. It does  
11 investigate the issues of the conveyance generally. You  
12 recollect that those matters were squarely raised by  
13 Mr Styant-Browne.

14 A. What I recollect is there were allegations about  
15 Mr Wilson being involved in wrongdoing and here was another  
16 occasion in which the firm had acted for him. And it is  
17 a long time ago but I think it concerned where that money  
18 came from.

19

20 Q. You recollect putting those matters to Ms Gillard?

21 A. Not in those terms. I don't recall the conversation.  
22 I recall raising with her the concerns that were being  
23 aired to satisfy myself about what had occurred and  
24 having - hearing her responses and reaching a view.

25

26 Q. In a nutshell, you formed the view that you would not  
27 take the matter any further?

28 A. In a nutshell, I believed her protestations that she'd  
29 done nothing wrong and I appreciate my view is neither here  
30 nor there in the scope of these things and that is a matter  
31 for the Commission to determine.

32

33 MR STOLJAR: Thank you, Commissioner.

34

35 THE COMMISSIONER: Is there any objection to  
36 Justice Murphy being excused?

37

38 MR STOLJAR: Not on my account, Commissioner.

39

40 MR HUTLEY: No, Commissioner.

41

42 THE COMMISSIONER: Thank you, Justice Murphy, for  
43 attending today. You are excused from further attendance  
44 and you can leave the witness box.

45

46 <THE WITNESS WITHDREW

47



1 THE COMMISSIONER: Shall we adjourn until five to 12?

2

3 MR STOLJAR: Yes, Commissioner.

4

5 THE COMMISSIONER: The hearing will resume at five to 12.

6

7 **SHORT ADJOURNMENT**

8

9 THE COMMISSIONER: Yes, Mr Stoljar.

10

11 MR STOLJAR: Commissioner, the next witness is Mr Cain.

12

13 <JOHN WILLIAM CAIN, sworn: [11.55am]

14

15 <EXAMINATION BY MR STOLJAR:

16

17 MR STOLJAR: Q. Your full name is John William Cain?

18

A. That's correct.

19

20 Q. You are a resident of Victoria?

21

A. That's correct.

22

23 Q. You are a solicitor by profession?

24

A. That's right.

25

26 Q. You have prepared a witness statement dated 22 August  
27 2014?

28

A. Yes.

29

30 Q. Is the content of that statement true and correct?

31

A. Yes.

32

33 MR STOLJAR: Commissioner, could that statement be received  
34 into evidence?

35

36 THE COMMISSIONER: Yes. If there is no objection to it,  
37 the statement of John William Cain will be received into  
38 evidence

39

40 **#EXHIBIT STATEMENT OF JOHN WILLIAM CAIN DATED 22/08/2014**

41

42 MR STOLJAR: Q. Do you have a copy of that with you?

43

A. Yes.

44

45 Q. In paragraph 10 you make reference to a telephone  
46 conversation with Mr Murphy. Do you recollect whether you  
47 had any discussion about a redundancy?

1 A. No, I don't.  
2  
3 Q. You mean you don't recollect?  
4 A. I don't recollect having a conversation about the  
5 redundancy. It also seems I have a different recollection  
6 as to who called who in relation to that, but given the  
7 lapse of time I'm not surprised.  
8  
9 Q. In paragraph 13 you are referring to a meeting at the  
10 Commonwealth Bank you attended with Mr Smith. Were you  
11 asked to give or did you give any advice about redundancy  
12 issues to Mr Smith?  
13 A. No, I didn't.  
14  
15 Q. That is to say you didn't proffer any such advice?  
16 A. No.  
17  
18 Q. You have attached a handwritten letter, Annexure C,  
19 and you say that is written out in your handwriting?  
20 A. Yes, it is.  
21  
22 Q. Did you obtain instructions in respect of that from  
23 Mr Smith?  
24 A. I assume I did. I don't actually remember writing it.  
25 I recognise it as my handwriting, so I certainly wrote it,  
26 and I would only assume that I wrote it on instructions  
27 I got from Mr Smith.  
28  
29 Q. Your client was the AWU FIME?  
30 A. My client - and I took instructions from Mr Smith.  
31  
32 Q. In paragraph 16 you make reference to not  
33 recalling providing any advice to the union in relation to  
34 the operation of bank accounts or the payment of  
35 redundancy. Do you know or do you recollect whether you  
36 gave any advice about whether certain moneys in CBA  
37 accounts should be paid back to companies?  
38 A. I don't recall, although I was certainly involved in  
39 facilitating that happening, so to the extent that I got  
40 instructions to write a letter to the bank, I did that.  
41 I don't recall the extent of the discussion around the  
42 dispatch of that money.  
43  
44 Q. How long was the meeting at the bank, do you  
45 recollect?  
46 A. I don't. If it was more than 20 to 25 minutes, I'd be  
47 surprised.

1  
2 Q. You have given an account of that in paragraphs 12 and  
3 13 of your statement?  
4 A. That's correct.  
5  
6 Q. 12 and 13 reflect your best recollection of the  
7 meeting?  
8 A. Yes, they do.  
9  
10 Q. I take it you have no file notes or the like?  
11 A. No, the files, to the extent that existed, are with  
12 Maurice Blackburn. I haven't retained any.  
13  
14 THE COMMISSIONER: Yes. Mr Galbally.  
15  
16 **<EXAMINATION BY MR GALBALLY:**  
17  
18 MR GALBALLY: Q. Mr Cain, prior to you going to the  
19 Commonwealth Bank in Carlton, did you ever receive  
20 instructions from Julia Gillard?  
21 A. No.  
22  
23 Q. Did you act on behalf of Julia Gillard in relation to  
24 her dealings with the Australian Workers Union and moneys  
25 that might have been owing by way of renovations?  
26 A. No.  
27  
28 Q. That didn't happen?  
29 A. Well, I have no recollection of it at all and I would  
30 say it didn't happen.  
31  
32 Q. You didn't prepare a deed of release for her?  
33 A. No, I don't believe so.  
34  
35 Q. You did get instructions, though, to act in relation  
36 to the redundancy issue?  
37 A. No.  
38  
39 Q. What was the initiator for you to go to the  
40 Commonwealth Bank?  
41 A. On which occasion?  
42  
43 Q. On the occasion --  
44 A. On the occasion of the cheques being --  
45  
46 Q. Yes, in July.  
47 A. I had a telephone call from Mr Smith and he, to the

1 best of my recollection, informed me there was a meeting to  
2 occur at the bank, that Wilson was leaving the union and he  
3 wanted to sort out these accounts.

4  
5 Q. You knew Mr Smith at that time?

6 A. Yes, I did.

7  
8 Q. Why was there a necessity for a lawyer to be present  
9 at the bank?

10 A. I don't know, but they were the instructions I had.

11  
12 Q. Were you given instructions by Mr Smith as to what the  
13 accounts were?

14 A. As I wrote that letter, I don't recall independently,  
15 but as I wrote the letter setting out the amounts that were  
16 to be drawn by way of cheques, I must have been given  
17 instructions from Mr Smith to enable me to write that  
18 letter.

19  
20 Q. Were you acting on behalf of Mr Smith or were you  
21 acting on behalf of the Australian Workers Union?

22 A. Mr Smith was the then Secretary of the Australian  
23 Workers Union. He was instructing me on behalf of the  
24 union.

25  
26 Q. So you were representing the union?

27 A. The Victorian Branch of the union which Mr Smith was  
28 the Secretary of.

29  
30 Q. The accounts which you dealt with at the bank, they  
31 were accounts, the moneys in those accounts belonged to the  
32 Australian Workers Union?

33 A. I don't know. That was the issue that Mr Smith  
34 raised, that there was uncertainty about that money, and  
35 that was the basis, as I understand it, on which Mr Smith  
36 instructed me to have those cheques drawn so the money  
37 could be repaid to those companies.

38  
39 Q. Had you been informed by anyone at that point in time  
40 that the money in the accounts may have been blended money,  
41 in other words, money belonging to members as well as money  
42 that had come from the Australian Workers Union?

43 A. The only information I had was that there was doubt  
44 about that money, I can't put it anymore strongly than  
45 that, and because - it was Mr Smith's view that given that  
46 doubt, the money should be repaid.

47

1 Q. Weren't you endeavouring to freeze the accounts,  
2 though, when you were first instructed by Mr Smith?  
3 A. I was instructed to write to the bank and freeze those  
4 accounts, yes.  
5  
6 Q. What was the purpose of asking the bank to freeze the  
7 money?  
8 A. So that nobody could withdraw money from those  
9 accounts in the intervening period.  
10  
11 Q. Until it was clarified who owned the funds?  
12 A. I can't tell you what other event they were waiting  
13 on, but that was the instructions I had.  
14  
15 Q. So by the time the date rolls around when you go to  
16 the bank, you know there is a cloud over the funds?  
17 A. I'm aware that there's controversy or uncertainty  
18 about those funds, yes.  
19  
20 Q. But haven't you participated in the remittance of  
21 funds from that account?  
22 A. To those people who paid it in there. They were the  
23 instructions I had from my client.  
24  
25 Q. So you were given a list of construction companies,  
26 were you, to whom moneys should be refunded?  
27 A. I believe so. I don't have an independent  
28 recollection, but I could not have written that letter  
29 without receiving that information and I assume I received  
30 it from Mr Smith.  
31  
32 Q. Did you make any inquiries, because you were an  
33 experienced trade union lawyer at that stage?  
34 A. A managing partner at the firm at that stage.  
35  
36 Q. Did you make any inquiries as to whether there had  
37 been any meeting of members or the executive about the  
38 issue of sending money from these frozen accounts?  
39 A. No, I took my instructions from Mr Smith and  
40 I understood that he had had other discussions with other  
41 people in the union, members of the executive or others.  
42 I was just following the instructions I was given by  
43 Mr Smith.  
44  
45 Q. I will ask you again. By the time you attend the  
46 bank, there is a cloud over the funds and who owns the  
47 funds?

1 A. There is uncertainty. I haven't got information about  
2 the extent of what the issues are. I'm provided with  
3 instructions from Mr Smith, on going to the bank, that the  
4 funds are to be repaid. I draw those cheques.

5  
6 Q. Did you think it important from a lawyer's point of  
7 view, in giving them advice at the bank, that you should  
8 know as to whether there'd been any meeting of the  
9 executive, resolutions passed, anything of that nature, in  
10 order to release these funds?

11 A. I can't recall independently what my thoughts were at  
12 that time. What I - it's hard to work out what was in my  
13 mind then or subsequently, but I took some comfort  
14 I suppose from the fact that these moneys were being paid  
15 back to the people that had paid them into the account.  
16 It's not as though they were being transferred to some  
17 other place and they were being paid back to those that had  
18 paid them in.

19  
20 Q. What about the members who had contributed from their  
21 salaries into that fund?

22  
23 MR GUIDOLIN: I object to that question. There is no basis  
24 to put it. No factual basis has been established that  
25 founds or grounds that question: it is impermissible.

26  
27 THE COMMISSIONER: Yes, it is a leading question that  
28 assumes something.

29  
30 MR GALBALLY: Yes, I accept that.

31  
32 Q. So you were not aware as to whether there were any  
33 union irregularities prior to attending the bank?

34 A. I don't know what you mean by "union irregularities".

35  
36 Q. Non-compliance with the rules.

37 A. Well, I knew that - this was not, to the best of my  
38 recollection, an account that was the usual bank account  
39 for the union to have in addition to their main account, so  
40 it was - that of itself created some uncertainty about that  
41 and I had information from Mr Smith, when I'd frozen the  
42 account, that there was uncertainty and a cloud hanging  
43 over it. Beyond the detail of that, I don't know.

44  
45 Q. The steps are these: you asked for the accounts to be  
46 frozen?

47 A. On instructions, yes.

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Q. Yes. And were they frozen in order to resolve ownership of the funds?

A. I can't - they were frozen. I can't put it any further than that.

Q. You effectively authorised the release of the funds by the bank?

A. I'm not sure of the basis on which you say that.

Q. Your letter.

A. I handwrote it.

Q. Your handwritten letter.

A. It's not signed by me. It's signed by the two people who were authorised to operate that account and Mr Smith.

Q. But you were there giving them legal advice?

A. I'm not giving Wilson or anybody else at the meeting legal advice. I'm there with Mr Smith as the Secretary of the branch of the AWU.

Q. I'll put the question to you bluntly. Were you approving of the repayment of funds to construction companies in order to reduce Bruce Wilson's exposure?

MR GUIDOLIN: I object to that. It is a completely irrelevant question.

DR HANSCOMBE: I object to it, too. There is no basis for it. Exposure to what?

MR GALBALLY: I withdraw the question.

Q. You were relying entirely upon the instructions from Mr Smith?

A. I was.

Q. And you were not aware of whether the members of the welfare fund have a say?

A. I don't know who the members of the welfare fund are.

MR GUIDOLIN: Do not answer the question, Mr Cain. Again, no basis is put to establish that there are any members of a welfare fund. The factual basis of the question is again improper.

1 THE COMMISSIONER: I think it is in the same position as  
2 the irrelevant one before.  
3  
4 MR GALBALLY: Yes, it is.  
5  
6 Q. You did not go beyond the instructions given by  
7 Mr Smith?  
8 A. No, I did not.  
9  
10 Q. I just want to ask you about your knowledge of  
11 election funds. Election funds are made up of a group of  
12 union members who have a bank account from which there are  
13 deducted from salaries amounts that go into the fund, have  
14 I put that succinctly?  
15 A. That's one version of it, yes.  
16  
17 Q. There is no necessity for a fund like that to be  
18 registered under the Incorporations Act?  
19 A. Not to my knowledge, no.  
20  
21 Q. Did your firm take over files from Slater & Gordon in  
22 1995?  
23 A. I don't believe so. When we commenced the work, there  
24 may have been one or two files but I don't believe any of  
25 the files, or any significant number of files, came across  
26 from Slater & Gordon to Maurice Blackburn at that time.  
27  
28 Q. In Ms Gillard's exit interview from Slater & Gordon in  
29 1995, she said that she was going off to make some  
30 inquiries through Mr Smith, and I hope we are talking about  
31 the same Mr Smith. You had nothing to do with --  
32 A. I am not familiar enough with Ms Gillard's exit  
33 interview to know what you are referring to, so you will  
34 need to give me some more information about that.  
35  
36 Q. You did not receive any instructions after --  
37 A. I don't believe so.  
38  
39 MR GALBALLY: Thank you. Thank you, Commissioner.  
40  
41 THE COMMISSIONER: Mr Clelland? .  
42  
43 MR CLELLAND: No questions, Commissioner.  
44  
45 THE COMMISSIONER: Dr Hanscombe?  
46  
47 DR HANSCOMBE: No, Commissioner.



1  
2 THE COMMISSIONER: Mr Richards?  
3  
4 MS RICHARDS: No questions, Commissioner.  
5  
6 THE COMMISSIONER: Mr Guidolin?  
7  
8 MR GUIDOLIN: No questions, Commissioner.  
9  
10 THE COMMISSIONER: Does anyone else want to ask any  
11 questions.  
12  
13 THE COMMISSIONER: Very well. Mr Stoljar?  
14  
15 MR STOLJAR: I have nothing further. Thank you,  
16 Commissioner.  
17  
18 THE COMMISSIONER: There is no objection, I take it, to  
19 Mr Cain being excused from further attendance?  
20  
21 MR STOLJAR: Not on my account, Commissioner.  
22  
23 THE COMMISSIONER: Mr Cain, thank you for attending in  
24 Sydney today. You are excused from further attendance.  
25  
26 THE WITNESS: Thank you, Commissioner.  
27  
28 **<THE WITNESS WITHDREW**  
29  
30 MR STOLJAR: Commissioner, the next witness is  
31 Mr Darrouzet.  
32  
33 MR A MEWING: Commissioner, Andrew Mewing is my name.  
34 I have leave to appear for Nick Jukes, but I also seek  
35 leave to appear for Mr Darrouzet.  
36  
37 THE COMMISSIONER: You have that leave.  
38  
39 MR MEWING: Thank you.  
40  
41 **<PAUL ARMOND DARROUZET, sworn: [12.14pm]**  
42  
43 **<EXAMINATION BY MR STOLJAR:**  
44  
45 MR STOLJAR: Q. Your full name is Paul Armond Darrouzet?  
46 A. Correct.  
47

1 Q. You are a resident of Queensland?

2 A. Yes.

3

4 Q. You are a company director?

5 A. Yes.

6

7 Q. You have prepared a witness statement dated 18 August  
8 2014. Do you have a copy of that statement with you?

9 A. No, I don't.

10

11 Q. I will provide you with a copy. Is the content of  
12 that statement true and correct?

13 A. Yes.

14

15 MR STOLJAR: Commissioner, I would ask that Mr Darrouzet's  
16 statement be received into evidence.

17

18 THE COMMISSIONER: Does anyone object to any part of it?  
19 Very well. Mr Darrouzet's statement is received into  
20 evidence.

21

22 **#STATEMENT OF PAUL ARMOND DARROUZET DATED 18/08/2014**

23

24 MR STOLJAR: Q. Could you come to paragraph 11,  
25 Mr Darrouzet. You are in the course of describing  
26 negotiations for an enterprise agreement between Thiess and  
27 Melbourne Water, or Melbourne Water employees, and you  
28 describe there a meeting and Mr Wilson indicated he wanted  
29 a consulting fee, is that what he said?

30 A. Yes. We had actually finalised the terms of the  
31 enterprise agreement and we had some pretty specific  
32 obligations of the union under the terms of the agreement  
33 by way of the Consultative Committee and the Skills  
34 Enhancement Program, and Wilson seemed to have formed  
35 a view that he didn't have either the resources or the  
36 hoist power to be able to comply with the union's  
37 obligations under that enterprise agreement and wanted to  
38 put on a couple of staff who had previously been employees  
39 of Melbourne Water to ensure that what happened was we had  
40 a satisfactory transition of these previous public sector  
41 employees into the private sector, and that they understood  
42 and could relate to the skills enhancement program and the  
43 whole workplace reform agenda that was part of the  
44 enterprise agreement, so, yes.

45

46 Q. When you say "put on some staff", you mean hire some  
47 staff?

1 A. Yes.

2

3 Q. Who would be hiring them?

4 A. The AWU hired them.

5

6 Q. They were to carry out some specific function, were  
7 they?

8 A. Yes, they were. They were basically there so that the  
9 160 employees that we employed out of the 800 that had been  
10 previously employed understand and would work with us  
11 through the technical aspects and the whole change in the  
12 workplace culture that was inherent in the transition from  
13 a public sector position to a private sector position.

14

15 Q. In paragraph 12 of your statement you describe you, as  
16 to what to do about that request. You were concerned, were  
17 you, that the AWU had the ability to take industrial  
18 action? Is that what you meant when you say "had the  
19 capacity to violently disrupt"?

20 A. There are two levels of all of that. By way of  
21 background at the time, there was a war going on between  
22 the CFMEU and the AWU over the coverage of people in the  
23 construction industry and the services industry.

24

25 Q. Yes.

26 A. We had the CFMEU attending all the meetings that we  
27 held with the employees that were coming on board and they  
28 were actively discouraging employment by membership of the  
29 AWU and getting people to come across and join the CFMEU.  
30 Our contract with Melbourne Water was a fixed price  
31 schedule of rates contract with no capacity for any  
32 additional cost to be passed on to anybody, so all of the  
33 burden of the costs for the project were Thiess'. We had  
34 a national agreement for workplace reform in place signed  
35 by Thiess and the AWU at the federal level for the  
36 implementation of a workplace reform agenda on all of our  
37 projects nationally, and this implementation in Melbourne  
38 was just seen as a standard process, as part of the  
39 national overarching agreement. So if I could go on two  
40 levels. The first one was that we needed the unions'  
41 assistance, input and help because, without that, we could  
42 not implement the reform agenda that was necessary to get  
43 the projects running. That was at that level. At the  
44 second level, we had a union who had an active interest in  
45 disrupting the projects as much as possible who were  
46 seeking to gain coverage of the membership of our  
47 employees.

1  
2 Q. The latter being the CFMEU?  
3 A. Correct, yes.  
4  
5 Q. You say in 15:  
6  
7 *In the end we agreed with Wilson to support*  
8 *half the cost of an organiser.*  
9  
10 A. Yes.  
11  
12 Q. You mean the cost to the AWU of an organiser?  
13 A. That's right.  
14  
15 Q. When you say "we agreed", did you and Mr Wilson,  
16 yourselves, negotiate the agreement?  
17 A. Well, Wilson put it that we should employ these two  
18 people from Melbourne Water and pay their costs. It was  
19 a matter of a negotiation I did with Wilson. I then went  
20 to my management team with a recommendation that we accept  
21 that we would pay the cost of half of one organiser for the  
22 two years of the project which amounted to about \$50,000  
23 a year for two years on an hourly rate, I think, of \$36.50  
24 times 100 hours a month.  
25  
26 Q. After speaking to your management, you went back to  
27 Mr Wilson and told him that?  
28 A. Yes.  
29  
30 Q. Did you have a meeting?  
31 A. We had a meeting. There were several of us present at  
32 the meeting.  
33  
34 Q. Who else was present?  
35 A. My recollection is from their side, Bruce Wilson and  
36 Robyn McLeod and from my side it was probably Leigh, John  
37 and myself.  
38  
39 Q. To the best of your recollection, that was the meeting  
40 where this was resolved?  
41 A. Yes. Some time in August, yes  
42  
43 Q. You told him, you say in 15, that he would have to  
44 send Thiess proper invoices?  
45 A. Correct.  
46  
47 Q. In 16 you describe receiving the first invoice from

1 the Workplace Reform Association and you say, "I assumed  
2 that that was part of the AWU." You say your signature  
3 appears on the invoices. If I just take you to the first  
4 one, it is invoice number 1 with a due date of 12 October  
5 1993?  
6 A. Yes.  
7  
8 Q. That is your initial, is it?  
9 A. Correct, yes.  
10  
11 Q. Is it your handwriting: "Ok pay"?  
12 A. That's right.  
13  
14 Q. Did you observe the word "secretary" in the bottom  
15 left-hand corner and a signature?  
16 A. I did, yes.  
17  
18 Q. Did you have any dealings with that person?  
19 A. I don't know whose signature it is.  
20  
21 Q. In any event, by writing "Ok Pay", you in effect  
22 facilitated the payment of the invoice by Thiess?  
23 A. Yes. It went to our Accounts Payable department and  
24 they processed the invoice and sent a cheque to the  
25 Australian Workers Union Workplace Reform Association, yes.  
26  
27 Q. Did you undertake any audit or check of what had been  
28 claimed in invoice number 1 by looking at underlying time  
29 records or the like to ensure that what was claimed was  
30 correct?  
31 A. No, I didn't. No.  
32  
33 Q. You simply initialled the invoice and sent it off to  
34 be paid?  
35 A. Yes, I did.  
36  
37 Q. Was that the practice that you followed for the  
38 balance of the invoices?  
39 A. It was. We were working on basically exception  
40 reporting. You had a situation where I'd speak with them  
41 down there: "Is the work going well?" "Yes, it is." "Is  
42 the union performing what we expected of them", which is  
43 being available at all hours of the day and night to talk  
44 to our workers about the transition problems they had and  
45 the skills enhancement and the grade problems, the answer  
46 was, "Yes", so we continued.  
47

1 MR STOLJAR: Nothing further. Thank you, Commissioner.

2  
3 THE COMMISSIONER: Yes, Mr Galbally?

4  
5 MR GALBALLY: No questions, Commissioner.

6  
7 THE COMMISSIONER: Mr Clelland?

8  
9 MR CLELLAND: No questions, Commissioner.

10  
11 THE COMMISSIONER: Dr Hanscombe?

12  
13 DR HANSCOMBE: If the Commission please.

14  
15 <EXAMINATION BY DR HANSCOMBE:

16  
17 DR HANSCOMBE: Q. It is fair to say, isn't it,  
18 Mr Darrouzet, that the industrial relations climate  
19 these days is completely different from how it was 20 or  
20 more years ago?

21 A. I haven't been in industrial relations since 1996. I  
22 believe it probably is different, but from what you guys  
23 are discovering, it probably doesn't seem that much  
24 different.

25  
26 Q. Well, what I meant by that is this: when people were  
27 employed in the 1980s and before, into the 1990s in the  
28 public service, there was a particular culture which was  
29 really not the same as the workplace culture of private  
30 enterprise, do you agree with that?

31 A. Yes.

32  
33 Q. Melbourne Water used to be known by the institutional  
34 name the Melbourne and Metropolitan Board of Works?

35 A. Correct.

36  
37 Q. That was the entity that was being brought into the  
38 new industrial relations climate; do you agree with that?

39 A. We were responsible for about a third of the work that  
40 they did, yes.

41  
42 Q. But you agree that it was moving from an old really  
43 post-Victorian culture at the Board of Works to a new  
44 private enterprise based enterprise level culture; do you  
45 agree with that?

46 A. Yes, I do.

47

1 Q. That was a very substantial change for the workers to  
2 have to come to terms with?  
3 A. Very much so, yes.  
4  
5 Q. Many of them would have found that transition very  
6 difficult?  
7 A. They did.  
8  
9 Q. They did find it very difficult?  
10 A. That's right, yes.  
11  
12 Q. That was one of the risks that you had to manage on  
13 your fixed price contract?  
14 A. That's right. It's what I call in industrial  
15 relations a zero negative gain. If you get it right, you  
16 just make margin. If you don't get it right, it's  
17 a disaster.  
18  
19 Q. That is a question of quoting the price, isn't it?  
20 A. That's right.  
21  
22 Q. You have to build in that risk and you have to assess  
23 it?  
24 A. That's right.  
25  
26 Q. That's what you had done, and you had allowed for  
27 funds to be expended in assisting in that transition?  
28 A. Yes, we had allowed for funds to be expended in  
29 assisting that transition, yes.  
30  
31 Q. And in fact that's what happened?  
32 A. What?  
33  
34 Q. There was assistance provided by the AWU to assist in  
35 that transition?  
36 A. Yes, correct. Yes.  
37  
38 Q. You said yourself, "We worked on exception reporting.  
39 We made an inquiry: Is the AWU doing what we wanted them  
40 to do?", and the answer was always "Yes"?  
41 A. Correct.  
42  
43 Q. So from the point of view of Thiess as the contractor,  
44 you were getting what you had paid for?  
45 A. I believe in the case of Melbourne Water, we were,  
46 yes.  
47

1 Q. Whether you want to call that transitioning or  
2 facilitating, or training, or whatever word you want to  
3 call it, that was a service that was being provided by the  
4 AWU to Thiess and you had no complaints about that service?  
5 A. No, none.  
6  
7 Q. I see that you and Mr Jukes now both live in  
8 Queensland?  
9 A. Yes.  
10  
11 Q. Are you still in communication with Mr Jukes?  
12 A. He's one of my oldest friends, yes.  
13  
14 Q. Have you discussed your evidence to be given in this  
15 Commission with Mr Jukes?  
16 A. Not in any detail.  
17  
18 Q. But you have discussed it?  
19 A. Broadly, that we are both appearing today to give  
20 evidence, yes. We were advised by our Counsel that it's  
21 not matters we should be discussing.  
22  
23 Q. So after that you stopped discussing it?  
24 A. We weren't discussing it before because we didn't know  
25 we were appearing here today until a couple of weeks ago.  
26  
27 Q. Okay. Mr Jukes had been here before?  
28 A. Yes. Yes, I think so.  
29  
30 Q. Had you discussed that with him?  
31 A. No.  
32  
33 Q. Between 1983 and 1996, you were employed by Thiess,  
34 except for a brief period in the early 1990s, that's your  
35 evidence?  
36 A. Yes.  
37  
38 Q. During that time did you have contact with Mr Jukes?  
39 A. No, I don't recall. I would have had - I've been  
40 having contact with Nick since 1983. We socialise. Our  
41 families are friends. I can't recall having any specific  
42 discussions in 1994 or five about anything really.  
43  
44 Q. And earlier?  
45 A. No.  
46  
47 Q. You have given the Commission some evidence of what



1 I think you called a war between the CFMEU and the AWU at  
2 the time of this transition at Melbourne Water?

3 A. Yes.

4

5 Q. The dispute was about coverage; that is to say, to  
6 which of those two unions the members would belong?

7 A. Correct, yes.

8

9 Q. That's a common problem between unions, isn't it,  
10 disputes about coverage?

11 A. Yes. Yes, very common. But the matter was not being  
12 settled in accordance with the normal arbitration  
13 processes. It was a war going out on the streets and on  
14 the work sites all over the country at that stage.

15

16 Q. And that didn't suit any employer in the country,  
17 including you, did it?

18 A. No.

19

20 Q. You didn't want to have a war with the CFMEU?

21 A. We employed the CFMEU on many, many of our 120  
22 projects and we had to - because of the industrial  
23 relations climate at the time and the fact that the whole  
24 balance of power was completely unbalanced, and that unions  
25 had, and still do, I imagine, the capacity to absolutely  
26 hold up or destroy the ability to deliver a project on time  
27 and on budget, we had to deal with all of them. We had 10  
28 unions we dealt with.

29

30 Q. Yes.

31 A. It always was a balancing act. While they want to  
32 fight each other, we want to actually build things.

33

34 Q. And the more reasonable the union, the better off you  
35 were?

36 A. I'm not too sure. They tend to change.

37

38 Q. The more reasonable the union, the better off you  
39 were?

40 A. Yes, and often you have a union that's reasonable and  
41 they have a leadership change and become unreasonable.  
42 It's not a consistent pattern that all unions are either  
43 reasonable or unreasonable. They tend to change their  
44 colours quite regularly.

45

46 Q. At any given time, the more reasonable the union is  
47 the better off you are?

1 A. Well, that's just commonsense of course.  
2  
3 Q. Yes, it is. At this time, in the early 1990s, the AWU  
4 was a much better bet for Thiess to deal with than the  
5 CFMEU, wasn't it?  
6 A. I don't know what you mean by a bet, but, as I said,  
7 we had a national workplace reform agreement signed at the  
8 top level of the federal AWU and the Managing Director of  
9 Thiess to facilitate just this sort of workplace reform  
10 process that we had put in place at Melbourne Water.  
11  
12 Q. Yes. And you preferred to be dealing with the AWU  
13 than the CFMEU --  
14 A. No, we had --  
15  
16 Q. -- for that purpose?  
17 A. We had a similar agreement with the CFMEU.  
18  
19 Q. Not at Melbourne Water  
20 A. No, of course not. They didn't have legal coverage of  
21 the employees.  
22  
23 Q. Though they were fighting about that?  
24 A. They wanted it, yes.  
25  
26 Q. Yes. This was in the interests of the AWU to provide  
27 this facilitation service at Melbourne Water and it was in  
28 Thiess' interests?  
29 A. Very much so, yes.  
30  
31 Q. Yes. Did you know about the arrangements that had  
32 been made for the Dawesville project between Thiess and the  
33 AWU in Western Australia?  
34 A. Not in any detail but I was overall familiar. It was  
35 discussed occasionally at Executive level but, no, not  
36 familiar entirely with it, no.  
37  
38 Q. But you knew that it existed, that arrangement?  
39 A. Yes, I did.  
40  
41 Q. Mr Wilson told you about it?  
42 A. Yes, yes, yes, yes.  
43  
44 Q. He told you about the Workplace Reform Association?  
45 A. No, he's never told me about a Workplace Reform  
46 Association. I assumed, when the invoices came in, the  
47 first invoice came in, that it was another branch of the

1 union like the newly established National Construction  
2 Branch and the Victorian Branch, and whatever. My  
3 assumption was that the Australian Workers Union Workplace  
4 Reform Association was a subsidiary, a branch, a part of  
5 the AWU.  
6  
7 Q. Are you saying like the National Construction Branch?  
8 A. Division, yes. Whatever it was, yes.  
9  
10 Q. I'm sorry?  
11 A. Division or branch or whatever it was, yes.  
12  
13 Q. I think its name was the National Construction Branch?  
14 A. Was it? Yes. Yes. Yes.  
15  
16 Q. You said you thought the Workplace Reform Association  
17 was like that?  
18 A. Exactly, yes.  
19  
20 Q. In fact, the National Construction Branch did not come  
21 into existence until 1995, so your memory is wrong about  
22 that, isn't it?  
23 A. Well, if it is, I'd question it. I mean, Wilson held  
24 himself out to be the secretary/president or whatever of  
25 the National Construction Branch.  
26  
27 Q. When?  
28 A. Oh, I thought it was 1993. Yes, 1993.  
29  
30 Q. On what basis?  
31 A. You're saying it's '95.  
32  
33 Q. Is that your memory?  
34 A. That is my recollection, yes.  
35  
36 Q. At the time you were negotiating at Melbourne Water?  
37 A. Well, it had nothing to do with the Construction  
38 Branch. It was the services division.  
39  
40 Q. I know it had nothing to do with the Construction  
41 Branch. I am trying to pin you down on your chronology.  
42 Do you say Wilson told you about the National Construction  
43 Branch at the time of these Melbourne Water negotiations?  
44 A. That's my recollection, yes.  
45  
46 Q. Might that be wrong?  
47 A. It may be wrong but I don't know. It's my

1 recollection.

2

3 Q. If I put to you that the National Construction Branch  
4 was formed in 1995, do you dispute that?

5 A. Well, if you're saying it - I won't dispute it but  
6 it's not my recollection.

7

8 Q. You think it was in existence already --

9 A. Yes.

10

11 Q. -- by the time you were negotiating at Melbourne  
12 Water?

13

14 THE COMMISSIONER: Could I just interrupt for a moment?  
15 There may be a false dichotomy or a failure of the minds to  
16 meet. The question whether the Association was established  
17 on a particular day in 1995 is one thing. The question of  
18 whether the witness was told something about it by a person  
19 earlier than that is another thing.

20

21 DR HANSCOMBE: I'm not asking, Commissioner, about when  
22 the Association was established but when the National  
23 Construction Branch, in this witness's memory, was  
24 established.

25

26 THE COMMISSIONER: But there remains a distinction between  
27 the objective date on which it was established and what  
28 something --

29

30 DR HANSCOMBE: Yes, I accept that. I was just trying to  
31 be clear about the entity that I am trying to ask the  
32 witness about, but I accept the distinction.

33

34 Q. You say Wilson told you back in 1992 or three about  
35 the National Construction Branch?

36 A. No, I'm saying that when I met Wilson, I understood he  
37 was the head of the AWU National Construction Division.  
38 That was my understanding. Now, whether the division was  
39 incorporated or associated, or whatever, I don't know.  
40 That's my clear belief that Wilson put himself out as  
41 the - I don't know if he called it "president" or  
42 "secretary" or "convenor" or whatever. That he had  
43 responsibility for construction work nationally.

44

45 Q. And when was that? When did you let --

46 A. I just said that, I think 1993.

47

1 Q. When?  
2 A. I can't recall the exact day.  
3  
4 Q. January, December, the middle?  
5 A. No, probably more like the middle of the year. I met  
6 Wilson in July or August of 1993.  
7  
8 Q. When was the contract to take over the work at  
9 Melbourne Water?  
10 A. Well, from 1 July.  
11  
12 Q. So it probably was after July?  
13 A. That I met Wilson?  
14  
15 Q. That you met Wilson.  
16 A. Sometimes in July, yes.  
17  
18 Q. Sometime in July 1993?  
19 A. Yes.  
20  
21 Q. You have a memory of that, that he told you then that  
22 he was the secretary?  
23 A. I'm saying - yes, I'll say it again for the fourth  
24 time: yes.  
25  
26 Q. Okay. In October 1993, you got the first invoice from  
27 the AWU Workplace Reform Association. You knew that was  
28 a separate entity from the AWU, didn't you?  
29 A. No, I did not.  
30  
31 Q. Wilson says he told you that?  
32 A. I don't care what Wilson said. I had no idea at all  
33 that it was anything other than a part of the Australian  
34 Workers Union.  
35  
36 Q. It didn't matter to you what entity provided the  
37 facilitation service, what mattered to you was a calm  
38 industrial relations climate?  
39 A. No. It mattered to us that we were dealing with the  
40 Australian Workers Union.  
41  
42 Q. That was a matter of concern to you?  
43 A. Very much so.  
44  
45 Q. Not the provision of the service?  
46 A. Well, we were dealing with the AWU as the legitimate  
47 body to cover the industrial relations aspect of our

1 workforce, and we were dealing with the AWU in the context  
2 of a national agreement to implement workplace reform with  
3 that union on projects where they had legitimate coverage.  
4 Yes, that was important. And, secondly, it was very  
5 important to achieve industrial harmony and get the job  
6 done.

7

8 Q. Yes, and you did achieve industrial harmony and you  
9 did get the job done?

10 A. Well, who's denying that?

11

12 Q. That happened because those facilitation services were  
13 provided?

14 A. Well, also because of some pretty good management and  
15 some new technology and some innovations and some things  
16 that were done. It's not just done because the AWU sets up  
17 a workplace reform agenda. It's got to be driven by  
18 management.

19

20 Q. Well, I accept that and, no doubt, you bear a good  
21 deal of the credit for it but it is the case, isn't it,  
22 that what achieved that calm industrial relations climate  
23 for you was that it included the facilitation services  
24 provided by the union?

25 A. Oh, very much. A part of it, yes, that's right.

26

27 Q. And they were provided on the organisation of  
28 Bruce Wilson?

29 A. And his organisation, yes.

30

31 Q. Yes Did you have any dealings with a man called  
32 Jim Collins?

33 A. Not that I ever recall, no.

34

35 Q. Did you have any dealings with a man called  
36 Mark Barnes?

37 A. Not that I recall, no.

38

39 DR HANSCOMBE: If the Commission please

40

41 THE COMMISSIONER: Yes. Thank you, Dr Hanscombe,  
42 Ms Richards?

43

44 MS RICHARDS: Just some brief questions, Commissioner.

45

46

47

1 <EXAMINATION BY MS RICHARDS:

2

3 MS RICHARDS: Q. I appear for Ms McLeod, Mr Darrouzet.  
4 You have given evidence in your statement and this morning  
5 of an agreement that you reached with Mr Wilson for Thiess  
6 to fund half the cost of an organiser for two years?

7 A. Yes, correct.

8

9 Q. That was an agreement that you negotiated directly  
10 with Mr Wilson, did you not?

11 A. Well, my recollection was it was with Bruce, Robyn,  
12 a fellow called Bill the Greek, Leigh and myself in a room,  
13 but that's where I'm at, yes.

14

15 Q. These are meetings that happened more than 21 years  
16 ago?

17 A. Yes.

18

19 Q. The meetings were not documented, were they,  
20 Mr Darrouzet?

21 A. I don't have any documents now with me. I can't  
22 recall whether diary notes were kept and, you know, I don't  
23 have anything with me here, sure.

24

25 Q. There had been a large number of meetings between  
26 Thiess and the AWU in the course of 1993, had there not --

27 A. Yes, many.

28

29 Q. -- to negotiate the enterprise agreement for Melbourne  
30 Water?

31 A. Yes.

32

33 Q. You have given evidence of two meetings at which you  
34 recall Ms McLeod being present. The first at which  
35 Mr Wilson made the claim, if you like, for the consulting  
36 fee. This morning you mentioned a second meeting at which  
37 you told Mr Wilson that your management had authorised the  
38 payment that you subsequently made?

39 A. Yes.

40

41 Q. Your recollection is that Ms McLeod was present at  
42 both those meetings?

43 A. That's my recollection, yes.

44

45 Q. There were negotiations directly between you and  
46 Mr Wilson in between those meetings, were there not?

47 A. No. I've never met Wilson alone.

1  
2 Q. Ms McLeod's evidence will be that she has no knowledge  
3 or recollection of any such discussion about payments from  
4 Thiess to the AWU and that she does not recall being at any  
5 meeting at which those matters are discussed. Given the  
6 time that has elapsed between the meetings that you are  
7 giving evidence about today, it is entirely possible that  
8 her recollection is correct and that yours is mistaken, is  
9 it not?  
10 A. It is possible, sure.  
11  
12 MS RICHARDS: Thank you. No further questions,  
13 Commissioner.  
14  
15 THE COMMISSIONER: Thank you, Ms Richards. Mr Guidolin?  
16  
17 MR GUIDOLIN: No, Commissioner.  
18  
19 THE COMMISSIONER: Mr Mewing, do you have any?  
20  
21 MR MEWING: No, Commissioner.  
22  
23 THE COMMISSIONER. Very well. Mr Stoljar?  
24  
25 MR STOLJAR: I have no further questions. Thank you,  
26 Commissioner.  
27  
28 THE COMMISSIONER: Is there any opposition to Mr Darrouzet  
29 being permitted to leave and be excused from further  
30 attendance?  
31  
32 MR STOLJAR: No.  
33  
34 THE COMMISSIONER: Mr Darrouzet, thank you for attending  
35 and coming down here. You are excused from further  
36 attendance.  
37  
38 <THE WITNESS WITHDREW  
39  
40 MR STOLJAR: Commissioner, the next witness is  
41 Mr Ainsworth.  
42  
43 <LEIGH ALWIN AINSWORTH, affirmed: [12.38pm]  
44  
45 <EXAMINATION BY MR STOLJAR:  
46  
47 MR STOLJAR: Q. Your full name is Leigh Alwin Ainsworth?



1 A. Correct.  
2  
3 Q. You are a resident of New South Wales?  
4 A. That's indeterminate. I have been commuting for six  
5 years. My residence is in Queensland.  
6  
7 Q. But you spend a fair bit of time here in  
8 New South Wales?  
9 A. I do.  
10  
11 Q. You are the Chief Executive and Managing Director of  
12 Coates Hire Group?  
13 A. Yes.  
14  
15 Q. You have prepared a witness statement in these  
16 proceedings. It is not dated. Do you have a copy of that  
17 with you?  
18 A. I do, yes.  
19  
20 Q. Is the content of that statement true and correct?  
21 A. Yes.  
22  
23 MR STOLJAR: I would ask that Mr Ainsworth's statement be  
24 received into evidence, Commissioner.  
25  
26 THE COMMISSIONER: If there is no objection,  
27 Mr Ainsworth's statement is received into evidence.  
28  
29 **#STATEMENT OF LEIGH ALWIN AINSWORTH UNDATED**  
30  
31 MR STOLJAR: Q. Mr Ainsworth, you describe in your  
32 statement negotiations between the AWU and Thiess with  
33 regard to Melbourne Water. If you come to paragraph 14,  
34 you say in the second sentence:  
35  
36 *I did not personally negotiate the*  
37 *arrangements for Thiess to fund the*  
38 *AWU-WRA.*  
39  
40 To the best of your recollection, you left those matters to  
41 Mr Darrouzet, did you?  
42 A. Yes. That's my recollection, yes.  
43  
44 Q. You were present in the Commission earlier today, were  
45 you?  
46 A. Yes, I was.  
47

1 Q. Is the short point that your recollection differs from  
2 his? You don't recollect being personally involved?

3 A. There was a lot of meetings and, you know, we were at  
4 some meetings together and, you know, I don't know if there  
5 were other meetings that I wasn't at.  
6

7 Q. Can you just expand a little bit on the practice at  
8 the time. You say in paragraph 14:  
9

10 *Mr Darrouzet discussed and agreed these*  
11 *terms with Bruce Wilson because he was*  
12 *a corporate guy from head office.*  
13

14 What precisely did you mean by that?

15 A. Just that there was national deals, as Paul gave in  
16 his evidence. He talked about there being a national  
17 overriding sort of agreement with the AWU, so that had been  
18 negotiated, you know, through the corporate office and  
19 I was more at an operational level where, you know, we left  
20 that to the specialists in the business.  
21

22 Q. The ordinary practice is that a negotiation of that  
23 kind would be undertaken by someone --

24 A. Yes, who would more at the tactical - at the coalface,  
25 if you like. If there was a dispute at the coalface, it  
26 would be more dealt with by an operational person.  
27

28 Q. In 15, you make some comments about the AWU providing  
29 certain services. I take it that you didn't approve  
30 invoices to be paid, that was something Mr Darrouzet did?

31 A. I don't know who approved them, but I didn't approve  
32 them.  
33

34 Q. It wasn't you? You thought you were dealing with the  
35 AWU, did you?

36 A. Absolutely.  
37

38 MR STOLJAR: I have nothing further. Thank you,  
39 Commissioner.  
40

41 THE COMMISSIONER: Mr Galbally?

42 MR GALBALLY: No questions.  
43

44 THE COMMISSIONER: Mr Clelland?

45 MR CLELLAND: No, Commissioner.  
46  
47

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THE COMMISSIONER: Dr Hanscombe?

DR HANSCOMBE: If the Commission please.

**<EXAMINATION BY DR HANSCOMBE:**

DR HANSCOMBE: Q. Mr Ainsworth, who drafted this statement for you? Did you write it yourself or did Commission staff help you?

A. Commission staff helped me. It was taken originally from the Victorian Fraud Squad statement that I made there, and has been modified for this venue.

Q. In paragraph 15, you say:

*The AWU provided the training services contemplated by the agreement.*

What did you understand the term "training services" to mean when you wrote that sentence?

A. My understanding was that the agreement was to provide some help to employees as we move from, as you were talking about, very old-style awards to modern awards where there was various classifications that people would be paid at and probably a range of six or seven or eight-type of classifications, and it was to help people either move through those grades or understand those new awards.

Q. Yes, I noticed you refer to an enterprise award. Was it an award or an enterprise bargaining agreement, an EBA?

A. It would have been an EBA.

Q. It would have been an EBA, wouldn't it?

A. Yes.

Q. In fact, that's what they were moving on to? EBAs were new in the early 1990s, weren't they?

A. If you say so. They've been around for a while.

Q. You don't know?

A. I've been around for a while nowadays, most of my --

Q. So have I, that's why I remember. If you were here when I asked Mr Darrouzet some questions, you heard me ask about the kind of services that employees needed to move from that old public service culture of moving up the

1 classification grades, and so on, to the new culture which  
2 was a much freer culture, did you hear that?  
3 A. Yes.  
4  
5 Q. You would agree, wouldn't you, with Mr Darrouzet, and  
6 the puttage I put to him, that that was quite a big  
7 transition?  
8 A. Yes. I don't know that it was a freer structure.  
9 I think it was actually more structured but, anyway, yes.  
10  
11 Q. Well, whether it was freer or less free, it was a very  
12 different structure from the old public service structure?  
13 A. It certainly was. We didn't have bicycle allowances  
14 and things like that.  
15  
16 Q. Didn't have?  
17 A. Bicycle allowances and things like that. So, yes, it  
18 was different.  
19  
20 Q. The employees would find such a transition back then,  
21 in the early 1990s, a difficult transition and they needed  
22 help to make it?  
23 A. Well, yes. Some people adapt easily and some don't.  
24  
25 Q. That's true.  
26 A. There was a mixture, yes, sure.  
27  
28 Q. And in fact the AWU did provide, whether you want to  
29 call it training or facilitation, or whatever you want to  
30 call it, assistance in helping people who were struggling  
31 with that transition to make it; you agree with that?  
32 A. Well, I can't say that I saw a lot of evidence of it.  
33  
34 Q. Well, what you didn't see was a lot of evidence of it  
35 going wrong? You heard Mr Darrouzet, didn't you, saying,  
36 "We worked on exception reporting. I'd ask if everything  
37 was okay and I was told everything was okay", you heard  
38 that?  
39 A. Yes. He was at head office. You know, we were at the  
40 coalface and I guess you would see little things go wrong  
41 from time to time, but it's not a big enough issue to be  
42 talking to the head office about.  
43  
44 Q. Do you know a man called Jim Collins?  
45 A. Don't recollect it, no.  
46  
47 Q. What about Mark Barnes?

1 A. No.  
2  
3 Q. You had several meetings with Bruce Wilson, didn't  
4 you?  
5 A. Yes.  
6  
7 Q. Those meetings were directed towards getting coverage  
8 of the employees at Melbourne Water?  
9 A. Absolutely, yes.  
10  
11 Q. That was the preferable outcome to having coverage by  
12 the CFMEU?  
13 A. Certainly in my view it was, yes.  
14  
15 Q. Yes. You would have been at that time supportive of  
16 the AWU recruiting those persons at Melbourne Water rather  
17 than seeing them recruited by the CFMEU as members; agree  
18 with that?  
19 A. Agree, yes.  
20  
21 Q. It was helpful to you to deal with Wilson, inter alia,  
22 for that reason?  
23 A. Sure.  
24  
25 Q. He did in fact assist in various industrial relations  
26 issues that arose at Melbourne Water, and that also was  
27 helpful to you rather than giving the CFMEU a toehold, do  
28 you agree with that?  
29 A. I think we assist ourselves a lot in those things, but  
30 we dealt with the AWU because they were the ones who looked  
31 like they were going to have the coverage.  
32  
33 Q. And because they were easier to deal with?  
34 A. Well, I wasn't having any experience of dealing with  
35 the CFMEU because I wasn't in the construction part. But  
36 they certainly had a reputation that they would be easier  
37 to deal with.  
38  
39 Q. Did you know about the training being provided to  
40 Thiess at Dawesville in Western Australia?  
41 A. No.  
42  
43 DR HANSCOMBE: If the Commission please.  
44  
45 THE COMMISSIONER: Thank you. Ms Richards?  
46  
47 MS RICHARDS: No questions, Commissioner.

1  
2 THE COMMISSIONER: Mr Guidolin?  
3  
4 MR GUIDOLIN: No questions, Commissioner.  
5  
6 THE COMMISSIONER: Mr Stoljar?  
7  
8 MR STOLJAR: Nothing further. Thank you, Commissioner.  
9  
10 THE COMMISSIONER: Is there any opposition to Mr Ainsworth  
11 being excused from further attendance? Mr Ainsworth,  
12 thank you for coming today. You are excused from further  
13 attendance.  
14  
15 <THE WITNESS WITHDREW  
16  
17 MR STOLJAR: Commissioner, the next witness is Ms McLeod.  
18  
19 <ROBYN LEE McLEOD, affirmed: [12.47pm]  
20  
21 <EXAMINATION BY MR STOLJAR:  
22  
23 MR STOLJAR: Q. Your name is Robyn Lee McLeod?  
24 A. Yes, that's correct.  
25  
26 Q. You are a resident of Victoria?  
27 A. Yes, I am.  
28  
29 Q. What is your current occupation?  
30 A. I'm retired.  
31  
32 Q. You have prepared a witness statement being  
33 a statement dated 19 August 2014. Do you have a copy of  
34 that statement?  
35 A. Yes, I do.  
36  
37 Q. Is the content of that statement true and correct?  
38 A. Yes, it is, with one minor typo at point 10.  
39  
40 Q. What is the correction?  
41 A. It should be "and on occasions", not "an occasion."  
42  
43 Q. Save for the insertion of the letter "s" after  
44 "occasion" in the second line of paragraph 10, do you have  
45 any correction you need to make to the statement?  
46 A. I don't.  
47

1 Q. Is the content of the statement true and correct?

2 A. Yes, it is.

3

4 MR STOLJAR: Commissioner, I would ask that Ms McLeod's  
5 statement be received into evidence.

6

7 THE COMMISSIONER: Yes. If there is no objection  
8 Ms McLeod's statement will be received into evidence

9

10 **#STATEMENT OF ROBYN LEE MCLEOD DATED 19/08/2014**

11

12 MR STOLJAR: Q. Ms McLeod, in paragraph 2 you refer to a  
13 period of time in which you were employed as an industrial  
14 officer with the AWU. That period of time concluded in  
15 September 1994?

16 A. That's correct.

17

18 Q. Did you leave the employment of the AWU at that time?

19 A. Yes, I did.

20

21 Q. You didn't move to some other position?

22 A. No, I didn't.

23

24 Q. You describe negotiations with Thiess in which you  
25 were part of the team from the AWU relating to  
26 Melbourne Water in paragraph 9 and following of your  
27 statement. In paragraph 12 you say you don't recall any  
28 discussion regarding financial payments to the AWU. In  
29 paragraph 15 you say you only became aware of the AWU  
30 Workplace Reform Association through media reporting.  
31 I take it you mean in relatively recent times?

32 A. That's correct.

33

34 Q. Do I take it from that that in paragraph 12, you don't  
35 recall any discussion regarding financial payment to the  
36 Workplace Reform Association by Thiess?

37 A. No, I don't.

38

39 Q. In paragraph 20 you indicate that you were asked by  
40 the AWU to go on a Thiess Superannuation Fund board. Do  
41 you recollect who asked you?

42 A. I imagine it would have been Bruce Wilson. It was  
43 quite normal for a union to have a representative on an  
44 employee superannuation fund.

45

46 Q. Did you report to Mr Wilson in the ordinary course of  
47 your day-to-day work?

1 A. Yes.  
2  
3 Q. Did Mr Wilson proffer any reason as to why you were  
4 being asked to go on the Thiess Superannuation board?  
5 A. No. Although most of the members of the workforce at  
6 that stage would have found the responsibilities of  
7 a Superannuation board to be onerous.  
8  
9 Q. You mean employees of the AWU?  
10 A. Yes. No, I'm sorry, employees of the workforce.  
11  
12 THE COMMISSIONER: Q. The Thiess employees?  
13 A. Thank you, Commissioner. The Thiess employees who  
14 could have otherwise been a representative on the Super  
15 board would have found it onerous.  
16  
17 MR STOLJAR: Q. OH, I see. You mean an employee  
18 representative?  
19 A. Yes.  
20  
21 Q. So the Thiess employees would have found it onerous?  
22 A. Yes.  
23  
24 Q. You don't recollect whether he said that to you  
25 specifically or whether that's just a surmise that you have  
26 now?  
27 A. I've surmised that.  
28  
29 Q. You say this was not a paid position. I take it from  
30 that you didn't receive any payment personally from sitting  
31 on the board?  
32 A. No, I didn't.  
33  
34 Q. Do you know whether the AWU received any payment?  
35 A. No, I have no idea.  
36  
37 Q. You don't know one way or the other?  
38 A. No.  
39  
40 Q. Who else from the AWU was on the board?  
41 A. I recall, now having looked at some documents, that  
42 Bruce Wilson was another director. I don't recall who else  
43 was there.  
44  
45 Q. Did you have regular meetings?  
46 A. I only recall attending one meeting which was  
47 a training meeting on the responsibilities of being on



1 a superannuation board.  
2  
3 Q. Is that the introductory training session to which you  
4 make reference in paragraph 20?  
5 A. Yes, it is.  
6  
7 Q. So you don't recollect any board meetings?  
8 A. No, I don't.  
9  
10 Q. Was your position on the board of the Thiess  
11 Superannuation Fund connected in any way with the  
12 enterprise agreement that was negotiated between Thiess and  
13 the AWU?  
14 A. I can't recall the exact details of what the  
15 enterprise agreement committed each party to.  
16  
17 Q. Who were you dealing with at Thiess in connection with  
18 the superannuation?  
19 A. With the superannuation fund? It was a gentleman from  
20 their head office in their finance area. I can't recall  
21 exactly who it was.  
22  
23 Q. Not Mr Darrouzet?  
24 A. No.  
25  
26 Q. Going back to the negotiations with Thiess that you  
27 make reference to in 12 and the like, do you have a clear  
28 recollection of meetings?  
29 A. It's difficult to say absolutely clear. At the time  
30 we were negotiating with three different companies, so  
31 there was Thiess, Transfield and Serco. They had all won  
32 individual contracts to run programs. There were  
33 negotiations going on at a very rapid pace and there were  
34 a number of different meetings.  
35  
36 MR STOLJAR: Nothing further. Thank you, Commissioner.  
37  
38 THE COMMISSIONER: Yes. Mr Galbally?  
39  
40 MR GALBALLY: No questions, Commissioner.  
41  
42 THE COMMISSIONER: Mr Clelland?  
43  
44 MR CLELLAND: No, Commissioner.  
45  
46 THE COMMISSIONER: Dr Hanscombe?  
47

1 DR HANSCOMBE: Commissioner, I find myself in something  
2 of a difficulty. The witness has given some evidence which  
3 is of more specificity with respect to my clients than in  
4 her statement. I therefore have no instructions about  
5 those matters. I can get them over lunchtime, but I am not  
6 in a position to ask at the moment.

7  
8 THE COMMISSIONER: Very well. Let's go through the rest  
9 of the teams, the lawyers, and then we will adjourn for  
10 lunch and then unfortunately, Ms McLeod, you may have to  
11 come back at 2pm, hopefully not for long. Mr Guidolin?

12  
13 MR GUIDOLIN: No questions, Commissioner.

14  
15 THE COMMISSIONER: That brings us to you, Ms Richards.

16  
17 MS RICHARDS: I do have some questions. Perhaps I can ask  
18 the ones I have now and if there is anything arising from  
19 Dr Hanscombe's questions, I may stand up again.

20  
21 **<EXAMINATION BY MS RICHARDS:**

22  
23 MS RICHARDS: Q. Ms McLeod, at paragraphs 12 and 13 of  
24 your statement that you have just adopted, you say that at  
25 no stage during any meeting at which you were present,  
26 whether official or unofficial, was there any discussion  
27 regarding financial payments to the AWU by Thiess?

28 A. That's correct.

29  
30 Q. Then at paragraph 13 you say you have no knowledge or  
31 recollection of any discussions with any Thiess  
32 representatives regarding Thiess making any such payments?

33 A. That's correct.

34  
35 Q. You were present, I believe, during most of  
36 Mr Darrouzet's evidence this morning?

37 A. Yes, most of it.

38  
39 Q. This afternoon, I should say. You have had an  
40 opportunity in the last 24 hours to see his statement?

41 A. Yes.

42  
43 Q. You would be aware from having read his statement that  
44 he recalls a meeting in July or August of 1993 at which he  
45 places you, at which Mr Wilson first raised the question of  
46 a consulting fee. Do you recall any such discussion taking  
47 place in your presence?

1 A. No, I have absolutely no recollection of that.  
2  
3 Q. Is that evidence to the effect that it did not happen  
4 or that you just do not recall?  
5 A. This was 20 years ago, so it's hard to remember  
6 everything, but it would have been so out of my life  
7 experience to hear something like that at a meeting,  
8 I would remember it or I would have just thought it was  
9 a joke, it was something that was not being said seriously.  
10  
11 Q. Could you expand on what you are referring to?  
12 A. My role was I was an industrial officer employed by  
13 the Australian Workers Union to represent members'  
14 interests at the Australian Workers Union.  
15  
16 Q. So if a question had been raised about a consulting  
17 fee being paid by an employer to a union, is that what you  
18 are referring to as having been outside your life  
19 experience?  
20 A. Yes, that would have been.  
21  
22 Q. Mr Darrouzet gave evidence earlier this afternoon of  
23 you having been possibly at a meeting at which he informed  
24 Mr Wilson that Thiess would fund half the cost of an  
25 organiser for two years. Do you have any recollection of  
26 that?  
27 A. Absolutely none.  
28  
29 MS RICHARDS: No further questions for my client at this  
30 stage.  
31  
32 THE COMMISSIONER: Mr Stoljar, do you agree that it is  
33 appropriate to adjourn now until 2pm?  
34  
35 MR STOLJAR: Yes, Commissioner.  
36  
37 THE COMMISSIONER: Dr Hanscombe may then ask some questions  
38 if she wants to and, if she does, Ms Richards can ask some  
39 more. We will adjourn until 2pm.  
40  
41 **LUNCHEON ADJOURNMENT**  
42  
43  
44  
45  
46  
47

1 UPON RESUMPTION:

2

3 THE COMMISSIONER: Yes, Dr Hanscombe?

4

5 DR HANSCOMBE: If the Commission pleases.

6

7 <EXAMINATION BY DR HANSCOMBE:

8

9 DR HANSCOMBE: Q. Ms McLeod, I am here for Bruce Wilson.  
10 When you worked at the AWU, that was from March 1993 to  
11 September 1994, something like 18 months?

12 A. That's correct.

13

14 Q. You did not have a prior industrial relations  
15 background, per se, did you?

16 A. I worked at the Victorian Secondary Teachers  
17 Association as the Assistant Secretary. So, yes, I did  
18 have an industrial relations background.

19

20 Q. Did you come from that job to the AWU?

21 A. No, I went from that job to be a ministerial adviser  
22 for a State Minister in the Victorian Government.

23

24 Q. For how long?

25 A. I was there for - oh, this goes back so far. I was  
26 there almost two years, just a bit over two years,  
27 something like that.

28

29 Q. Going back from that, you were in the Teachers  
30 Industrial --

31 A. I was in the teachers - sorry, I was in the Victorian  
32 Secondary Teachers Association.

33

34 Q. And that is a union?

35 A. Yes, it is. This was --

36

37 Q. How long was that?

38 A. That was four years, I think, and then in my role as a  
39 ministerial adviser, I oversighted a number of the  
40 industrial matters that was facing the minister at the  
41 time.

42

43 Q. You came into the AWU in March 1993 actually at the  
44 invitation of Bruce Wilson. He offered you the job; is  
45 that right?

46 A. He did. Yes, that's right.

47

1 Q. That was your first job as an industrial officer in  
2 anything like a union representing construction or similar  
3 workers?  
4 A. It was the first time I had worked in what would have  
5 been called back then a blue collar union.  
6  
7 Q. Yes. That's a convenient phrase.  
8 A. Yes.  
9  
10 Q. I don't think anyone has it anymore, but it is a  
11 convenient phrase. That was really a new industrial  
12 environment for you?  
13 A. Yes, it was.  
14  
15 Q. It is fair to say that back in 1993 there was a new  
16 industrial environment still in evolution anyway, was there  
17 not?  
18 A. Absolutely.  
19  
20 Q. We were moving from the old award system to the  
21 enterprise bargaining agreement system?  
22 A. Correct.  
23  
24 Q. Enterprise bargaining agreements had to be registered  
25 with what was then called the Industrial Relations  
26 Commission; correct?  
27 A. That is correct.  
28  
29 Q. You may not know the answer to this, but it is my  
30 belief that at the time, in order to register an EBA for a  
31 particular enterprise, you were required, among other  
32 documents, to have a high level transition to enterprise  
33 bargaining arrangement registered with the Industrial  
34 Relations Commission?  
35 A. I can't exactly recall all of the documentation that  
36 was required. We were in a stage where we were doing  
37 enterprise bargaining agreements rather than sitting on a  
38 uniform national award.  
39  
40 Q. Yes. They varied, of course, enterprise to  
41 enterprise?  
42 A. Correct.  
43  
44 Q. One of the drivers or proponents of the move to this  
45 new system was Bill Kelty?  
46 A. Yes.  
47

1 Q. One of the things that he was keen to see implemented  
2 was a transition process, at a high level, to be registered  
3 with the Industrial Relations Commission. You don't recall  
4 that?  
5 A. I don't recall that level of detail.  
6  
7 Q. But you would not deny that?  
8 A. No, not at all.  
9  
10 Q. It is consistent with how the environment was moving  
11 at that time?  
12 A. Possibly.  
13  
14 Q. After you left the AWU, you went to work for  
15 Adelaide Water?  
16 A. No. My position in South Australia was as the Water  
17 Security Commissioner in South Australia. That was  
18 recently.  
19  
20 Q. The Water Security Commissioner?  
21 A. I was the Commissioner for Water Security for the  
22 State of South Australia.  
23  
24 Q. That was quite a high level government job?  
25 A. Yes, it was. That was recently, though. That was --  
26  
27 Q. Where did you go after you left the AWU?  
28 A. After I left the AWU, I was standing for State  
29 Parliament. I was a candidate, so I was not working in any  
30 full-time job.  
31  
32 Q. And then after that you became the Water Commissioner?  
33 A. No, I went to some other positions. I worked as an  
34 employment consultant for a company. I went to Deakin  
35 University, Deakin Australia, which is their private sector  
36 arm. I then became the Chief of Staff to a Minister in  
37 Victoria who was managing electricity, mining, resources,  
38 fishing and, in that role, I particularly worked a lot with  
39 the Snowy - in the corporatisation of the Snowy Hydro  
40 Scheme. Should I keep going?  
41  
42 Q. Well, it is fair to say, isn't it, that both before  
43 and after your 18 months in the AWU, you were not working  
44 in any industry - I'll withdraw that. You were not working  
45 in any capacity representing blue collar workers?  
46 A. That would be correct, yes.  
47

1 Q. Did you hear Mr Darrouzet's evidence?  
2 A. Most of it, yes.  
3  
4 Q. Did you hear the part where he said there was an  
5 agreement at a national level between the AWU and Thiess?  
6 A. No, I'm sorry, I didn't hear that bit.  
7  
8 Q. You didn't hear that?  
9 A. No, sorry.  
10  
11 Q. Assume if you would for the sake of my question that  
12 there was such a high level national agreement between  
13 Thiess and the AWU as to training and other matters, you  
14 wouldn't necessarily have been involved in any negotiations  
15 at that level, would you?  
16 A. No.  
17  
18 Q. Indeed, you wouldn't necessarily be involved in any  
19 negotiations between management at Thiess at Melbourne  
20 Water and Mr Wilson?  
21 A. Management at - sorry, Melbourne Water before Thiess  
22 took over that part of the contract?  
23  
24 Q. While Thiess was taking over.  
25 A. While Thiess was taking over - no, I had conversations  
26 with Melbourne Water at that stage because I was dealing -  
27 I was the industrial officer representing the members. One  
28 of my jobs was to ensure that their redundancy payments,  
29 that their transition to new jobs, all those sort of  
30 things, was in order.  
31  
32 Q. Yes, I follow that.  
33 A. Yes.  
34  
35 Q. But it would not be remarkable if there were meetings  
36 between representatives of Thiess management and Mr Wilson  
37 in which you did not participate?  
38 A. Oh, yes.  
39  
40 Q. You don't say you were at every single meeting?  
41 A. No, I was not at every single meeting, absolutely not.  
42  
43 Q. There was no particular reason, unless it touched upon  
44 your job as an industrial officer, that you would be  
45 informed about meetings concerning other matters between  
46 the union and Thiess?  
47 A. No. I was only responsible for the public sector

1 workers, so my understanding is that Thiess had other jobs  
2 in the private sector at that time. My only responsibility  
3 was the public sector workers.  
4

5 Q. And, in particular, assisting them with the transition  
6 from the public sector into private enterprise?

7 A. Assisting the workers as members in their transition  
8 or in their redundancies and in helping to negotiate the  
9 enterprise agreement and taking that through the  
10 Commission.  
11

12 Q. The Industrial Relations Commission?

13 A. Yes.  
14

15 Q. Yes. Now called the Fair Work Commission?

16 A. Yes.  
17

18 Q. Yes.

19 A. I think it was the AIRC back 20 years ago, Australian  
20 Industrial Relations Commission.  
21

22 Q. Yes, I think it was too 20 years ago. You would  
23 agree, wouldn't you, that a lot of these public sector  
24 workers found that transition quite difficult?

25 A. Oh, incredibly stressful; it was very difficult.  
26

27 Q. They needed a lot of support?

28 A. They did. The workforce was being reduced very, very  
29 dramatically and these were workers who in many cases had  
30 done nothing else in their entire lives and, in fact,  
31 inter-generationally had done nothing in their careers  
32 apart from work for Melbourne Water.  
33

34 Q. So dad had been a maintenance engineer with the board  
35 of works, son was a maintenance engineer with the board of  
36 works?

37 A. Correct.  
38

39 Q. They were used to a pay classification scheme that was  
40 the public service scheme and so on?

41 A. Correct. There was even a school at the Werribee  
42 Treatment Farm.  
43

44 Q. A school for the children of the workers?

45 A. Yes, correct.  
46

47 Q. You had to manage that transition from really quite a



1 protected public sector environment into the brutal open  
2 winds of competition?  
3 A. That's one way of putting it, yes.  
4  
5 Q. You did help that?  
6 A. Yes, I did.  
7  
8 Q. That was part of your task?  
9 A. Yes, it was.  
10  
11 Q. Whether you call that facilitation or training or  
12 assistance, or whatever you call it, there's no doubt that  
13 that occurred?  
14 A. Yes. I saw myself as the industrial officer  
15 representing the members.  
16  
17 Q. And you helped in the facilitation of that transition  
18 process?  
19 A. I guess that's one way of putting it, yes.  
20  
21 Q. Do you know a man called Jim Collins?  
22 A. I knew a man called Jim Collins. My understanding is  
23 he's deceased.  
24  
25 Q. Do you know what, if any, role he had in respect of  
26 those transitions?  
27 A. He would have been an organiser. The way the union  
28 was set up, I was an industrial officer doing most of the  
29 work, you know, behind a desk and in the Commission, and  
30 people like Jim Collins would have been on the shop floor.  
31  
32 Q. Helping the workers?  
33 A. Yes.  
34  
35 Q. What about a man called Mark Barnes?  
36 A. I vaguely recall Mark, yes.  
37  
38 Q. He was in a similar role, was he not?  
39 A. Yes, he was. I think they were both elected  
40 officials. I was an appointed officer of the union.  
41  
42 Q. However they got there, they were in fact on the  
43 shop floor helping the workers with that transition to the  
44 new environment?  
45 A. I can't say what they were doing every day. I don't  
46 believe they were just at that workforce. I don't know.  
47 I think they were organisers for the union. That's what

1 I recall.  
2  
3 Q. But you would not dissent from the proposition that  
4 part at least of their task was to be on the shop floor  
5 helping the workers with the transition?  
6 A. Yes, I would agree with that.  
7  
8 Q. You would agree with that?  
9 A. I would agree with that.  
10  
11 Q. Thank you. You did that to the extent it touched upon  
12 your job as well, did you not?  
13 A. I was not on the shop floor very much.  
14  
15 Q. I follow that. But to the extent that it touched upon  
16 your job as an industrial officer, you also assisted with  
17 the transition. For instance, someone came to you and  
18 said, "I'm losing my job. What can I do?", your job was to  
19 help them?  
20 A. Yes, correct.  
21  
22 Q. And you did?  
23 A. Yes, I did.  
24  
25 Q. You were only at the AWU for 18 months?  
26 A. Yes.  
27  
28 Q. When in that 18 month period were you appointed to the  
29 superannuation board?  
30 A. Sorry, I can't recall. I'd have to look at - is it in  
31 my statement?  
32  
33 Q. Your statement won't help you because it doesn't tell  
34 me, that is why I'm asking you.  
35 A. I can't recall exactly.  
36  
37 Q. At the very beginning?  
38 A. Oh, no, it --  
39  
40 Q. Well into your time there?  
41 A. Well into my time there because I don't recall  
42 attending meetings. It was some time after I'd started  
43 there. I don't know.  
44  
45 Q. In fact, it was quite some time, was it not?  
46 A. Yes, I imagine so, yes.  
47

1 Q. In fact, not long before you left?  
2 A. Yes, possibly.  
3  
4 Q. Maybe there were no meetings in the time between you  
5 being appointed and doing your board membership training  
6 and you leaving the union?  
7 A. That's possible.  
8  
9 Q. It is, isn't it?  
10 A. Yes, it is.  
11  
12 Q. It is not as though the superannuation board had to  
13 meet every week, is it?  
14 A. No.  
15  
16 Q. You gave the Commissioner evidence that you imagined  
17 Mr Wilson had asked you to take up that position. Are you  
18 surmising that?  
19 A. Well, he was my boss. Somebody must have asked me to  
20 be the representative of the employees on that  
21 superannuation board. I can't imagine who else it would  
22 have been.  
23  
24 Q. In fact, he was on that board too, was he not?  
25 A. I think so, yes. Yes, he was.  
26  
27 Q. Yes. The two of you were on the board representing  
28 employees?  
29 A. Yes.  
30  
31 Q. There was nothing untoward or unusual about that, that  
32 was a common arrangement at the time, was it not?  
33 A. Absolutely normal practice.  
34  
35 Q. Yes. Indeed, it suited the employers because it meant  
36 somebody else was providing the board member?  
37 A. I guess, yes. Yes.  
38  
39 Q. Yes. It was Thiess, in fact, who sought to have  
40 worker representatives on the board; do you agree with  
41 that?  
42 A. I don't know, sorry. I don't know how - I can't  
43 remember how it was constituted, how the Thiess  
44 Superannuation Board was set up. They would have decided  
45 on a membership structure somewhere.  
46  
47 Q. Thiess would have?

1 A. Yes.  
2  
3 Q. Yes.  
4 A. I assume so, yes.  
5  
6 Q. In fact, my instructions are that that was part of  
7 Mr Kelty's brave new world agenda, that we would have  
8 workers on superannuation boards and that sounds consistent  
9 to you, doesn't it?  
10 A. Yes. Yes, it does.  
11  
12 Q. So that is probably right?  
13 A. Yes.  
14  
15 Q. That is how it came about?  
16 A. Yes.  
17  
18 DR HANSCOMBE: If the Commission please.  
19  
20 THE COMMISSIONER: Thank you, Dr Hanscombe. Ms Richards?  
21  
22 MS RICHARDS: Nothing arising, Commissioner. Thank you.  
23  
24 THE COMMISSIONER: Mr Stoljar?  
25  
26 MR STOLJAR: No further questions, Commissioner. Thank  
27 you.  
28  
29 THE COMMISSIONER: Does anyone oppose Ms McLeod being  
30 excused from further attendance? Ms McLeod, thank you for  
31 coming today. You are excused from any further attendance.  
32  
33 **<THE WITNESS WITHDREW**  
34  
35 MR STOLJAR: Commissioner, the next witness is Mr Trio.  
36  
37 **<JOSEPH FRANCIS TRIO, sworn: [2.18pm]**  
38  
39 **<EXAMINATION BY MR STOLJAR:**  
40  
41 MR STOLJAR: Q. Your full name is Joseph Francis Trio?  
42 A. Yes, it is.  
43  
44 Q. You are a civil engineer?  
45 A. Yes.  
46  
47 Q. Are you a resident of WA?

1 A. Yes, I am. Perth.  
2  
3 Q. You have prepared a witness statement in these  
4 proceedings dated 20 May 2014?  
5 A. I have.  
6  
7 Q. Do you have a copy of that with you?  
8 A. No, I don't.  
9  
10 Q. I will provide you with a copy.  
11 A. Thank you.  
12  
13 Q. Is the content of that statement true and correct?  
14 A. Yes. There are a lot of other attachments to the  
15 statement, but the statement itself is true and correct,  
16 yes.

17  
18 MR STOLJAR: I would ask that Mr Trio's statement be  
19 received into evidence, Commissioner.

20  
21 THE COMMISSIONER: Yes. If there is no objection, that  
22 statement with its annexures will be received into  
23 evidence.

24  
25 **#STATEMENT OF JOSEPH FRANCIS TRIO DATED 20/05/2014**

26  
27 MR STOLJAR: Q. Just a couple of matters, Mr Trio. In  
28 paragraph 13 you make reference to a letter of 16 March  
29 1992 sent by Thiess to the Workplace Reform Association.  
30 I just want to be clear on this. You say in 13:

31  
32 *The letter was drafted by Mr Jukes in*  
33 *Brisbane but because he wanted it set out*  
34 *on Thiess WA letterhead, he asked me to*  
35 *sign it on his behalf.*

36  
37 If one goes to it, one can see your signature, "J Trio",  
38 and in small letters "PP Mr Jukes". The position is that  
39 Mr Jukes drafted it and you merely signed it?

40 A. Yes.

41  
42 Q. In paragraph 21 you describe the circumstances in  
43 which invoices were approved, that is to say, invoices from  
44 the Workplace Reform Association to Thiess were approved by  
45 Thiess. You say in the portion at paragraph 21 that  
46 appears on the top of page 4:

47

1           *I relied on the approval of the managers*  
2           *beneath, being Mr Pulham, later Mr Schalit,*  
3           *to confirm that the hours charged by the*  
4           *AWU were fair and reasonable.*

5  
6           You did not make any independent check yourself in respect  
7           to what was claimed in the invoice?

8           A.    No, I did not.

9  
10          Q.    You did not ask to look at underlying documents or  
11          time records or anything else?

12          A.    No, I did not.

13  
14          Q.    You left that to Mr Pulham and later Mr Schalit?

15          A.    Yes.

16  
17          MR STOLJAR:   Yes.  Nothing further.  Thank you,  
18          Commissioner.

19  
20          THE COMMISSIONER:   Mr Galbally?

21  
22          MR GALBALLY:   No questions, Commissioner.

23  
24          THE COMMISSIONER:   Mr Lewis?

25  
26          MR LEWIS:   I have no questions, Commissioner.

27  
28          THE COMMISSIONER:   Dr Hanscombe?

29  
30          DR HANSCOMBE:   If the Commissioner please.

31  
32          <EXAMINATION BY DR HANSCOMBE:

33  
34          DR HANSCOMBE:   Q.    Mr Trio, I am here for Bruce Wilson.  
35          One of the attachments to your statement is the report to  
36          the Building and Construction Industry Training Fund or a  
37          similar body.  That report was made in due course, was it  
38          not?

39          A.    Well --

40  
41          Q.    Attachment B.

42          A.    Sorry, what was the question?

43  
44          Q.    That report to the Building and Construction Industry  
45          Training Fund was made in due course to that fund?

46          A.    Yes, it was, I believe.

47

1 Q. You don't know that?  
2 A. Well, I can't recall. Whether they actually received  
3 it or not, I can't recall.  
4  
5 Q. Do you know if Thiess actually sent it?  
6 A. I believe so.  
7  
8 Q. The report, so far as you know, was made? I don't  
9 know if they received it either, but Thiess sent it to  
10 them?  
11 A. I believe so.  
12  
13 Q. It correctly identified what the training to be  
14 conducted at Dawesville was. We see that at paragraph 4.1  
15 of that attachment, do you agree?  
16 A. Well, the reason I'm deliberating, I haven't seen this  
17 for a long time. I've not --  
18  
19 Q. You didn't see it when you made your statement --  
20 A. No.  
21  
22 Q. -- although it is an attachment?  
23 A. No.  
24  
25 Q. I see. Your statement says that it is attachment B -  
26 excuse me a moment - in paragraph 18.  
27 A. Yes.  
28  
29 Q.  
30 *Annexed to this statement and marked "B" is*  
31 *a copy of the final report.*  
32  
33 At the time you made this statement, that wasn't true; is  
34 that correct?  
35 A. No, it's true, there was a final report. I just  
36 hadn't seen this report for a long time. I don't know how  
37 long ago.  
38  
39 Q. Fair enough, but that is not actually what I am asking  
40 you.  
41 A. Oh, right.  
42  
43 Q. At the time you made this statement --  
44 A. Yes.  
45  
46 Q. -- one of the things the statement says is:  
47

1                    *Attached to this statement ... is the final*  
2                    *report.*  
3  
4                    A.    Yes, okay.  
5  
6                    Q.    At the time you made the statement, was that true?  
7                    A.    Yes, it was.  
8  
9                    Q.    It was true?  
10                   A.    Well it wasn't attached but I knew it was going to be  
11                   attached.  
12  
13                   Q.    So it wasn't in fact attached?  
14                   A.    No.  
15  
16                   Q.    You knew what would be attached?  
17                   A.    Yes.  
18  
19                   Q.    But you hadn't seen it?  
20                   A.    I hadn't seen it for a long time, yes.  
21  
22                   Q.    Did you see it at the time?  
23                   A.    I believe so.  
24  
25                   Q.    How did you know what was going to be attached if it  
26                   had been a long time since you had seen it?  
27                   A.    Well, I assume there's only one report.  
28  
29                   Q.    You assume there is only one report?  
30                   A.    Yes, and that would be the one that I was referring to  
31                   and it would be attached.  
32  
33                   Q.    Who prepared your statement?  
34                   A.    Well, I prepared - I think this is statement number  
35                   three. The previous two, there was one in 1997 that a lady  
36                   working for the West Australian Fraud Squad by the name of  
37                   Samantha Tuff, that I prepared for her and signed it. Then  
38                   one or two statements for the Victorian Fraud Squad which  
39                   I prepared and signed, or assisted in preparing. This one  
40                   here I believe is a combination of everything and that was  
41                   prepared by somebody here I've been dealing with, with the  
42                   lady here, sorry, Shelley. I don't know the surname.  
43  
44                   Q.    Shelley put this statement together and sent it to  
45                   you?  
46                   A.    Well, somebody - I got it from Shelley, yes, and then  
47                   I modified it, I got it correct to the best of my ability,



1 and then signed it.  
2  
3 Q. Attachment B, this report to the fund, was that a  
4 document - the version that I have doesn't appear to have  
5 a signature page. Who prepared that?  
6 A. I can't recall.  
7  
8 Q. It wasn't you?  
9 A. No, it wasn't me.  
10  
11 Q. Who provided the information for its inclusion into  
12 this report? It wasn't you?  
13 A. It wasn't me, no.  
14  
15 Q. So you didn't really have very much knowledge at all,  
16 first hand, of the training that happened out at  
17 Dawesville, did you?  
18 A. No, I had very good recollection of the training that  
19 happened down there. It's just the report that's the  
20 issue.  
21  
22 Q. But you don't know who put that together?  
23 A. No, I don't.  
24  
25 Q. Why didn't they ask you, whoever it was?  
26 A. Well, I was the State Manager. I had responsibility  
27 for three operations: building, civil and mining. The  
28 Dawesville Channel Project and this training exercise was  
29 one particular job in the civil sector, so it would have  
30 been --  
31  
32 Q. So it was a relatively minor part of your task in the  
33 scheme of things?  
34 A. It was a project under my control, but it was one of  
35 many, yes.  
36  
37 Q. And in the scheme of things, relatively minor in your  
38 workload?  
39 A. No, I wouldn't say it was relatively minor. It was  
40 just one of many. They're all important. This was a large  
41 project, so it wasn't minor.  
42  
43 Q. But you say you had a good knowledge of the training?  
44 A. Yes, I did.  
45  
46 Q. It was for Thiess to set up the training rooms and the  
47 facilities, wasn't it?

1 A. To set it up and implement it and monitor it.  
2 I attended meetings with the Building and Construction  
3 Industry Training Fund relating to that training.  
4  
5 Q. I would like you, if you would, just to attend to my  
6 question. It might be a little faster. It was for Thiess  
7 to set up the training facility, was it not?  
8 A. It was for Thiess to implement the training program.  
9 Setting up the training facility was just part of that  
10 process.  
11  
12 Q. That may be so, but that is what I am asking you  
13 about. I will ask you a third time. It was for Thiess to  
14 set up the training facility, was it not?  
15 A. Yes, it was.  
16  
17 Q. Yes.  
18 A. Yes.  
19  
20 Q. They didn't do it until about March of 1992 at the  
21 earliest; agreed?  
22 A. Correct.  
23  
24 Q. And you couldn't provide the training until there was  
25 somewhere to do it, do you agree?  
26 A. No, not necessarily. Not all the training had to take  
27 place in that facility.  
28  
29 Q. Most of the training did take place in that facility,  
30 didn't it?  
31 A. No, it did not. Most of the training took place out  
32 in the field. The formal part of that training took place  
33 in the facility.  
34  
35 Q. Yes. And that was an essential element of the  
36 training, was it not?  
37 A. It was an element of the training. You don't need a  
38 facility necessarily to do it, but it was part of what we  
39 were going to do, and it was done. And because these units  
40 are difficult to come by, they had to be ordered and they  
41 had to be fabricated, brought to site, assembled and kitted  
42 out.  
43  
44 Q. And that took time?  
45 A. Yes, it did.  
46  
47 Q. So you couldn't put it on the site any earlier?

1 A. Correct.  
2  
3 Q. What had to happen in that facility couldn't happen  
4 until then?  
5 A. Correct, but it may have happened in another facility.  
6  
7 Q. There was no other facility?  
8 A. Who said that?  
9  
10 Q. I put to you that down at Dawesville there was no  
11 other training facility before you installed the one in  
12 March or thereabouts of 1992. Do you disagree with that?  
13 A. Well, yes. I mean, I don't know one way or another,  
14 but there are other facilities on the project. There were  
15 crib-rooms, there were meeting rooms, a whole array of  
16 other facilities that could have been used. It didn't just  
17 rely on this purpose-made facility for the training to  
18 commence. Whether it did or didn't, I can't recall.  
19  
20 Q. You don't know?  
21 A. But what I want to say is that it didn't rely on this  
22 structure to be in place.  
23  
24 Q. There was no other training facility there? I know  
25 there were crib-rooms and so on.  
26 A. Not dedicated, yes, correct.  
27  
28 Q. You say in your statement you relied on Pulham and  
29 later Schalit to report to you if anything was going wrong;  
30 correct?  
31 A. Yes, in addition to what I could get feedback myself.  
32  
33 Q. They didn't report to you that anything was going  
34 wrong; correct?  
35 A. No, nor did I observe anything going wrong.  
36  
37 Q. That's right.  
38 A. Mmm.  
39  
40 Q. This project finished in about July of 1994, do you  
41 agree?  
42 A. No, I don't agree with that.  
43  
44 Q. When do you say the project finished?  
45 A. Well, what happened was the formal part of the project  
46 finished at that time but we had secured additional work  
47 for the developers which consisted of canal development,

1 road building, some four or \$5 million of additional work  
2 which we continued to perform after that date.  
3  
4 Q. Was that work where the workers were covered by the  
5 AWU --  
6 A. Yes.  
7  
8 Q. -- or were they covered by another union?  
9 A. It covered the same workers, the same union. It was  
10 just a continuation of it.  
11  
12 Q. You say that finished when?  
13 A. From memory, it was about six or eight months after  
14 that date. Six months probably, from memory.  
15  
16 Q. Six months later?  
17 A. Mmm.  
18  
19 Q. You say it finished in about December 1994, is that  
20 your evidence?  
21 A. Something like that, yes.  
22  
23 Q. I think I was a year out in what I put to you.  
24 I think I said to you the training facility was put on site  
25 in March 1992. In fact, it was put on site in March 1993.  
26 A. In 1993.  
27  
28 Q. Yes. I'm sorry about that. It is my error.  
29 A. I can't recall but that's what I have read, yes.  
30  
31 Q. That's about right?  
32 A. I think so.  
33  
34 Q. You say there were crib-rooms inside, and I know that,  
35 that people had to eat their lunch in a crib-room. This  
36 was for computer-based training, was it not?  
37 A. In part, yes.  
38  
39 Q. This was for computer-based training? You had to have  
40 that facility for the computer-based part of the training?  
41 A. Yes.  
42  
43 Q. That computer-based training was in fact provided?  
44 A. Well, the computer-based training was a special  
45 innovation particular to that job. We developed that whole  
46 system for that job, so it had never been used before.  
47

1 Q. Is that an answer to my question?  
2 A. What was your question?  
3  
4 Q. Yes, I thought you weren't listening. Can I ask it  
5 again?  
6 A. Yes.  
7  
8 Q. That computer-based training was in fact provided?  
9 A. Yes.  
10  
11 Q. Do you still work for Thiess?  
12 A. No, I don't.  
13  
14 Q. Who do you work for now?  
15 A. I work for two organisations primarily. One is  
16 Leighton Contractors and one is the Georgiou Group and  
17 occasionally I do work for Main Roads of Western Australia.  
18  
19 Q. Thiess and the Leighton Group are related?  
20 A. Yes, they are.  
21  
22 Q. In what way?  
23 A. They have a common owner, being Leighton Holdings.  
24  
25 Q. So you work for a related party to Thiess?  
26 A. At the moment, yes.  
27  
28 Q. And you have done for the last 40 years, one way or  
29 another?  
30 A. I have worked for one or other of the Leighton  
31 companies, either on salary or in a consulting capacity for  
32 40 years, yes.  
33  
34 Q. Does Mr Jukes still work for Thiess?  
35 A. I don't believe so.  
36  
37 Q. Mr Jukes at that time was your superior?  
38 A. Yes, he was.  
39  
40 Q. When did that cease?  
41 A. It would have ceased in the year 2000.  
42  
43 Q. I think you told me that the Dawesville project  
44 finished in December 1994, is that your evidence? What are  
45 you reading in the witness box, might I ask?  
46 A. No, I was trying to get to the end. I'm sorry. I was  
47 trying to get to the end of this report to see who signed

1 it or where it - where the end is. I can't see a signature  
2 on it or anything. That's all it was.  
3  
4 Q. I can't see a signature on it either.  
5 A. Oh, well, we agree then.  
6  
7 Q. Yes. You didn't know actually what was going to be  
8 attached to your statement at the time you made it, did  
9 you?  
10 A. That's right, yes.  
11  
12 Q. Whatever was going to be attached was attached and you  
13 didn't really know?  
14 A. Yes.  
15  
16 Q. You say the Dawesville project finished in December  
17 1994 or thereabouts?  
18 A. Or thereabouts, yes.  
19  
20 Q. In fact, there was a formal opening of that project,  
21 wasn't there?  
22 A. Correct.  
23  
24 Q. With ribbon cutting and speeches and such like?  
25 A. Yes, there was.  
26  
27 Q. That was in April 1994, wasn't it?  
28 A. There were several openings. There was a formal  
29 opening where the Premier of the State cut a ribbon to  
30 celebrate the bridge opening. Then there was another  
31 formal opening where the channel itself was opened, also  
32 attended by the Premier and other dignitaries, and that was  
33 a separate occasion, yes.  
34  
35 Q. The bridgeworks were not the same as the channel  
36 opening works, they were two different sorts of works, do  
37 you agree?  
38 A. No, I don't. Similar. Some would have had perhaps  
39 different union coverage, but it was heavy civil  
40 engineering. It was bridgework, concrete work, excavation  
41 work, all of those things, building of abutments.  
42  
43 Q. So that is why you put these two stages of this as one  
44 process?  
45 A. No. That was a requirement - two different government  
46 bodies controlled different parts of the project. The  
47 bridge came under Main Roads, which we designed and

1 constructed, and because the channel cut the main road  
2 heading south, it was in everybody's interests to get the  
3 bridge finished quickly and open it to traffic.

4  
5 Q. It was in fact opened in April 1994?

6 A. I can't recall but it was very much earlier than the  
7 channel proper.

8  
9 Q. If I put to you it is April 1994, you don't disagree?

10 A. Look, it's 20-odd years ago. I just can't recall.

11  
12 Q. You therefore don't disagree?

13 A. Well, if I could refresh my recollection, I'd be able  
14 to confirm it. I don't agree and I don't disagree.

15  
16 Q. You are married to Mr Wilson's sister?

17 A. Yes, I am.

18  
19 Q. Do you have some feeling of resentment that you have  
20 wound up in the witness box in this Commission because,  
21 inter alia, of your relationship with Mr Wilson?

22 A. No, I don't.

23  
24 Q. You don't?

25 A. No.

26  
27 Q. Did your wife have a 40th birthday?

28 A. I'm sure she did. She's 61 now, so I'm sure she did.

29  
30 Q. Do you happen to remember when it was?

31 A. Well, a 40th birthday --

32  
33 Q. I think if you don't know your wife's birthday, you  
34 are in such more serious trouble than anything here?

35 A. I do know my wife's birthday. I am trying to figure  
36 out when the 40th was. If you add to 19953, 40 years, that  
37 is 1993. So it would have been on 3 February 1993.

38  
39 Q. Did she have a party or a celebration of any kind?

40 A. I am sure she did. I am sure we would have had  
41 something for kids and the like and relatives, but I can't  
42 recall.

43  
44 Q. You would have invited the relatives?

45 A. If there was somebody around, yes.

46  
47 Q. In fact, Mr Wilson couldn't make it, do you recall

1 that?  
2 A. I don't recall that he couldn't make it.  
3  
4 Q. You recall he wasn't there?  
5 A. I don't recall that either.  
6  
7 Q. He says he wasn't there and you don't dispute it?  
8 A. No, I don't dispute it.  
9  
10 DR HANSCOMBE: If the Commission please.  
11  
12 THE COMMISSIONER: Thank you, Dr Hanscombe. Does anyone  
13 else want to ask any questions of Mr Trio? Very well.  
14 Yes, Mr Stoljar?  
15  
16 MR STOLJAR: I have no further questions, Commissioner.  
17  
18 THE COMMISSIONER: If there is no objection, I propose to  
19 excuse Mr Trio from further attendance. Thank for coming  
20 today.  
21  
22 THE WITNESS: Thank you, Commissioner.  
23  
24 <THE WITNESS WITHDREW  
25  
26 MR STOLJAR: Commissioner, the next witness is Mr Jukes  
27 who has prepared a small statement in reply to certain  
28 evidence that emerged on 12 June 2014.  
29  
30 <NICHOLAS NEIL JUKES, affirmed: [2.39pm]  
31  
32 <EXAMINATION BY MR STOLJAR:  
33  
34 MR STOLJAR: Q. Your name is Nicholas Neil Jukes?  
35 A. That is correct.  
36  
37 Q. You are a resident of Queensland?  
38 A. Yes, I am.  
39  
40 Q. Can you just say for the record your current  
41 occupation?  
42 A. Semi-retired. I own a consulting engineering business  
43 which I practice in. I resigned my role in Sedgman on June  
44 30th of this year, and that was in my original statement  
45 that I was with Sedgman until June 30.  
46  
47 Q. You have previously provided a witness statement dated



1 23 May 2014?

2 A. That's correct.

3

4 Q. You have more recently prepared a witness statement in  
5 reply dated 15 August 2014?

6 A. I have.

7

8 Q. Do you have a copy of your witness statement in reply?

9 A. Yes, I do.

10

11 Q. Is the content of that statement in reply true and  
12 correct?

13 A. It is.

14

15 MR STOLJAR: Commissioner, I would ask that Mr Jukes  
16 statement in reply of 15 August 2014 be received into  
17 evidence.

18

19 THE COMMISSIONER: Yes. In the absence of any objection  
20 it will be received into evidence.

21

22 **#REPLY STATEMENT OF NICHOLAS NEIL JUKES DATED 15/08/2014**

23

24 MR STOLJAR: Q. Mr Jukes, just one thing. You say in  
25 paragraph 12 that you agreed to start paying the AWU, and  
26 you say in brackets:

27

28 *... (at the time I assumed the AWU WRA was*  
29 *part of or controlled by the AWU.)*

30

31 In paragraph 15 you say:

32

33 *I understood at all times that Thiess was*  
34 *paying the Workplace Reform Association for*  
35 *services it had performed or costs it had*  
36 *incurred.*

37

38 Your understanding was based on the same assumption that  
39 you had made and to which you make reference in  
40 paragraph 12, namely, that the Workplace Reform Association  
41 was part of or controlled by the AWU?

42 A. That's correct. They're one and the same as far as I  
43 was concerned.

44

45 MR STOLJAR: Nothing further. Thank you, Commissioner.

46

47 THE COMMISSIONER: Mr Galbally?

1  
2  
3  
4  
5  
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MR GALBALLY: No questions. Thank you, Commissioner.

THE COMMISSIONER: Dr Hanscombe?

DR HANSCOMBE: If the Commission please.

**<EXAMINATION BY DR HANSCOMBE:**

DR HANSCOMBE: Q. Mr Jukes, you will recall I appear for Bruce Wilson. I think we have met here before.

A. We have. Thank you.

Q. Were you here when Mr Trio just gave his evidence?

A. I was, yes.

Q. So you heard me ask him about when the training facilities were put on site in Dawesville?

A. I have, yes.

Q. He said early 1993, and you would agree with that?

A. I have little knowledge of the exact date. I did attend the site about halfway through construction which was probably in mid or late '93, and I know there was a training facility there then. When it was actually mobilised, the exact date, I don't know.

Q. That really was for people a bit further down the chain than you?

A. That's correct.

Q. So far as you're aware now, the training was in fact provided that Thiess paid for?

A. That's been my statement to this Commission from my previous appearance here, yes.

Q. Yes. I know you have put an excerpt of my client's transcript into your new statement.

A. Yes.

Q. I would like to ask you a few things about that. Do you recall that late in 1991 or early in 1992, you were in Sydney and there was a dinner with Bruce Wilson, Martin Albrecht, Bill Ludwig and you?

A. I gave evidence that I agree that I was in Sydney and had that meeting. I don't recall it being over dinner. It may well have been, but, yes, we had a meeting.

1  
2 Q. Well, I don't think it matters --  
3 A. So it's irrelevant.  
4  
5 Q. -- one way or the other.  
6 A. Correct.  
7  
8 Q. Mr Albrecht was from Thiess?  
9 A. He was the managing director, yes.  
10  
11 Q. Bill Ludwig was another person from the AWU?  
12 A. Senior official of the AWU, yes.  
13  
14 Q. At that meeting the proposal, or the idea to develop a  
15 competitor to the CFMEU was mooted?  
16 A. I don't believe so. I don't think there was such an  
17 issue as a competitor to the CFMEU. They both had  
18 legitimate coverage of certain members and were trying to  
19 steal one another's members. We were quite cognisant of  
20 assisting the AWU maintain at least some competitive force  
21 by helping them industrially, but in terms of - yes, that's  
22 probably the way I'd put it, yes.  
23  
24 Q. The term National Construction Branch, or something  
25 like it, was discussed, do you agree with that?  
26 A. I agree. I think there's no doubt Bruce Wilson had an  
27 agenda to broaden the State sort of federated model that  
28 the AWU had, and I think Thiess saw that as an advantage  
29 that if you're going to do a training scheme somewhere, you  
30 didn't want to have to go and redo that in Queensland or  
31 Western Australia. The local branch of the AWU didn't  
32 accept it, so we were looking for the national branch of  
33 the AWU to endorse what Thiess was doing.  
34  
35 Q. Yes. The aim of a national, what shall we call,  
36 manifestation of the AWU, was something Thiess was very  
37 receptive to?  
38 A. Yes. We weren't worried about union politics, but we  
39 saw the benefit in them having a more integrated model  
40 nationally rather than a series of federated models.  
41  
42 Q. If you had your choice, you would probably rather deal  
43 with the AWU nationally than the CFMEU nationally?  
44 A. On most occasions I have found that to be the case,  
45 but probably not all.  
46  
47 Q. It is a fair general statement, though, isn't it?

1 A. From my 30 years in construction, I would prefer to  
2 deal with the AWU than the CFMEU or the BLF, yes.

3

4 Q. The CFMEU is the modern day incarnation of the old  
5 deregistered BLF, isn't it?

6 A. Very much so, yes.

7

8 Q. I think it is fair to say, isn't it - you would agree  
9 with this - that it preserves many of the aspects of the  
10 culture of the deregistered BLF?

11 A. I think it varies from State to State. I've had  
12 reasonable dealings with Andrew Ferguson in  
13 New South Wales; I've had bad dealings with Kevin Reynolds  
14 in Western Australia. It depends very much on who leads  
15 the organisation in the State that you are dealing, and  
16 I think it is no different with the AWU.

17

18 Q. At this time the turmoil, shall we call it that, in  
19 the BLF had not yet settled down, that is to say in the  
20 early 1990s?

21 A. No, it hadn't. I think they had been deregistered in  
22 Victoria and I don't think the amalgamation had actually  
23 occurred at that stage in Western Australia. There was a  
24 bit of a shotgun marriage going on, that they were still  
25 fighting with one another, as I recall in the early '90s.

26

27 Q. So the AWU looked like a more stable and reasonable  
28 partner for Thiess than whatever would emerge from the  
29 bird-dashes of the BLF?

30 A. I think at that time the AWU were a lot less militant  
31 and very much a culture of a fair day's work for a fair  
32 day's pay and, you know, not ideologically mad.

33

34 Q. When there was some discussion about establishing a  
35 national model, to use your phrase, of the AWU at that  
36 meeting and indeed later, there was some discussion about  
37 how to fund such an enterprise?

38 A. No, not at all. Not at all. Mr Albrecht and I went  
39 to Sydney. I think we addressed the full State secretarial  
40 meeting of the AWU. I think all of the State Secretaries  
41 were there. Our agenda was to talk about the fact that the  
42 AWU had fallen behind in training with respect to the  
43 CFMEU, so we were encouraging the workplace reform model  
44 across the AWU sites. That was the agenda. It wasn't  
45 about how the AWU funded a National Construction Branch or  
46 how they funded anything. It was sort of more a high level  
47 discussion about trying to get AWU to lift its game.

1  
2 Q. Do you agree that Mr Wilson in particular said to you,  
3 "Well, we're going to have to work out how to fund doing  
4 that."?  
5 A. No, I don't agree.  
6  
7 Q. You don't agree with that?  
8 A. There was no discussion around funding whatsoever.  
9  
10 Q. You therefore don't agree either that Mr Wilson  
11 discussed setting up a separate vehicle, the National  
12 Construction Branch as a separate vehicle?  
13 A. No, there was no discussion of it as a separate  
14 vehicle. There was a belief that Bruce had that  
15 nationalising the AWU would be beneficial, and we agreed  
16 with that concept. In terms of whether it was a National  
17 Construction Branch or how it properly got constituted with  
18 however the unions worked was of little concern to Thiess.  
19  
20 Q. That's right, it was of little concern to Thiess?  
21 A. Yes.  
22  
23 Q. It was no secret that that's what Wilson was wanting  
24 to do?  
25 A. No, no, no secret. Certainly not to Thiess there was  
26 no secret.  
27  
28 Q. Then in March 1992 there was another meeting at  
29 Thiess's office, do you agree?  
30 A. In or about March there were probably various meetings  
31 but you will have to refer me to which meetings though.  
32  
33 Q. The one in Perth.  
34 A. I wrote a letter that went to Mr Trio that went to  
35 Mr Blewitt confirming our commercial agreement in March  
36 1992. I would have been based in Brisbane when I sent that  
37 letter to Trio, so I am not sure I was at a meeting in  
38 March in Perth in 1992. You would have to refresh my  
39 memory if I was.  
40  
41 Q. My instructions are that there was a later meeting in  
42 Thiess's office in Perth at about that time?  
43 A. There were meetings with Wilson in late 1991 and early  
44 '92. It may well have been March. I sent the letter from  
45 Brisbane at the time the commercial deal was done. Whether  
46 I was in Perth earlier in the month or not, I genuinely  
47 can't recall.

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Q. You can't recall?

A. No.

Q. You cannot recall, fair enough. So it may well have occurred?

A. It may well have, yes.

Q. Mr Wilson says that you were expressly told at that meeting about the WRA, the Workplace Reform Association?

A. No, I disagree with that. The evidence that I gave to the WA police who asked a similar question was that my understanding was that Mr Trio had conveyed that they'd established the Workplace Reform Association, and I said that in 1997. Today, if you ask me the same question, I don't really recall who told me. The letter that I sent that Trio signed is addressed to the Australian Workers Union Workplace Reform Association. Again, it had little context in terms of Thiess's thought about who we were dealing with. We were dealing with the AWU. If they'd set up some other subsidiary or whatever, it was of no concern. So it didn't play an important part in our life at the time, let me assure you.

Q. Well, if it didn't play an important part in your life, it is quite possible you have just forgotten? That you were in fact told and you have forgotten. Do you agree?

A. That's possible.

Q. It's 20 years ago.

A. That's possible. That's possible.

MR STOLJAR: Commissioner, I think it needs to be clear: told what? If what is being put is that he was told that there was some entity potentially within the AWU, that's one thing. If the proposition he was going told about some completely separate incorporated association, that needs to be made clear, because that may not be clear on the transcript.

THE COMMISSIONER: Q. Told what?

A. I can certainly say we weren't told about an incorporated association, or how it was going to occur, or whatever, and I know Mr Wilson has given evidence that I was aware of it. I certainly wasn't aware of it. In terms of the letter that we wrote, certainly it went to the AWU, the Australian Workers Union Workplace Reform Association.

1 In terms of it having any significance about what it was  
2 other than an AWU training business model or whatever,  
3 I don't know.  
4

5 DR HANSCOMBE: Q. You certainly knew the words because  
6 you put them on the letter.

7 A. Someone's - and I wouldn't have written "AWU Workplace  
8 Reform Association" unless somebody told me it existed. My  
9 evidence to the police in 1997 was I thought Mr Trio had  
10 told me, and that's still the best recollection I've got.  
11

12 Q. You think Mr Trio told you those words, to address it  
13 to the Workplace Reform Association?

14 A. That's the best as I can recall and it's in my  
15 statement to the WA police in 1997.  
16

17 Q. My puttage to you, my instructions are that you were  
18 told that it was a separate entity and you were told that  
19 in early 1992?

20 A. I find that hard to believe given that I have seen  
21 evidence that it wasn't registered until months after the  
22 letter went out. So if it was a separate entity, it was  
23 somebody's - a figment of imagination at that point in  
24 time.  
25

26 Q. That it would be set up as a separate entity?

27 A. I don't recall those discussions or, if I was told, it  
28 bore little significance. If the AWU said, "We're going to  
29 conduct training through this group", I may have been told  
30 that. Would it be of any importance? No, not really.  
31 We're still dealing with the AWU.  
32

33 Q. Because you may have thought that that had no  
34 particular significance to Thiess, it is quite possible you  
35 were told and you have simply forgotten about it?

36 A. That is possible, yes.  
37

38 Q. The job finished in April 1994, do you agree?

39 A. I'm not clear on the exact dates. I believe the  
40 channel was completed in late, mid to late 1994. But as  
41 Mr Trio gave evidence, there was some other work that went  
42 on for the developers that surrounded Dawesville, so  
43 whether you are actually measuring the completion of the  
44 channel or some land development, you need to be clear what  
45 you're measuring. I went to the official opening and  
46 I can't remember that date when Richard Court cut the  
47 ribbon, so I think I was there. I think it was sometime in

1 late 1994 from memory, but it might be out.

2

3 Q. You heard me put to Mr Trio that in fact it was in  
4 April 1994?

5 A. It may well have been.

6

7 Q. It may well have been, might it not?

8 A. It may well have been. It may well have been.

9

10 Q. Your letter that you addressed to the Workplace Reform  
11 Association refers in five separate places in the text to  
12 "your association". It doesn't say anything about the  
13 union or the AWU:

14

15 *I confirm our agreement that your*  
16 *association ...*

17

18 The next paragraph:

19

20 *The AMMA, Thiess and your association ...*

21

22 The next paragraph:

23

24 *We are certain that both Thiess and your*  
25 *association ...*

26

27 The next paragraph:

28

29 *As discussed we would be pleased ... a*  
30 *representative of your association ...*

31

32 MR STOLJAR: Commissioner, I object to this. The reason  
33 is this: Mr Jukes has come back to give a limited  
34 statement in reply. There has already been  
35 cross-examination generally about Mr Jukes' evidence  
36 including this letter on the last occasion. I am conscious  
37 of the fact we still have three witnesses to get through  
38 this afternoon. Leisurely cross-examination on matters  
39 that really relate to his evidence-in-chief, in my  
40 submission, is not appropriate.

41

42 THE COMMISSIONER: Yes. I am worried about the passing of  
43 the time.

44

45 DR HANSCOMBE: I accept that, Commissioner, but I have  
46 been on my feet for something under 10 minutes. In my  
47 submission, it is hardly leisurely.



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THE COMMISSIONER: I think the essential point is this: Mr Jukes put on a statement in reply. You are entitled to try and shake what he has said in the statement in reply, but aren't you, in effect, in your last question at least offering further cross-examination?

DR HANSCOMBE: I certainly am engaging in cross-examination, there's no doubt about that.

THE COMMISSIONER: A repeat of what took place on an earlier occasion.

DR HANSCOMBE: I think, Commissioner, with respect, I did not ask this question on the last occasion. I stand to be corrected on the transcript, but I don't recall asking that question.

THE COMMISSIONER: You can continue, Dr Hanscombe, but I do point out that we have some important witnesses this afternoon to be finished.

DR HANSCOMBE: I accept that. If the Commission please.

Q. Could I take you back to your Attachment A. In the penultimate paragraph, the last sentence reads:

*Accounts are to be submitted by your association.*

Mr Trio might have drafted this letter?

A. It's possible.

Q. You might have drafted this letter. Whoever drafted this letter had no doubt that the relevant entity was an association, not the union?

A. I disagree. The letter is worded:

*The Secretary of the Australian Workers Union Workplace Reform Association.*

So it starts dealing with the Secretary of the AWU.

Q. It refers to "your association"?

A. I think you're splitting hairs 25 years later, to be frank.

1 Q. You still say, having revisited this letter, you  
2 didn't have knowledge of the association as a separate  
3 entity?  
4 A. Not in the context of what the Commission's been  
5 hearing, no.  
6  
7 Q. Your paragraph 14, you say if you had known the work  
8 wasn't being done, you would have taken steps to cause the  
9 services to be performed or stop payments, and you told me  
10 last time that work was done and that's why you paid.  
11 A. Yes.  
12  
13 Q. This was your subordinate's job to tell you if it  
14 wasn't being done, do you agree?  
15 A. I agree.  
16  
17 Q. And they didn't?  
18 A. I had no feedback to say that services weren't being  
19 provided, that's correct.  
20  
21 Q. Were you here when Mr Darrouzet gave evidence about  
22 Melbourne Water?  
23 A. I was.  
24  
25 Q. You heard him use the phrase "exception reporting"?  
26 A. I did.  
27  
28 Q. "We worked on an exception reporting system where if  
29 something was going wrong, I would be told about it." Is  
30 that the way you worked too?  
31 A. Generally you have a large domain to control and if  
32 something is not going wrong, usually the information  
33 doesn't flow uphill, yes. It is a bit like that in any  
34 organisation.  
35  
36 Q. Yes. That didn't happen in respect of Dawesville  
37 either, did it?  
38 A. No.  
39  
40 DR HANSCOMBE: Yes. If the Commission please.  
41  
42 THE COMMISSIONER: Mr Clelland?  
43  
44 MR CLELLAND: No questions, Commissioner.  
45  
46 THE COMMISSIONER: Mr Guidolin?  
47

1 MR GUIDOLIN: No questions, Commissioner.  
2  
3 THE COMMISSIONER: Mr Mewing?  
4  
5 MR MEWING: No, Commissioner.  
6  
7 THE COMMISSIONER: Mr Stoljar?  
8  
9 MR STOLJAR: No further questions, Commissioner.  
10  
11 THE COMMISSIONER: Any objection to Mr Jukes being  
12 excused? Thank you for returning, Mr Jukes. You are  
13 excused from further attendance.  
14  
15 THE WITNESS: Thank you, Commissioner.  
16  
17 <THE WITNESS WITHDREW  
18  
19 MR STOLJAR: The next witness is Mr Smith.  
20  
21 <ROBERT FREDERICK SMITH, sworn: [2.57pm]  
22  
23 <EXAMINATION BY MR STOLJAR:  
24  
25 MR STOLJAR: Q. Your full name is Robert Frederick  
26 Smith?  
27 A. Yes.  
28  
29 Q. You are a resident of Victoria?  
30 A. Yes.  
31  
32 Q. What is your current occupation?  
33 A. Retired.  
34  
35 Q. You prepared a witness statement dated 14 August 2014?  
36 A. Yes.  
37  
38 Q. Do you have a copy of that statement?  
39 A. With me, yes in my --  
40  
41 Q. I will provide you with one.  
42 A. Thank you.  
43  
44 Q. Is the content of that statement true and correct?  
45 A. Yes.  
46  
47 MR STOLJAR: Commissioner, I would ask that Mr Smith's

1 statement be received into evidence.

2

3 THE COMMISSIONER: Any objection? The statement of Robert  
4 Frederick Smith of 14 August 2014 is received into  
5 evidence.

6

7 **#STATEMENT OF ROBERT FREDERICK SMITH DATED 14/08/2014**

8

9 MR STOLJAR: Q. Mr Smith, if you come to paragraph 10,  
10 you say that you went to the CBA with Mr Cain to inform the  
11 bank of my credentials and to let them know that you and  
12 only you were responsible for the operation of any AWU  
13 accounts. You were told on that occasion that there were  
14 considerable sums of money in at least one other account  
15 an, amount of approximately \$157,000. That prompted you to  
16 send the letter which is annexure A, or to cause Mr Cain to  
17 send the letter which is annexure A to your statement  
18 seeking that the accounts be frozen; is that right?  
19 A. It's close. One: I think you may have referred to it  
20 as the AMWU, I may be wrong, but there's a very real  
21 distinction, I might tell you.

22

23 Q. Yes.

24 A. Two: as a matter of administrative process, I took my  
25 lawyers to the bank to inform them that I had now become  
26 the only Secretary of the AWU in Victoria and, as such, was  
27 the only person responsible for, or able to, you know, sign  
28 on behalf of and, on that basis, I wanted to see the bank's  
29 or the AWU accounts from the other side of the amalgamated  
30 union. Having done that and then provided them to me,  
31 I then became aware of the significant amounts in the  
32 account. I then immediately, with my lawyer present,  
33 instructed the bank to freeze those accounts. Subsequent  
34 to that, I had the lawyer or my lawyer write to the bank  
35 formally.

36

37 Q. The letter is dated 14 July 1995. That was sent  
38 shortly after the meeting, was it?

39 A. Correct.

40

41 Q. You then set out in paragraph 13 a conversation that  
42 you had with Mr Wilson. I won't take you through that.  
43 That, I presume, sets out your best recollection of that  
44 conversation. In paragraph 15 you say that you had become  
45 convinced that there had been a breach of the rules because  
46 he, that's Mr Wilson, had put union money into those  
47 accounts?

1 A. Correct.

2

3 Q. And that was your understanding at the time?

4 A. And they were not AWU accounts. That was my belief.

5

6 Q. Yes. Shortly thereafter, there was a meeting of the  
7 Finance Committee. You deal with this in paragraph 18 and  
8 following. The meeting to which you make reference in  
9 paragraph 18 took place on 2 August 1995, to the best of  
10 your recollection?

11 A. I'm not really clear on the dates and times. As time  
12 has gone by - I haven't kept any records, they were left  
13 with the union, and any private details, et cetera, have  
14 since disappeared, so I am relying on others for those  
15 sorts of dates but I don't dispute them.

16

17 Q. I am going to take you to some letters in a moment  
18 that clarifies the date, but, in any event, if you work  
19 with me on the basis for the moment that it was 2 August.  
20 You were obviously concerned because you say at the end of  
21 19, a comment about Mr Wilson "going to the slammer". That  
22 was a comment you made at the meeting?

23 A. That may not be verbatim, but it certainly was pretty  
24 close. I did mention "going to the slammer", yes.

25

26 Q. The point I am trying to get to is that you were  
27 obviously very concerned at this meeting?

28 A. Concerned and pretty annoyed.

29

30 Q. And pretty annoyed. You say things got pretty heated.  
31 In 21 you articulate your concern. You say:

32

33 *Mr Wilson may have been misappropriating*  
34 *the funds for his own personal benefit.*

35

36 There was then a further meeting that you deal with at  
37 paragraph 23. You say:

38

39 *Following the Finance Committee meeting,*  
40 *I met with Cambridge, Harrison and Ludwig*  
41 *in Brisbane. This meeting took place*  
42 *within days of the Finance Committee*  
43 *meeting. No-one else was present.*

44

45 At that meeting you wanted Mr Wilson's resignation; if not,  
46 you said you were going to the police. That is in  
47 paragraph 24. If I take you then to paragraph 28:

1  
2           *On the 15th of August 1995, National*  
3           *Executive decided to shut down the NCB.*

4  
5           You have attached as annexure C the circular letter.  
6           I don't seem to have that. But, in any event, you attach a  
7           letter there and you say in 29:

8  
9           *I supported the decision to give Mr Wilson*  
10          *and others ...*

11  
12          It has come up on the screen. That letter records the  
13          outcome of a postal ballot which took place involving the  
14          National Executive. I will take you to the resolution that  
15          was voted on, but the short point is that the ballot  
16          resolved to pay Mr Wilson and others a redundancy package?

17          A. Yes.

18  
19          Q. In paragraph 30, you say:

20  
21          *I informed Mr Wilson he was going to have*  
22          *to return the money in the AWU Members'*  
23          *Welfare Account to the companies that*  
24          *donated it.*

25  
26          You said to him words to the effect, "It's going back. You  
27          won't get your redundancy", et cetera. It is in italics,  
28          but I think it is another quote:

29  
30          *I was adamant that this money was received*  
31          *from the company as a result of some sort*  
32          *of deceit or fraud and therefore is not AWU*  
33          *moneys.*

34  
35          Taking that in steps, Mr Wilson had to return the money  
36          because he remained the signatory on that account; is that  
37          right?

38          A. Well, that's correct. I couldn't do it myself so I  
39          had to have him comply with my demand to do it. I note  
40          that in his statement he says that I had no interest in  
41          that account, therefore, he volunteered to send it back.  
42          As if.

43  
44          Q. What I am interested in is the fact that in about  
45          mid-July, as we've seen, did you say at paragraph 15, you  
46          were concerned that he had put union money into those  
47          accounts, and then in 30 you say that the moneys in that

1 account had been donated by companies and you were making  
2 arrangements to send it back. What caused you to change  
3 your position?

4 A. I think the term "donated" is probably incorrect and  
5 it was maybe just something I used very, very quickly.  
6 "Deposited" may have been a more accurate description. On  
7 initially discovering these accounts and the amounts of  
8 money, I made the assumption that it was union moneys that  
9 were deposited into a non-union account, therefore, he was  
10 - well, depriving the union of it in a general sense. It  
11 should have been going into the central fund.  
12

13 Q. Yes.

14 A. But subsequent to that, I, through discovering other  
15 bits and pieces of information regarding that fund, felt  
16 that he was using it for his own purposes and there was  
17 some withdrawals and expenditures, et cetera, which were  
18 inconsistent with what we would have accepted. Therefore,  
19 I felt it was moneys that he had got from companies for  
20 purposes other than what you would normally expect and my -  
21 at a later date, I had, prior to sending this money back,  
22 written or communicated to those companies asking them,  
23 after I had become the single Secretary, what the moneys  
24 were for and if they happened to be union dues, who were  
25 the members so I could reconcile it. Not one company got  
26 back to me.  
27

28 Q. When did you write to the companies in those terms?

29 A. I can't recall the dates but it was - I had become the  
30 Victorian Secretary at that stage.  
31

32 Q. It would have been within a very narrow compass, would  
33 it not, because you only found out about these accounts in  
34 about mid-July and by mid-August a decision had been made  
35 to refund the moneys?

36 A. We were moving pretty quickly, but I can't say to you  
37 this was the day or this was the date that I had  
38 communicated to the companies, et cetera. But having done  
39 that, I had asked them to verify what the moneys were for.  
40 Obviously they didn't want to tell me.  
41

42 Q. So you had not received any response?

43 A. No, none.  
44

45 Q. Are you sure about that? It is a long time ago. It  
46 may be that you have just conflated - I don't mean that in  
47 a rude way.

1 A. I am sure I asked the companies because I wanted to  
2 know what the moneys were for.

3  
4 Q. Yes. Can I take you to some letters and we will see  
5 if we can work out the timeline a bit more closely. Could  
6 I take you to a document that has been already put into  
7 evidence in the Commission. For the record, it is  
8 Cambridge tab 18-117. I don't know whether you want to  
9 read it on the screen or in hard copy, Mr Smith, I will  
10 give you the option.

11 A. I'll read it on the screen when it comes up.

12  
13 Q. It will come up in a moment. This is a letter which  
14 Mr Cambridge and Mr Harper sent on 27 July 1995. In the  
15 second paragraph it is referring to correspondence from  
16 yourself to members of the National Executive. Reference  
17 is made to that in the first paragraph. The letter  
18 continues:

19  
20 *The issues raised in the correspondence*  
21 *from Mr Smith are important and complex.*  
22 *The matters raised require proper*  
23 *investigation, a thorough financial audit*  
24 *in order to establish exactly what the*  
25 *correct allocation of moneys, assets and*  
26 *liabilities should be in respect to the*  
27 *Victorian position.*

28  
29 I'll leave you to skim over the next two paragraphs, but  
30 then it says:

31  
32 *Obviously such a financial analysis will*  
33 *take some time to complete.*

34  
35 If you come over to the next page, it says:

36  
37 *I believe it appropriate the National*  
38 *Executive should resolve as a matter of*  
39 *urgency ... (a) to commence necessary*  
40 *financial auditing ...*

41  
42 Then it is authorising relevant officers at the NCB to make  
43 payments for salaries; and:

44  
45 *(c) direct the Joint Secretary of the*  
46 *Victorian Branch, Mr Bob Smith, and any*  
47 *other officers take [certain steps].*



1  
2 (b) and (c) is really dealing with the separate issue about  
3 wages to members of the National Construction Branch, but  
4 the point is that there had been at that point no auditing  
5 or investigation of the kind raised in the letter; that's  
6 right, isn't it?

7 A. Correct.  
8

9 Q. Indeed at that point, if you come back to the page  
10 before - I'm sorry to jump around - at the bottom of 117,  
11 it says that the accounts held in the name of the union  
12 have been frozen, which was the letter that you had caused  
13 Mr Cain to send. Then coming back to the top of page 118,  
14 that's really one reason that there was a problem with  
15 paying wages and salaries to the members of the NCB, but  
16 we'll leave that to one side for the moment. If you come  
17 to the third paragraph on page 118, it says:

18  
19 *Although this matter will be included on*  
20 *the Agenda for a forthcoming*  
21 *Finance Committee meeting to be held on*  
22 *Wednesday 2nd August, I believe ...*  
23

24 And certain things are set out. It is foreshadowing a  
25 meeting of the Finance Committee on 2 August, this letter  
26 having been sent on 27 July. That was the position as at  
27 27 July. Then on 2 August there was the Finance Committee  
28 meeting and we have already discussed your comments to  
29 Mr Wilson there. If you come through to another document,  
30 it is in evidence as Cambridge tab 27, page 147 in the  
31 bottom right-hand corner, this was a letter of 14 August  
32 1995, a circular letter to members of the National  
33 Executive headed "Postal Ballot". This is the resolution:

34  
35 *Finance Committee of the Australian Workers*  
36 *Union authorises payment to those from the*  
37 *Construction Branch applying for redundancy*  
38 *package ...*  
39

40 Et cetera. That was the resolution which went out by  
41 postal ballot to the members of the National Executive. If  
42 you come to page 146, those are the members. If you come  
43 to 149, you should now be looking at a further circular  
44 letter, and this was sent again by - this was signed simply  
45 by Mr Cambridge on this occasion and he says at page 149,  
46 in the bottom right-hand corner - this has obviously been  
47 sent after the circular letter the day before, 14 August.

1 He says in the third paragraph:

2

3 *The matters which underpin the issue of*  
4 *redundancy payments to officers and staff*  
5 *of the [NCB] are complex and require*  
6 *thorough investigation. I have recently*  
7 *sought and obtained legal advice of a*  
8 *Queen's Counsel ...*

9

10 Then he goes on to say:

11

12 *The advice of senior counsel should be*  
13 *followed ...*

14

15 If you come over to the next page, page 150, Mr Cambridge  
16 says - I know this is what Mr Cambridge says and you may  
17 not necessarily agree, but he says about halfway down  
18 page 2:

19

20 *Apart from any of these reasons ...*

21

22 That's comments he has made about the postal ballot:

23

24 *... I believe that the proposition to pay*  
25 *alleged redundancies without proper*  
26 *investigation, consideration and debate, is*  
27 *simply a misuse of union funds.*

28

29 *I am unaware of the full circumstances*  
30 *involving the alleged redundancies and*  
31 *I believe that most National Executive*  
32 *members are also unapprised of all of the*  
33 *facts. Allowing the redundancies to occur*  
34 *will impede a proper investigation of the*  
35 *relevant events leading to the redundancy*  
36 *proposal.*

37

38 On the same day, 15 August, if you go to page 151 in the  
39 bottom right-hand corner, Mr Ludwig, who was then the  
40 President - it will come up in a moment - writes saying  
41 that he in substance agrees with what Mr Cambridge has  
42 said. He says:

43

44 *I also attach a letter that I sent to the*  
45 *Joint National Secretary ...*

46

47 If one comes to that, it is 14 August 1995 to Mr Harrison,

1 joint National Secretary. He says in the third paragraph  
2 that he opposes the ballot. He says:

- 3  
4 *1. There is no power in the rules ...*  
5 *2. The circumstances in which the subject*  
6 *officers of the National Construction*  
7 *Branch propose to resign from office do not*  
8 *give rise to a redundancy situation.*  
9

10 At the bottom of the page:

11  
12 *[Anyone] who makes and or authorises such*  
13 *payments would be in breach of their clear*  
14 *Fiduciary Obligation ...*  
15

16 Then there's one more letter from Mr Cambridge, page 154  
17 the third paragraph. He says:

18  
19 *Once an Officer takes redundancy they will*  
20 *be under no obligation to comply with*  
21 *directions to provide information regarding*  
22 *their conduct. The ability of the Union to*  
23 *properly investigate what has occurred will*  
24 *be significantly impeded.*  
25

26 Just pausing there, that must be right, must it not?

27 A. Yes. In a sense it is right. Having said that, if  
28 Mr Cambridge had supported me when I first started pursuing  
29 Mr Wilson, we may not have ever got to this stage, but he  
30 had and his actions showed, in my view, with Mr Ludwig,  
31 done everything they could to delay the removal of Wilson,  
32 for their own political purposes, maintaining control  
33 within the union. I had a view that once Wilson was gone,  
34 there was nothing that would impede us from pursuing him  
35 legally for any misconduct or, you know, breaking of the  
36 law, et cetera, so I wasn't fussed by that.  
37

38 Q. He's correct in saying:

39  
40 *The ability of the Union to properly*  
41 *investigate what has occurred will be*  
42 *significantly impeded.*  
43

44 That must be right, must it not --

45 A. That is correct.

46  
47 Q. -- because they will have gone?

1 A. But he's inconsistent.  
2  
3 Q. What I am really trying to understand is on 2 August  
4 you were very vociferous in your views about what had  
5 occurred and then at the meeting in Brisbane, you said you  
6 wanted Wilson's resignation that day or you were going to  
7 the police. What I'm trying to explore is why you were so  
8 adamant to proceed with the redundancy only 10 days or so  
9 later on the 16th or thereabouts of August?  
10 A. Well, it was no secret that I had a very, very low  
11 opinion of Mr Wilson and his modus operandi. I wanted him  
12 out. The fact is I had - well, subsequently - I'll come to  
13 that in a second - been made aware that he wanted to go now  
14 and he wanted a redundancy. We were attaching to this  
15 redundancy vote a vote to shut the branch down, which gave  
16 legitimacy to making Wilson and his supporters redundant.  
17 The branch was being closed down.  
18  
19 Q. Is that right, Mr Smith, because no decision about the  
20 future - by the branch, you mean the National Construction  
21 Branch?  
22 A. Yes.  
23  
24 Q. No decision had been made in that regard at that  
25 point, had it?  
26 A. Well, at that point, but of course Wilson going  
27 allowed us to do that.  
28  
29 Q. You had only just set up the National Construction  
30 Branch, what, in the last 12 months, if that, six months  
31 probably?  
32 A. Yes, well, I didn't do it.  
33  
34 Q. That's the position, is it not?  
35 A. That's right. It was always going to be a failure.  
36 None of us supported it. In fact, it was always a vehicle  
37 to move Wilson on.  
38  
39 Q. The short point is that they were not in truth being  
40 made redundant. They were simply resigning from their  
41 positions; their positions had not become redundant at that  
42 point?  
43 A. I suppose in a legal sense that is probably right.  
44  
45 Q. So I come back to my question.  
46 A. But we were going to fill them.  
47

1 Q. Why were you so determined to pay out this redundancy  
2 on the 16th - or thereabouts - of August 1995, having been  
3 of a different persuasion only some 10 days before?

4 A. It didn't change my views about what we were able to  
5 do in a legal sense. I wasn't about to stop pursuing  
6 Wilson. Even though he was gone, I was still wanting to  
7 pursue him legally.

8  
9 Q. If he's gone, the likelihood is it would be difficult  
10 to recover redundancy payments made to him as a practical  
11 sense, isn't that right?

12 A. In all likelihood, probably, yes.

13  
14 Q. If you come back to this letter, come down to the  
15 third paragraph and then pausing there, if I take you back  
16 to this letter of 16 August 1995, Mr Cambridge says, as  
17 I think I pointed out to you, that the ability of the union  
18 to properly investigate what has occurred will be  
19 significantly impeded. Then he goes on to say:

20  
21 *The future of the National Construction*  
22 *Branch is itself a matter of some*  
23 *complexity and one which justifies input*  
24 *from all members of the National Executive.*  
25 *The composition or structure of the*  
26 *National Construction Branch is a matter*  
27 *which needs to be properly considered by a*  
28 *meeting of members of the National*  
29 *Executive and logically precedes any*  
30 *decision in respect to alleged*  
31 *redundancies.*

32  
33 Pausing there, the National Executive hadn't debated the  
34 future of the National Construction Branch at that time;  
35 correct?

36 A. No. You had to - and I think you do appreciate that  
37 there were two sides to this coin, or this union, and two  
38 parts to the Executive. We had joint secretaries, we had  
39 different --

40  
41 Q. Do you mean FIME and AWU?

42 A. Yes. Yes. I'm trying to explain --

43  
44 Q. That may be so, but those two sides will come together  
45 in a debate at the National Executive level, won't they?

46 A. Yes. Mr Cambridge had been doing, along with  
47 Mr Ludwig, everything they possibly could to prevent us

1 removing Wilson from the union and in a cynical way to  
2 protect their control of the union and we just simply  
3 weren't listening or dealing with Mr Cambridge. I dealt  
4 predominantly through the other Joint Secretary,  
5 Mr Harrison.

6  
7 Q. When you talked about Mr Wilson going to the slammer  
8 on the 2nd - I know it's just a comment you made, you  
9 weren't necessarily giving legal analysis, but when you  
10 made that comment during a heated meeting at the  
11 Finance Committee on 2 August 1995, you weren't  
12 contemplating paying him a redundancy at that stage,  
13 were you?

14 A. No, not at all.

15  
16 Q. The idea of a redundancy is something that emerged in  
17 debate at some time after that time?

18 A. It was the most convenient vehicle to remove him.

19  
20 Q. When you say it is convenient, if we go back to this  
21 letter, I've just taken you through the paragraph which  
22 concludes with the words "to alleged redundancies." It  
23 then goes on:

24  
25 *If the payments are made members would be*  
26 *entitled to call those Officers who*  
27 *authorise such payment to account, as the*  
28 *proposed payments are not payments which*  
29 *fall within the objects of the Union or are*  
30 *authorised by the Rules. The proposed*  
31 *redundancies would result in termination*  
32 *payments totalling \$341,000 of members'*  
33 *funds and a decision to make such payments*  
34 *must be justified.*

35  
36 That is his calculation, that in total \$341,000 would be  
37 going out in redundancies, but does that sound about right?

38 A. It sounds a bit excessive to me, to be honest.

39  
40 Q. In any event, a significant sum of members' moneys  
41 would be paid out in redundancies. It wasn't so convenient  
42 as far as members' funds was concerned, was it?

43 A. In fact it was because the construction branch had  
44 been bleeding the union financially for some time and  
45 clearly was putting us into a very, very difficult, if not  
46 dangerous, financial position and removing this branch was  
47 certainly a significant way of improving our financial

1 bottom line and that in my view was certainly in the best  
2 interests of members.

3

4 Q. If you wanted to get rid of Wilson because you had  
5 concerns about his probity, why not just say, "Well, you're  
6 sacked" and you don't pay him a redundancy?

7 A. That became a political matter. I didn't have the  
8 power to sack him.

9

10 Q. Not even for misconduct of that kind?

11 A. Not me personally, no. That becomes a matter for the  
12 whole executive and that's where it becomes politicised.  
13 As I said earlier, Mr Ludwig and Mr Cambridge and others on  
14 that side, including Mr Harper, were doing all they could  
15 to defend him. They wanted him kept there.

16

17 Q. Doesn't that underscore the need for a proper  
18 investigation to be carried out before these decisions were  
19 made?

20 A. I'm sorry?

21

22 Q. Doesn't that underscore the need for a full  
23 investigation to have been undertaken before these  
24 decisions were made?

25 A. I might remind you that in fact I did go to the police  
26 and asked for the matter to be pursued.

27

28 Q. Yes, you make reference to that in your statement.  
29 I'll come back to that. If I could just focus on this  
30 letter for a minute, it says:

31

32 *The proposed redundancies would result in*  
33 *termination payments totalling \$341,000 ...*

34

35 In addition to that, in the end a figure of about \$157,000  
36 was paid out to the companies that had deposited it in the  
37 Commonwealth Bank account. The total amount, assuming that  
38 figure of \$341,000 - I know you've questioned it, but if we  
39 just assume for the minute that it is right - plus  
40 \$157,000, it is getting up to half a million dollars?

41 A. Are you suggesting that that \$157,000 was legitimately  
42 AWU funds? Because if you are, I have to disagree.

43

44 Q. We'll come back to that in a minute, Mr Smith. You  
45 had decided at an early stage, I think I took you to the  
46 statement, in mid-July, you thought that it was union  
47 moneys in the accounts and you changed your mind by the

1 time we got to mid-August. Let's finish working through  
2 this letter so just you have the full picture. He says,  
3 "In summary" - this it Mr Cambridge.

4  
5 *... the question of redundancy payments*  
6 *does not properly arise unless and until*  
7 *(a) a thorough investigation is undertaken*  
8 *in respect to accounting matters relating*  
9 *to the [NCB]; and*  
10 *(b) the National Executive makes a decision*  
11 *in respect to the future of the National*  
12 *Construction Branch.*

13  
14 He says:

15  
16 *Proper investigations are required and the*  
17 *question of redundancy payments could be*  
18 *conveniently considered at the next meeting*  
19 *of the National Executive. Members must*  
20 *ask themselves what is this undue haste.*

21  
22 That letter from Mr Cambridge wasn't accepted in the sense  
23 that we then come to the letter that you have included in  
24 your statement of 17 August 1995, the next day, which  
25 indicates the results of the postal ballot, which in  
26 substance was "pay the redundancy"?

27 A. I'd say overwhelmingly supported.

28  
29 Q. "Yes" votes 26, "no" votes 10. Did the "yes" votes  
30 include any persons who were themselves receiving  
31 redundancies?

32 A. I'm really not aware. Probably - well, possibly  
33 Mr Wilson.

34  
35 Q. Anyone else?

36 A. I'm not sure.

37  
38 Q. He should not have participated in that vote, should  
39 he?

40 A. I'm not saying he possibly did. I don't know that he  
41 did.

42  
43 Q. If we go to 146 in the bottom right-hand corner --

44 A. I would accept it as a conflict of interest.

45  
46 Q. If you come back to paragraph 31 of your statement,  
47 you describe there arrangements that you made for



1 Mr Harrison and Mr Harper to sign redundancy cheques.  
2 That's because the cheques had to be made out to each of  
3 the union staff and you had them couriered to you in  
4 Melbourne so that you could present them to Mr Wilson the  
5 following day at the meeting at CBA. Is this the position  
6 - you yourself were opposed to the National Construction  
7 Branch?

8 A. Was I opposed to it?

9

10 Q. Yes, you yourself.

11 A. Not in principle. I thought in fact it had some merit  
12 as an idea or a concept, but I'd become very opposed to  
13 those running it.

14

15 Q. You mean Mr Wilson?

16 A. Mr Wilson and others.

17

18 Q. Who were the others who you make reference to?  
19 Mr Blewitt?

20 A. And Busby. I don't know Blewitt. I don't think I've  
21 ever met Mr Blewitt.

22

23 Q. Then you say in paragraph 32 that a meeting was held  
24 the following day at the Victorian Branch of the CBA:

25

26 *I attended, along with Mr Cain, Mr Wilson*  
27 *and Mr McCarthy ...*

28

29 And then Mr Wilson signed various cheques authorising the  
30 return of moneys from the AWU Members' Welfare Account to  
31 those various companies. You say in 33 you had to do that  
32 because you weren't a signatory. And then a handwritten  
33 letter was drafted - I'll come back to that - to give to  
34 the manager of the Carlton branch. Can I take you through  
35 to a document which is at, for the record, Cambridge  
36 tab 34, but it is at 164 in the bottom right-hand corner.  
37 This is letter from Mr Wilson to the manager of  
38 John Holland Construction. He says:

39

40 *Dear sir,*  
41 *There has recently been some controversy*  
42 *regarding moneys received from your*  
43 *company.*  
44 *It has been determined to refund such*  
45 *moneys.*  
46 *Please find attached ...*

47

1 He says "a cheque" and I think someone has changed it to  
2 "cheques for \$35,200." Mr Wilson signed it at the bank,  
3 did he?

4 A. Yes.

5

6 Q. By this stage you had procured a number of cheques.  
7 I think a lot of these cheques are in evidence. I won't go  
8 through each one. In any event, in essence, the \$157,000  
9 that was then being held in the CBA account was repaid to  
10 those companies which had deposited it?

11 A. Yes.

12

13 Q. And then if you come back to 34 of your statement, you  
14 say:

15

16 *Before the CBA was willing to process the*  
17 *cheques, it required confirmation that the*  
18 *freeze on the accounts could be lifted.*  
19 *Accordingly, at the meeting someone,*  
20 *I cannot recall who, drafted a handwritten*  
21 *letter to give to the manager of the*  
22 *Carlton Branch.*

23

24 Was that Mr Cain who drafted the letter?

25 A. I believe so.

26

27 Q. Could I take you to that. It is at Cambridge tab 33,  
28 page 163 in the bottom right-hand corner. The letter  
29 reads:

30

31 *Further to the recent correspondence from*  
32 *our solicitors Maurice Blackburn wherein*  
33 *various accounts were frozen ...*

34

35 I think it should say.

36

37 *... we advise matters in dispute have been*  
38 *resolved and the freeze on all accounts can*  
39 *be lifted. The only accounts that the AWU*  
40 *has an interest in are:*

41

42 And two are identified. And then it goes on:

43

44 *The AWU has no interest in any other*  
45 *accounts held at the Victoria Street Branch*  
46 *of the Commonwealth Bank.*

47

1 You signed that as Secretary?

2 A. Yes.

3

4 Q. It has been signed by Mr Wilson and Mr Collins. He  
5 was there as well, was he, at the bank?

6 A. He must have been.

7

8 Q. He was an organiser at AWU at that time?

9 A. I sometimes get a little confused because there are  
10 two Collinses, I think a Phil Collins or Peter Collins, and  
11 a Jim Collins. I think Jim Collins was the organiser.

12

13 Q. Did he report to Mr Wilson?

14 A. Well, he must have been with Bruce Wilson that day and  
15 we needed his signatory. He must have been a signatory to  
16 that account.

17

18 Q. The statement, "The AWU has no interest in any other  
19 accounts held at the Victoria Street Branch of the  
20 Commonwealth Bank", the other accounts to which reference  
21 is made include the one which held the \$157,000 from which  
22 moneys were being returned?

23 A. No, I think the only accounts I was talking about that  
24 we had no interest in were those which were say the  
25 TattsLotto account that staff members had and I think -  
26 I think it's called the Grave Diggers' Fund,  
27 "grave diggers" being members of the - the AWU had a  
28 Christmas Fund of some description.

29

30 Q. The cheque drawn which was paid to John Holland,  
31 for example, was that drawn on --

32 A. It could have been that my comments relate to the fact  
33 that the moneys were now returned; therefore, we had no  
34 longer an interest in that account.

35

36 Q. If you just go back to the handwritten letter, the  
37 cheque to John Holland, for example, and the other entities  
38 was not drawn on the AWU Vic Branch Account ending 2416 or  
39 the AWU Grant Account ending in 6316; correct? It was  
40 drawn on another account, namely, the account that  
41 Mr Wilson had set up that you'd found out about on 14 July?

42 A. Correct.

43

44 Q. And the purpose of this letter was to give some  
45 assurance to the manager of the Commonwealth Bank that the  
46 money could be legitimately returned to the entities which  
47 had deposited it because, as is stated in the letter, AWU

1 has no interest in any other accounts?  
2 A. I think he was a little nervous as to who was really  
3 either able to direct him or in a position of authority,  
4 et cetera. We had to give him some comfort and hence, that  
5 letter was raised.  
6  
7 Q. And that letter was written in order to give him that  
8 comfort?  
9 A. Yes.  
10  
11 Q. It was written on your instructions?  
12 A. Yes.  
13  
14 Q. It was drafted by Mr Cain but written on your  
15 instructions?  
16 A. Correct.  
17  
18 Q. The statement, "AWU has no interest in any other  
19 accounts", was that a true statement at the time?  
20 A. Well, it was referring, obviously, to the  
21 Victorian Branch.  
22  
23 Q. But the fact is that certainly from the point of view  
24 of Mr Cambridge and others, the AWU had an interest in the  
25 moneys held in those other accounts; correct?  
26 A. Are you talking about the accounts - the TattsLotto  
27 account and the Grave Diggers' account?  
28  
29 Q. No, the account in which the \$157,000 was being held.  
30 A. He may well have, yes.  
31  
32 Q. He was of that view that the AWU did have an interest  
33 in the other accounts?  
34 A. Well, he did.  
35  
36 Q. You were of the view that AWU had no interest in the  
37 other accounts?  
38 A. Yes.  
39  
40 Q. But you had been of the view that it was union moneys  
41 at least as at mid-July 1995?  
42 A. My initial feeling was, on discovery, that it was AWU  
43 moneys that had been hived off into basically a private  
44 account.  
45  
46 Q. And had that analysis been correct, then plainly --  
47 A. That money would be returned to the central funds.

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Q. Yes, and also the proposition that AWU has no interest in that money would not be a correct proposition, correct?

A. Well, parts of the AWU, yes.

Q. You had, you say, changed your mind by mid-August 1995 about that?

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

Q. I just want to be clear. I have not absorbed some of the purport. Come back to paragraph 18 of your statement. More particularly, at paragraph 18 you recount what Mr Wilson said at the meeting. If you look particularly at paragraph 20, where does he say that this was "keep the peace money" or "bribe money"?

A. It may have been not at that meeting.

Q. Indeed, you say that he told the meeting it was bribe money?

A. Not necessarily this meeting. It could have been this meeting, it could have been other meetings.

Q. It's a pretty significant statement.

A. I used the term "bribe". I don't think he would have used the term "bribe".

Q. What did he say?

A. That we didn't understand that this was the way it worked, companies paid money to assist unions or whatever. Well, we were a bit shocked by that and that's certainly not the way we operated.

Q. Who is "we"?

A. Well, the FIME side of the union, people like Graham Roberts, Steve Harrison and others.

Q. Were they at this meeting where that statement was made?

A. This must have been at some either executive meeting or some other meeting. It could have been at this meeting.

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Q. There are only two meeting referred to.

A. Okay. Maybe the minute-taker didn't get everything down and, as you say, it got pretty heated.

Q. All right. There's the meeting of 2 August and there was the next meeting in Brisbane that you refer to in paragraph 23. You say that was another meeting. Could it have been at that meeting that he made the statement about --

A. It could have been.

Q. -- bribe money?

A. But he certainly made it. He did suggest that we were naive if we did not understand that's the way things worked.

Q. Is that what caused you to change your mind?

A. No, I think once I started to hear other things in Victoria about, well, either disbursements or moneys being spent or - it's hard to remember exactly what triggered my view that it was totally inappropriate what he was doing.

Q. I'm not here defending Mr Wilson. I'm just trying to understand the sequence of events. As at 2 August, you're not certain whether he made that statement. You had the further meeting in Brisbane. By the 16th, or thereabouts, you decided to refund moneys to the companies and pay him the redundancy. I'm just trying to pin down when it was that the statement was made to the effect of what you've given evidence about now, that you didn't understand and you were naive?

A. I can't recall exactly when, but there was a number of people there. It was some sort of meeting. It could have been after we had completed the executive business of the day and we were just gathered around, I just really can't recall, but I will not forget the fact that he did say it.

Q. I will show you a bundle of letters. It is Cambridge tab 49 and it begins on page 216. There is a letter of 15 September 1995. This is the letter from the AWU through Mr Cambridge saying to this company that:

*During the course of the last 24 hours  
I have been provided with information from  
the Commonwealth Bank which indicates that  
on or about 18th August a cheque or cheques*

1           *in the sum of \$6,400 were forwarded to your*  
2           *company. This cheque(s) apparently related*  
3           *to "return" of money previously paid to the*  
4           *AWU.*

5  
6           *I advise that that payment to your company*  
7           *was not authorised by the [AWU] and as far*  
8           *as the Union is concerned that money*  
9           *remains the property of the Union unless*  
10           *and until the specific details regarding*  
11           *the payment ... are determined ...*

12  
13       Et cetera. Did Mr Cambridge consult with you about that  
14       letter before he sent it?

15       A. No. I didn't know that he had actually sent that  
16       until maybe within the last 12 to 18 months. I was unaware  
17       that the money had in fact been returned. I was quite  
18       shocked by that.

19  
20       Q. If I take you to page 217, it is a similar letter to  
21       Thiess seeking recovery of two cheques which had been  
22       forwarded to Thiess.

23       A. I might add that Mr Cambridge was doing this on his  
24       own behalf or with some people. This wasn't a matter that  
25       the National Executive had decided to do.

26  
27       Q. He was recovering money that he thought had been  
28       improperly --

29       A. He thought, that's right, but it was not a decision  
30       that was made by the National Executive. We, by and large,  
31       did not agree with that and had we known that he was doing  
32       it, we would have done something about it.

33  
34       Q. At 218 he writes to John Holland.

35       A. The same thing.

36  
37       Q. I won't take you through every one. In essence,  
38       he wrote to the companies to whom the money had been paid  
39       through the letters that Mr Wilson signed. And then at  
40       page 221 --

41       A. Just on the John Holland one --

42  
43       Q. Yes.

44       A. -- I actually talked to very recently a very senior  
45       industrial officer within Hollands who told me that he had  
46       advised the company not to send the money back, that there  
47       was something horribly wrong here, and they, according to

1 him, did not send the money back.

2

3 Q. Who was that?

4 A. Mr Mike Paynter.

5

6 Q. When did you have the conversation with Mr Paynter?

7 A. Oh, within the last three or four months.

8

9 Q. What prompted you to have that conversation?

10 A. Well, we're old combatants from way back in the  
11 industrial arena and we happen to play golf at the same  
12 course and we were playing together that day.

13

14 Q. Could you come please to page 221: it is  
15 Cambridge tab 50. This is a letter from a Mr Tyler from  
16 Hunter Industrial Management Services who says:

17

18 *... as of this morning ...*

19

20 This is 18 September. He obviously hasn't received  
21 Mr Cambridge's letter yet.

22

23 *... as of this morning I have not received*  
24 *any letter from you seeking information ...*

25

26 But then he describes why the moneys were paid. He says:

27

28 *Bruce agreed to allocate the services of*  
29 *Mark Barnes to the project ... for 2 days*  
30 *per week and in return I agreed to make*  
31 *payment of \$400 per day ...*

32

33 *Cheques were made payable to the Australian*  
34 *Workers Union ...*

35

36 Then he says in the penultimate paragraph:

37

38 *I received repayment of the abovementioned*  
39 *cheques ... in a cheque from the [AWU]*  
40 *dated 16 August 1995 from [Mr] Wilson as*  
41 *Secretary ...*

42

43 That was no doubt one of the letters that Mr Wilson signed  
44 at the meeting at the bank. And then at page 222  
45 Mr Cambridge wrote back and said:

46

47 *I thank you for your letter ...*



1                   *It appears that your letter has crossed ...*

2

3                   And he asks for clarification and asks for a copy of the  
4                   cheque. I will take you to Cambridge tab 52 --

5                   A.    Can I just make a comment on that particular letter?

6

7                   Q.    Yes, certainly.

8                   A.    I'm just looking at this one clause here where he  
9                   says:

10

11                   *The only exception to this position was the*  
12                   *agreement which I reached to pay*

13                   *Mark Barnes an amount of \$800 as a "stand*  
14                   *by" payment ...*

15

16                   Q.    This is at 221, yes.

17                   A.    Yes:

18

19                   *... to make himself available to respond*  
20                   *urgently over the Easter holiday period ...*

21

22                   It's just shocking to me. I mean that's not the way unions  
23                   ought to operate. This was the sort of culture that had  
24                   developed on that side of the union that we wanted to flush  
25                   out.

26

27                   Q.    Do you have any difficulty with the arrangement  
28                   described in paragraph 2, Mark Barnes working there for two  
29                   days a week?

30                   A.    I have a great deal of difficulty with that.

31                   We didn't accept on our side of the union that it was the  
32                   employers who ought to be paying expenses in - any moneys  
33                   for, you know, the union to operate in its normal fashion.  
34                   It was a culture shock for us, to be quite frank, on  
35                   amalgamation.

36

37                   Q.    Did you regard it as inappropriate behaviour of  
38                   Mr Wilson to have set up this arrangement?

39                   A.    I did.

40

41                   Q.    Why pay him a redundancy?

42                   A.    Well, we wanted him out. I don't know how many times  
43                   I have to say that.

44

45                   Q.    That involved paying out a significant sum of money of  
46                   members' funds?

47                   A.    The other side were not going to allow him to go.

1 They wanted to keep him there for their own political - for  
2 the numbers to control the Executive or the National  
3 Conference or whatever. Branches have got votes as well as  
4 individuals. They needed Wilson there.

5

6 Q. Couldn't this have been debated at some  
7 National Executive or other level where these matters could  
8 have been thrashed out?

9 A. Ad nauseam. Ad nauseam. The debates, the fights, the  
10 arguments --

11

12 Q. Why the haste, Mr Smith? Why do it --

13 A. Haste?

14

15 Q. -- yes, in seven or eight days?

16 A. Haste.

17

18 Q. Why do it in that period of time?

19 A. Well, it goes back, I suppose, to the start of Wilson  
20 coming to Victoria and the circumstances in which he came  
21 were on the nose, as far as we were concerned. They were  
22 politically motivated. Nothing - I should say nothing  
23 else, but clearly, it was also to continue his  
24 relationship. They manipulated the rules and had them  
25 varied to accommodate his desire to come to Victoria and  
26 control both Victoria and West Australia. In addition to  
27 that, he'd made it very clear that he was taking votes or  
28 the votes of that organisation to the - and voting with the  
29 Socialist Left and to us that was anathema. We just -  
30 automatically the barriers were up. From that day on we  
31 were opposed to Mr Wilson and it took a few years to  
32 overcome it.

33

34 Q. Were you so opposed to him that you were prepared to  
35 pay him a redundancy whether that was appropriate or not?

36 A. Well, my view was the branch was going, therefore, the  
37 redundancy was legitimate. We were shutting that branch  
38 down.

39

40 Q. You say that - and I know we're going around in  
41 circles a little - but as I said to you before, no decision  
42 was made by National Executive about shutting the branch  
43 down.

44 A. But we were going to do it and no-one was going to  
45 support the retention of it other than Ludwig and Cambridge  
46 for their own political reasons and that is the numbers.  
47 When we decided to shut it down, they went to court to get

1 orders to prevent it and then installed Busby in as the new  
2 Secretary. It was bloody appalling.

3  
4 Q. If you go back to page 163, that's Cambridge tab 33 --  
5 A. Sorry, what page?

6  
7 Q. The handwritten letter from Mr Cain. It is 163 in the  
8 bottom right-hand corner. It will come up on the screen in  
9 a moment. When that letter was sent or signed on  
10 17 August, it was at best unclear that AWU had no interest  
11 in other accounts; that's right, isn't it?

12 A. You say the AWU. I keep saying to you that we were at  
13 loggerheads with Cambridge and he was not the AWU. He was  
14 a Joint Secretary.

15  
16 Q. This letter was sent on your instructions, Mr Smith?  
17 A. Yes.

18  
19 Q. You're the one who used the words, "The AWU has no  
20 interest in any other accounts"?

21 A. No, the AWU Vic Branch account. I'm referring all the  
22 time to my areas of responsibility, ie the  
23 Victorian Branch.

24  
25 Q. Yes. The letter that you caused Mr Cain to send says,  
26 "The AWU has no interest in any other accounts held at the  
27 Victoria Street Branch of the Commonwealth Bank." Was that  
28 true or not?

29 A. I'm trying to think. The only three accounts - the  
30 AWU Members' Welfare Funds 1, 2 and 3 were the only ones  
31 that were in contention.

32  
33 Q. It wasn't true, was it, Mr Smith?

34 A. Well, it was. We didn't have any interest in the  
35 minor accounts and the only other ones, or this one I'm  
36 referring to here was the one that was being emptied, if  
37 you like, returned, therefore, we had no interest in it.

38  
39 Q. Could I take you to a document that is identified in  
40 the evidence as Cambridge tab 52. It is at page 223 in the  
41 bottom right-hand corner. This is a letter from Woodside  
42 of 19 September 1995. It is addressed to Mr Busby and he's  
43 described as the Acting Secretary, National Construction  
44 Branch, so there was still a construction branch as at  
45 19 September 1995; correct?

46 A. They had gone to the Federal Court to seek orders  
47 preventing us shutting the branch down.

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Q. Whatever the reason, there was still a construction branch as at that date?

A. Well --

Q. Woodside's position is set out in this letter relating to the return of the \$39,000. They say at the end of that paragraph:

*We are obviously also aware of recent media interest ... but are not clear why the moneys were returned.*

A. Well, they would say that, wouldn't they.

Q. You say they were saying something untrue?

A. Yes. They would - there's no way that that money that they gave to Wilson was for legitimate purposes. That's my view. I don't have the proof of that, of course, but it's his modus operandi. They weren't going to admit it, were they.

Q. They go on to say:

*Woodside considers that the \$39,000 has been properly incurred and accounted for in accordance with the various letters documenting the agreement between Woodside and the AWU. Accordingly, we consider monies have been returned to which the AWU is contractually entitled and are happy to reverse that process.*

A. When I first went to the police to have them pursue this matter, their response was Thiess didn't want to pursue it. They had no complaint.

Q. I'll take you to Cambridge tab 56.

A. Sorry, which page?

Q. I think it might be 230, in the bottom right-hand corner --

THE COMMISSIONER: It is extremely hard to read. It is smudged out.

MR STOLJAR: I've inferred it's 230 from some subsequent

1 numbering, Commissioner. Yes, that seems to be it.

2

3 Q. In the second paragraph they are suggesting, or it  
4 would appear that they're talking about tickets, meaning,  
5 as I understand it, union fees for a certain number of  
6 working staff. They say, "The subsequent return of funds  
7 by the union was unsolicited and unexpected."

8 A. They wouldn't have returned it if they'd given me the  
9 names of the members these tickets were supposedly for.

10

11 Q. These are the letters that you say you sent at some  
12 point between 2 August and 16 August; is that right?

13 A. I can't - I'm not familiar with the - I can't recall  
14 the dates.

15

16 Q. Are they letters that you say you sent? It must have  
17 been at some point between 14 July at the earliest and  
18 16 August, because 14 July is when you found out and  
19 16 August is when the money went back?

20 A. This letter is signed by Cambridge.

21

22 Q. Yes, but you were making reference in your evidence a  
23 moment ago to the fact that --

24

25 THE COMMISSIONER: Just one moment. I think there may be  
26 some confusion. Mr Smith said the letter is signed by  
27 Cambridge. There is an annexure marking which says  
28 "I Cambridge", but it is not signed by Cambridge, it is  
29 signed by Mr Tasker, the one I'm looking at. I may have  
30 the wrong one.

31

32 THE WITNESS: There's two signatures on it.

33

34 THE COMMISSIONER: Page 230, IC56.

35

36 MR STOLJAR: Yes, that's what I was asking questions  
37 about.

38

39 THE COMMISSIONER: It wasn't signed by Mr Cambridge.

40

41 MR STOLJAR: No.

42

43 THE COMMISSIONER: It was annexed to his affidavit.

44

45 MR STOLJAR: Q. Yes. To which letter were you referring  
46 when you said the letter was signed by Mr Cambridge?

47 A. This one here. I just assumed that - I can't decipher

1 that signature there. I just assumed that was his where it  
2 says "Cambridge". I didn't read this letter entirely.

3

4 Q. If you just look at the document on the screen in  
5 front of you, you'll see it says, "Yours faithfully,  
6 John Holland Construction & Engineering". And then there is  
7 a name, "D R Tasker, General Manager" and a signature.  
8 That is the person who appears to be the author of this  
9 letter.

10 A. What's the other signature?

11

12 Q. That's just because the copy has been used from some  
13 old - it looks like a statement from 24 October 1995 from  
14 Mr Cambridge, or an affidavit of Mr Cambridge in some  
15 proceedings, so that's irrelevant --

16 A. Can we start again then on this letter?

17

18 Q. Yes. This letter from John Holland refers to payment  
19 for membership fees for employees engaged on a particular  
20 project. It says:

21

22 *... it was desirable from an administration*  
23 *standpoint that tickets for the estimated*  
24 *total number of working staff be purchased*  
25 *by our company. This was accepted by all*  
26 *parties and the payment made by us in good*  
27 *faith.*

28

29 *The subsequent return of funds by the union*  
30 *was unsolicited and unexpected.*

31

32 From John Holland's point of view, they thought that the  
33 return of the moneys to them, as least that was the  
34 position they were putting in writing, was, as they say,  
35 unsolicited and unexpected because they regarded the moneys  
36 as properly union moneys?

37 A. Well, unsolicited and unexpected, yes, I could  
38 understand that.

39

40 Q. What was Mr Paynter's position in John Holland as at  
41 21 September 1995?

42

43 THE COMMISSIONER: Tasker?

44

45 MR STOLJAR: Q. No, I am sorry, I was talking about  
46 Mr Mike Paynter to whom the witness made reference before  
47 when he said that he'd spoken to someone who was at

1 John Holland.  
2 A. He was the senior industrial officer. I can't recall  
3 his exact title at that stage.  
4  
5 Q. He was employed by John Holland at the time, was he?  
6 A. Either permanently or as a consultant, but he was  
7 there.  
8  
9 Q. Back in 1995?  
10 A. Well, I assume so. He told me he was there then at  
11 the time and had advised them.  
12  
13 Q. Could you come through to page 238. It is Cambridge  
14 tab 58. It is a letter to yourself from Mr Cambridge of  
15 25 September 1995, attaching a letter from Woodside. The  
16 paragraph I want to ask you about is his paragraph where he  
17 says:  
18  
19 *Would you please advise me within seven (7)*  
20 *days as to why you authorised the refund of*  
21 *moneys to Woodside on or about 17th August*  
22 *1995.*  
23  
24 Did you respond to that letter?  
25 A. I don't believe I would have.  
26  
27 Q. If I take you to another one, Cambridge tab 59, it is  
28 239 in the bundle.  
29 A. Was Woodside actually a recipient of moneys out of  
30 that account? That doesn't ring a bell with me.  
31  
32 Q. Yes, Woodside wrote - I took you to Cambridge tab 52,  
33 223.  
34 A. We had a list of the people that we sent the cheques  
35 back to.  
36  
37 Q. I'm sure I could find one, but Woodside was the one  
38 who wrote a letter of 19 September 1995 to Mr Busby, then  
39 the Acting Secretary of the National Construction Branch.  
40 I asked you about this letter before and you said, in  
41 effect, "Well, they would say that, wouldn't they." And  
42 I said something like, "Are you saying what they say is  
43 untrue?" And you said, "Yes." That's the Woodside letter.  
44 If we come back to the one I was just taking you to,  
45 Cambridge tab 58, 238 in the bottom right-hand corner,  
46 Mr Cambridge says:  
47

1           *Would you please advise me within seven (7)*  
2           *days ...*

3

4           He attaches the letter I've just taken you to and he says:

5

6           *Would you please advise me within seven (7)*  
7           *days as to why you authorised the refund of*  
8           *moneys to Woodside on or about 17th August*  
9           *1995?*

10

11          And you just said you didn't reply.

12          A.    I may have replied but I can't recall.

13

14          Q.    Did you write back and say that you didn't believe  
15          what Woodside was saying?

16          A.    I said I may have replied but I can't recall.

17

18          Q.    What about if you come to Cambridge tab 59, page 239  
19          in the bottom right-hand corner.

20          A.    I have to reiterate that I'm strongly of the view -  
21          and I am today - that all those moneys deposited by Wilson  
22          and others into those accounts were not legitimate AWU  
23          funds. That's why I believed morally we were obligated to  
24          send them back from whence they came.

25

26          Q.    You arrived at that view at some point in the few days  
27          leading up to August 16, 1995?

28          A.    I can't recall exactly when I came to that view.

29

30          Q.    Is it the position that you were very keen to get rid  
31          of the National Construction Branch and the leadership of  
32          the National Construction Branch and that desire overrode  
33          any other consideration?

34          A.    Not any other consideration, but I was certainly very  
35          keen. They were a very destructive, financially  
36          destructive force within the organisation, as well as, in  
37          my view, well, I won't say morally bankrupt, that's  
38          probably a bit high-handed, but, well, I just had a very  
39          strong view, along with others within our organisation,  
40          that they were tending to be a little bit bent, shall  
41          I say.

42

43          Q.    I just want to ask you something quickly about a  
44          couple of other matters in your statement. In paragraph 42  
45          and following you are dealing with Mr Spyridis. You  
46          describe the kerfuffle, you say, at the reception desk and  
47          so on and then, "At our meeting Mr Spyridis said words to



1 the effect". You mean a meeting with yourself at your  
2 office at AWU?  
3 A. Yes.  
4  
5 Q. Was there anyone else present?  
6 A. No.  
7  
8 Q. You have a clear recollection of that meeting, do you,  
9 as you sit here today?  
10 A. Yes, I think so.  
11  
12 Q. I'll take it in steps. He said, "I want my money for  
13 the work I did on the union houses."  
14 A. I'm very confident that's what he said.  
15  
16 Q. And then at the top of the next page, you said,  
17 "We don't have any union houses." And he said, "Yes, you  
18 do. I have been working on houses in Kerr Street and  
19 Abbotsford." Is that right?  
20 A. That's right.  
21  
22 Q. I won't take you through the balance of the  
23 conversation, but you've set it out, as best as you  
24 recollect, in your statement?  
25 A. Yes.  
26  
27 Q. You received a telephone call from Ms Gillard shortly  
28 after that, you say in 45?  
29 A. Within a few days, yes.  
30  
31 Q. And you've set out your best recollection of your  
32 conversation with Ms Gillard in 45?  
33 A. Yes.  
34  
35 MR STOLJAR: I have nothing further, thank you,  
36 Commissioner.  
37  
38 THE COMMISSIONER: Yes, Mr Galbally?  
39  
40 MR GALBALLY: I note the time. I should only be five or  
41 10 minutes.  
42  
43 THE COMMISSIONER: Very good.  
44  
45 **<EXAMINATION BY MR GALBALLY:**  
46  
47 MR GALBALLY: Q. Mr Smith, with your lengthy experience

1 in the union movement, you know what a slush fund is?  
2 A. I'm familiar with the term.  
3  
4 Q. What does that describe?  
5 A. It is a slang term, almost, to describe generally an  
6 election fund, a re-election fund, a defence fund, if you  
7 like.  
8  
9 Q. That's a group of union members who have a bank  
10 account and deductions are taken from their pay?  
11 A. Generally speaking, yes.  
12  
13 Q. Going into the fund and assisting with the election of  
14 candidates at elections?  
15 A. Yes.  
16  
17 Q. That's an unincorporated entity?  
18 A. Generally, yes.  
19  
20 Q. With loose rules, not the sort of formal rules we find  
21 with an incorporated association?  
22 A. Correct, yes.  
23  
24 Q. You yourself --  
25 A. "Informal", I would say, not "loose".  
26  
27 Q. Sorry?  
28 A. "Informal", I would say, not "loose".  
29  
30 Q. Thank you. You ran an election fund yourself, did you  
31 not?  
32 A. Well, we did, yes.  
33  
34 Q. Yes. You wouldn't be able to get a slush fund or  
35 election fund registered under the incorporations  
36 legislation because it is a profit based entity; is that  
37 right?  
38  
39 MR GUIDOLIN: I object. That is a conclusion of law.  
40  
41 DR HANSCOMBE: I object to that.  
42  
43 THE COMMISSIONER: There is some force in what they say.  
44 There is some force in the objections.  
45  
46 MR GALBALLY: I can't see the validity of it, but I do  
47 accept it.

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THE COMMISSIONER: We would have to take a piece of legislation in our left hand, I suppose, and some rules in our right hand.

MR GALBALLY: No, there's no need to go down that track. I can approach it with another witness.

MR CLELLAND: Commissioner, can I then ask out loud just why this exercise is being pursued at all by Mr Galbally? I understood Mr Smith to say he hadn't met Mr Galbally's client.

THE COMMISSIONER: It has been our custom Mr Galbally to concentrate on cross-examination by Lawyer A of B where there is a conflict, as it were, between Lawyer A's client and B. What is the conflict between Mr Blewitt and Mr Smith?

MR GALBALLY: There is no direct conflict, but the use of the expression "slush fund" has been used by Ms Gillard, who is giving evidence tomorrow, and I attempted to extract from Justice Murphy what his understanding of the expression was. He didn't have the experience to answer that and I'm seeking this man's experience.

THE COMMISSIONER: I think there's some force in what Mr Clelland says. We have to discipline ourselves tightly to concentrate on genuine primary factual conflicts. The points you're making may be appropriate for address, or some points you may wish to make may be more appropriate for address.

MR GALBALLY: Thank you, Commissioner, yes.

Q. I will move on, Mr Smith --

THE COMMISSIONER: What are the points of conflict between Mr Blewitt and Mr Smith - conflict of primary fact?

MR GALBALLY: I would have to answer that by saying that I'm not aware of any.

THE COMMISSIONER: I am afraid I might have to terminate the cross-examination then.

MR GALBALLY: I was going to embark upon some questioning

1 of this witness in relation to the contents of his  
2 statement.  
3  
4 THE COMMISSIONER: The problem is that the contents of his  
5 statement don't collide with Mr Blewitt, do they?  
6  
7 MR GALBALLY: No, not directly.  
8  
9 THE COMMISSIONER: Unless you've got anything more to say,  
10 I'm afraid, Mr Galbally --  
11  
12 MR GALBALLY: I can't take it any further.  
13  
14 THE COMMISSIONER: Mr Clelland?  
15  
16 MR CLELLAND: No, thank you, sir.  
17  
18 THE COMMISSIONER: No questions?  
19  
20 MR CLELLAND: No, sir.  
21  
22 THE COMMISSIONER: Dr Hanscombe.  
23  
24 DR HANSCOMBE: Yes. I think I'll be some time. I wonder  
25 if it is more convenient to the witness not to be held in  
26 overnight, but it is a matter of course for you.  
27  
28 THE COMMISSIONER: Mr Stoljar, what's your plan for the  
29 rest of the day? My plan is to finish Mr Smith and then  
30 deal with any other witnesses that have to be dealt with.  
31  
32 MR STOLJAR: I am happy with that course, Commissioner. I  
33 am not sure what's meant by "some time".  
34  
35 THE COMMISSIONER: No, it can be difficult to predict.  
36  
37 MR STOLJAR: It can be.  
38  
39 THE COMMISSIONER: It depends on the answers. Mr Smith,  
40 are you feeling fit enough to soldier on this afternoon?  
41  
42 THE WITNESS: I've waited 18 years for this, Commissioner.  
43  
44 THE COMMISSIONER: Dr Hanscombe.  
45  
46  
47

1 <EXAMINATION BY DR HANSCOMBE:

2

3 DR HANSCOMBE: Q. It is fair to say you don't like  
4 Bruce Wilson, isn't it?

5 A. Do you think?

6

7 Q. I'm getting that hint.

8 A. I said, "Do you think?"

9

10 Q. I do think.

11 A. Good.

12

13 Q. It is fair to say you don't like Bruce Wilson?

14 A. No. I do not.

15

16 Q. It is fair to say for a long time you've had a  
17 political agenda in respect of Bruce Wilson. You don't  
18 approve of him. Do you agree?

19 A. Not political; not political at all; personal.

20

21 Q. It was political in the union. You came from the  
22 Federated Ironworkers that morphed into FIME and there was  
23 an amalgamation with the AWU and that was never a happy  
24 marriage, was it?

25 A. Parts of it were, most of it wasn't. The Wilson part  
26 wasn't.

27

28 Q. And your part wasn't?

29 A. Well, from his perspective it might not have been.

30

31 Q. From your perspective, the marriage with his part  
32 wasn't?

33 A. Correct.

34

35 Q. You can't disagree with that?

36 A. I don't disagree.

37

38 Q. No.

39 A. But it was based on personalities and personal issues  
40 rather than actual politics. For example, I'm highly  
41 critical of Mr Ludwig but politically we're very closely  
42 aligned.

43

44 Q. You just said a minute ago yourself, "I've waited  
45 18 years for this." You have come here with an agenda to  
46 put your view of Bruce Wilson out?

47 A. Absolutely, my view, my view of Bruce Wilson and what

1 I know what he did to this union and its members. Maybe  
2 I could expand on that.  
3  
4 Q. I'm sure you will in due course.  
5 A. I will.  
6  
7 Q. It is the case, isn't it, that it is not unusual for  
8 unions to have factions. You would agree with that?  
9 A. It's normal.  
10  
11 Q. It's normal?  
12 A. Yes.  
13  
14 Q. Okay.  
15 A. And that could be based on politics or personality or  
16 industrial agendas.  
17  
18 Q. Yes, or --  
19 A. The same as corporations.  
20  
21 Q. -- trivial things, like any other organisation, that's  
22 absolutely right?  
23 A. Yes.  
24  
25 Q. People take a set against each other sometimes for no  
26 reason.  
27 A. Mmm.  
28  
29 Q. And like any organisation there is always internal  
30 movement between factions and within factions, do you  
31 agree?  
32 A. Of course.  
33  
34 Q. When union elections are coming up people tend to  
35 polarise and take sides?  
36 A. On occasion; sometimes there are unity tickets.  
37  
38 Q. It is a rare beast the unity ticket, isn't it?  
39 A. Very rare.  
40  
41 Q. Very rare, you would agree?  
42 A. Yes.  
43  
44 Q. In order to advance these various factional agendas,  
45 especially when there are elections coming up or some other  
46 hot issue, quite often people want to be able, for example,  
47 to pay printers to print pamphlets? Do you agree with

1 that?  
2 A. Yes.  
3  
4 Q. Lobby the members, hire a public address system, have  
5 a rally, that sort of lobbying costs money, do you agree  
6 with that?  
7 A. Parts of that, yes, I do.  
8  
9 Q. And people raise funds for such purposes?  
10 A. Yes.  
11  
12 Q. Whether they're called election funds or some other  
13 name, those funds are raised for that purpose?  
14 A. Can be, yes; if they're done properly, correct, yes.  
15  
16 Q. The word "slush fund" is somewhere pejorative and you  
17 heard this morning, if you were here, that his Honour the  
18 judge referred to "election funds" and if I refer to an  
19 election fund, that's the sort of fund I'm talking about.  
20 Your evidence is I think that no election fund has AWU in  
21 the title. Is that your evidence?  
22 A. Well, I wasn't aware of any.  
23  
24 Q. Have you ever heard of Bob Kernohan's AWU Action Team?  
25 A. Team?  
26  
27 Q. Team.  
28 A. Yes.  
29  
30 Q. Bob Kernohan's AWU Action Team. That was a fund,  
31 wasn't it?  
32 A. Not necessarily. When I was first elected, it was the  
33 Bob Smith Action Team, but it wasn't a fund, it was a team.  
34  
35 Q. I'm not asking you about you, I'm asking you about the  
36 Bob Kernohan --  
37 A. Well, I'm explaining to you that Bob Kernohan's AWU  
38 team, or whatever, is not necessarily a fund. I don't know  
39 what he actually called his election fund, if he had one.  
40 I think he might have had a private one.  
41  
42 Q. If I put to you that there was Bob Kernohan's AWU  
43 Action Team that had a fund, you don't dissent?  
44 A. I can't say that he did. I don't know that his action  
45 team had a fund.  
46  
47 Q. No, and you can't say that he didn't?

1 A. No, I can't.  
2  
3 Q. Likewise, Steve Harrison's AWU Reform Team Fund?  
4 A. I'm not aware of that.  
5  
6 Q. You can't say there wasn't such a fund, can you?  
7 A. I'm not aware of that.  
8  
9 Q. You can't say there wasn't a fund called Renew the  
10 AWU?  
11 A. I'm not aware of it.  
12  
13 Q. You can't say there wasn't a fund called the AWU Rank  
14 and File Fund?  
15 A. I can't say there wasn't because I'm not aware of  
16 them.  
17  
18 Q. I follow that. So when you said funds of that nature  
19 don't have AWU in the title, naturally all you meant was  
20 the ones you know about?  
21 A. That's right.  
22  
23 Q. But they could well have had that title in some other  
24 fund?  
25 A. Yes, if you were trying to camouflage what it really  
26 was, you might use the AWU's name.  
27  
28 Q. Do you think Bob Kernohan was camouflaging if that was  
29 his fund name?  
30 A. Well, you said he had a fund called that, I don't know  
31 that he did, but the AWU - Bob Kernohan's team is not  
32 necessarily camouflaging anything. I thought he was  
33 advertising the fact of who he was.  
34  
35 Q. The AWU Members' Welfare Fund might likewise have been  
36 advertising what it was, but that's different because it is  
37 Wilson; is that right?  
38 A. No. As I understand it, Wilson didn't set that up,  
39 that it was already there and he just simply used it to  
40 become signatory to it and took it over, used it for his  
41 own benefit, in my view.  
42  
43 Q. In your view?  
44 A. Mmm.  
45  
46 Q. You have no evidence whatever, do you, that he misused  
47 those funds for his own personal benefit?



1 A. Yes, I do. Have a look at the cheques that were drawn  
2 from the funds and what they were used for. That's what  
3 convinced me that he was a crook.  
4  
5 Q. One of the things that seems to have convinced you is  
6 that there were two cheques for \$8,500, each written to a  
7 ladies-wear store, which Wilson has given evidence, which  
8 nobody has controverted, were used to pay for T-shirts?  
9 A. For construction workers. What were they? Armani  
10 T-shirts? I mean, come on.  
11  
12 Q. You don't even accept the possibility, is that right?  
13 You're so hostile to Wilson, you don't accept --  
14 A. Well --  
15  
16 Q. Let me finish the question, please, Mr Smith. You  
17 don't accept that someone could get some T-shirts printed  
18 by a boutique that sold T-shirts and was in a position to  
19 get them printed?  
20 A. Well, it could, but it's so highly unlikely it's  
21 implausible to me and I might add that information I had  
22 given to me by people who worked with Wilson was that he  
23 was hitting employers for money to pay for T-shirts for  
24 construction workers. We never saw any T-shirts for  
25 construction workers.  
26  
27 Q. Information given to you by whom?  
28 A. A Mr Yossi Berger who is the National Occupational  
29 Health and Safety Officer of the union.  
30  
31 Q. When?  
32 A. When did he tell me?  
33  
34 Q. Yes, when did he tell you?  
35 A. When he had come over into my office after the AWU  
36 Victoria branches were fully integrated.  
37  
38 Q. When was that?  
39 A. I can't give you the exact date. When the  
40 amalgamation had taken place and we had then agreed --  
41  
42 Q. Can you give me a year?  
43 A. -- that the National Construction Branch had been  
44 established, then they came in to us. I think it was about  
45 1995, 1996.  
46  
47 Q. Was Wilson still at the union?

1 A. In the National Construction Branch.  
2  
3 Q. When Berger told you this?  
4 A. Yes, and it was - and I think Wilson has even verified  
5 the fact that he had talked to companies about being -  
6 getting certain moneys to supposedly look at the  
7 feasibility of putting contaminated soil into a road-making  
8 project. I think it might have been John Hollands who were  
9 the actual company involved in that and Berger was very  
10 much aware of that and not at all happy.  
11  
12 Q. You're getting off the topic. I'm asking you when he  
13 told you about T-shirts.  
14 A. I can't tell you the exact date he told me.  
15  
16 Q. Can you tell me the year?  
17 A. As I said to you, he had come into my office, so it  
18 was probably somewhere like '95.  
19  
20 Q. My instructions are very clear, that the \$8,500 in the  
21 first payment to that entity, the women's wear shop, was  
22 the deposit on the printing of the T-shirts and the balance  
23 was paid on collection of the T-shirts and --  
24 A. That he paid two --  
25  
26 Q. Let me finish the question, Mr Smith. And all you  
27 have to put against that instruction is your suspicion;  
28 correct?  
29 A. Two \$8,500 cheques. Which one was the deposit?  
30  
31 Q. The first in time. Half the payment first as the  
32 deposit, half the payment upon completion of the job.  
33 A. And where do those cheques come from?  
34  
35 Q. My question to you was that the only thing you have to  
36 put against that instruction is your suspicion of Wilson?  
37 A. Those cheques came out of that fund.  
38  
39 Q. Did you not understand my question?  
40 A. Yes, I did.  
41  
42 Q. And the answer is "Yes", isn't it?  
43 A. No, it's not. All I was --  
44  
45 Q. The only thing you have to put against that  
46 proposition is your suspicion of Wilson?  
47 A. Well, the fact that he has drawn two \$8,500 cheques to

1 a lady's boutique in Collins Street, of all places, you  
2 know, the top end, the Paris end of Collins Street --  
3  
4 Q. Are you sure of that?  
5 A. Town Mode?  
6  
7 Q. Are you sure of that?  
8 A. Well, I'm led to believe it was in Collins Street.  
9  
10 Q. Are you sure of that?  
11 A. And they have another shop in I think Abbotsford or  
12 Collingwood. They had two stores.  
13  
14 Q. You say you're led to believe it's at the top end of  
15 Collins Street. Who led you to believe that?  
16 A. My understanding is that they have two stores, one in  
17 Collins Street and one in Abbotsford or Collingwood.  
18  
19 Q. Who do you understand that from?  
20 A. I can't recall. Are you saying they didn't have one  
21 in Collins Street? If they don't, I stand corrected.  
22  
23 Q. You're very keen to blacken Wilson, aren't you?  
24 A. I think he's done that to himself.  
25  
26 Q. For the last time, the only thing you have to put  
27 against my instruction as to the T-shirts is your  
28 suspicion?  
29 A. Well, that's probably right, in my view, yes.  
30  
31 Q. Your view is suspicious?  
32 A. Okay.  
33  
34 Q. You've been in industrial relations for a long time.  
35 You were at the Federated Ironworkers before it was FIME.  
36 You're familiar with the word "redundancy". It means you  
37 no longer want the job done; correct?  
38 A. Yes.  
39  
40 Q. It has a legal meaning, well established in law, that  
41 means that the employer no longer wants the job done?  
42 A. And won't be replaced.  
43  
44 Q. Yes. Well, if you don't want the job done by anybody,  
45 you're not going to replace the person, agreed?  
46 A. Yes.  
47

1 Q. Because you were closing down or wanted to close down  
2 the National Construction Branch, in your view this was a  
3 genuine redundancy?  
4 A. Correct.  
5  
6 Q. If it was a genuine redundancy, how were you in a  
7 position to make the payment to Wilson of his redundancy  
8 conditional on any agreement by him? Your paragraph 30.  
9 A. Well, I wasn't in a legal position to do it.  
10  
11 Q. You agree you weren't in a legal position to do it?  
12 A. That's right.  
13  
14 Q. Either it was a genuine redundancy --  
15 A. He wasn't going to get it unless he returned that  
16 money.  
17  
18 Q. Either it was a genuine redundancy or it wasn't. Do  
19 you agree with that?  
20 A. Yes.  
21  
22 Q. If the branch was closing down, it was a genuine  
23 redundancy. Do you agree with that?  
24 A. Mmm.  
25  
26 Q. He was entitled to be paid a redundancy payment  
27 pursuant to his employment. Do you agree with that?  
28 A. Mmm.  
29  
30 Q. You were in no position legally, as you say, to make  
31 that conditional upon anything. Do you agree?  
32 A. He could have fought it if he wanted. He didn't  
33 object.  
34  
35 THE COMMISSIONER: You keep putting a number of questions  
36 assuming the validity of legal propositions, to Mr Smith,  
37 who isn't a lawyer, I don't think.  
38  
39 DR HANSCOMBE: That's so.  
40  
41 THE COMMISSIONER: Even if he were, it would be of  
42 questionable value and in a court of law of questionable  
43 admissibility.  
44  
45 DR HANSCOMBE: He's not a lawyer, I accept that, but he's  
46 a person who has been in the industrial relations context  
47 for decades. He's familiar with the word. He uses the

1 word. He it was who approved the redundancies and the  
2 propositions I'm putting to him hitherto he has agreed  
3 with.

4  
5 THE COMMISSIONER: That doesn't make them true as matters  
6 of law.

7  
8 DR HANSCOMBE: It doesn't make them true as matters of  
9 law.

10  
11 THE COMMISSIONER: Do we really have to have this  
12 argument? Have you finished with this line of questioning?

13  
14 DR HANSCOMBE: I had not finished with this line of  
15 questioning, but if you're telling me that this won't  
16 assist you --

17  
18 THE COMMISSIONER: No, if you think it's valuable you  
19 proceed with it, Dr Hanscombe. If you think it is  
20 advancing the interests of Mr Wilson, proceed with it.

21  
22 DR HANSCOMBE: Q. You've just told the Commissioner that  
23 you were not, in your view, in a legal position to make it  
24 conditional upon anything; correct?

25 A. Correct.

26  
27 Q. You did nonetheless make it conditional. You were, in  
28 your words, adamant?

29 A. Yes.

30  
31 Q. Yes?

32 A. Yes.

33  
34 Q. And yet, as counsel assisting has just shown us, in  
35 fact, the people who paid those moneys in the end returned  
36 them saying they were validly incurred; correct?

37 A. Correct.

38  
39 Q. So that end of the transaction said there was nothing  
40 wrong with it. Who were you to say otherwise?

41 A. If there was nothing wrong with it, it would not have  
42 been put in that side account hidden from the union  
43 generally. It was. And I think we didn't come down in the  
44 last shower. We understand what happens in the  
45 construction industry and we were being educated by the old  
46 AWU chapter and verse, actually, and I have no doubt that  
47 that money was, as I said earlier, not genuinely our money

1 and that it had been improperly gained by Wilson and he  
2 wasn't going to get advantage of it from my perspective, so  
3 I was adamant that it had to go back. He did not object.  
4 He did not demand that it was either handed over to the  
5 union properly or that it was actually his money, which he  
6 said to me earlier it was his money and I disagreed with  
7 him on that, but he could have easily, you know, demanded  
8 that his redundancy is legit and he could go and that money  
9 stays, but he didn't. He wanted out. He knew he was  
10 caught. The game was up.

11  
12 Q. Mr Smith, the construction branch was set up from  
13 nothing, wasn't it?

14 A. From nothing?

15  
16 Q. It was a new entity?

17 A. Yes.

18  
19 Q. There were no funds allocated by the state entities of  
20 the union to fund the setting up of the construction  
21 branch?

22 A. We didn't have any funds to do that.

23  
24 Q. Quite. There was no money to fund it. In fact, your  
25 very recounting of the conversation that you had with  
26 Wilson is not just he said it was his money. "No, it's  
27 mine." "It's the construction branch's money, ie, Wilson,  
28 who is the mind behind the construction branch and I can  
29 prove it." He was not saying, "This belongs to me,  
30 Bruce Wilson, as my own money", and you know that. He was  
31 saying, "That's the construction branch's money."

32  
33 THE COMMISSIONER: I reject those seven questions.

34  
35 THE WITNESS: He was saying it was --

36  
37 THE COMMISSIONER: Just a moment, Mr Smith. Just a  
38 moment.

39  
40 MR GUIDOLIN: There are seven propositions in that  
41 question, as I read it in the transcript.

42  
43 THE COMMISSIONER: Yes, I think that is correct.

44  
45 DR HANSCOMBE: If the Commission please.

46  
47 Q. You recount Mr Wilson as saying to you, "No it's mine,

1 it's the construction branch's money and I can prove it."  
2 That is your evidence?

3 A. Yes.

4

5 Q. I am suggesting to you that the first three words of  
6 that sentence have to be read in the context of the  
7 remainder of it. When he said, "It's mine, it's the  
8 construction branch's money", he was not saying to you  
9 "That's my own to use for my purposes." He was saying:  
10 "That's money for the construction branch that I have  
11 garnered in to set that branch up." Do you agree with  
12 that?

13 A. No, I don't. He said it was his money, "It belongs to  
14 the construction branch", and to suggest that he was going  
15 to use it to set the branch up is a nonsense, absolute  
16 nonsense. If he wanted to do that, it would have been in  
17 the central fund.

18

19 Q. If it were in the central fund, it would not have been  
20 set aside for the construction branch, do you agree?

21 A. Well, he was quite happy to take his pay and that of  
22 his staff from the central fund when it was operating, and  
23 let me just explain something to you. When we amalgamated,  
24 the unions had different systems of financial autonomy or  
25 central control. The old ironworkers, FIME, were a  
26 centrally controlled union. All of our moneys went  
27 centrally and were administered centrally. The AWU were  
28 operating under branch autonomy and after amalgamation some  
29 of them wanted to go into central funding because they were  
30 literally going broke and, as part of the amalgamation  
31 agreement, I think the own branch who decided they wouldn't  
32 do it was Queensland. As a consequence, they were bleeding  
33 us dry because they were actually going down at a much more  
34 rapid rate than our side and that was, to be fair, during  
35 the recession we had to have and privatisation, and a lot  
36 of instrumentalities, like Melbourne Water, et cetera.  
37 They were really, really struggling. They were bleeding  
38 us. We were on amalgamation one of the - I think in fact  
39 we were the fourth richest union in the country, the old  
40 ironworkers when we started this amalgamation process and  
41 all of our wealth was in bricks and mortar, by and large,  
42 and we had central control over the funds. I think it is  
43 fair to say we were pretty well administered. It all  
44 started to go pear-shaped and, of course, with the  
45 amalgamated, or the new amalgamated union, funds were going  
46 out much faster than coming in and we were paying for  
47 things that were just out of our control. My branch was in

1 the black when we started and all of a sudden we were in  
2 the red, arguably insolvent. That branch had to go.

3

4 Q. Is that the end of that answer?

5 A. Yes.

6

7 Q. Do I take it from that that you did not consider that  
8 the establishment of the National Construction Branch as a  
9 potential competitor to the CFMEU a good thing for the AWU?

10 A. I thought, as I said earlier, the concept had some  
11 real merit and if it was properly administered and run, it  
12 could actually work. Of course, Wilson tried to overreach  
13 and claim all sorts of members from all the branches should  
14 be transferred into the construction branch. Well, that  
15 just simply wasn't going to happen.

16

17 Q. You agree that it was Wilson's idea?

18 A. Well, as I understand it, it was his at an AWU  
19 conference some years prior to amalgamation.

20

21 Q. I'm sorry, I didn't hear that?

22 A. Prior to amalgamation, I understand that it was his  
23 idea. I think he raised maybe in Adelaide, or possibly a  
24 Sydney conference, something like that.

25

26 Q. It was he who progressed it before and after  
27 amalgamation?

28 A. Yes.

29

30 Q. It would have been a viable base for the AWU to become  
31 a truly national union competing with the CFMEU?

32 A. In construction, yes, but I have a very strong view  
33 that the real reason - I need to be careful what I say  
34 here. It would have been like a money-pit to Mr Wilson  
35 that construction branch fully operating, with him in  
36 control, and he knew politically he was in big trouble in  
37 Victoria with the forthcoming election where Mr Kernohan  
38 was running against him would mean he was out. He wanted  
39 an escape route which was the National Construction Branch.

40

41 Q. Does that mean you didn't think it was a good thing to  
42 compete nationally with the CFMEU?

43 A. The concept was very good. The idea was very good.  
44 With the right people administrating and operating within  
45 that construction branch, it could work. When you have  
46 people like Bill Telikostoglou, Mark Barnes and others as  
47 your organisers or officials, you're not serious about



1 construction. You are not.  
2  
3 Q. At the time, in late 1994, when Wilson was elected  
4 Secretary of the National Construction Branch, you were  
5 elected Secretary of AWU-FIME; correct?  
6 A. Mmm. Of the new --  
7  
8 Q. The new amalgamated entity.  
9 A. Yes, the separate Victorian Branch.  
10  
11 Q. The Victorian Branch of the new amalgamated entity?  
12 A. Yes.  
13  
14 Q. At the time the only financially viable place to set  
15 up an office for the National Construction Branch was in  
16 Melbourne, do you agree?  
17 A. No. Our agreement was that it would be set up in  
18 Sydney, and he reneged. I wanted him out of Victoria. Can  
19 you believe it?  
20  
21 Q. I suggest to you that at the time it was not  
22 financially viable to set up in Sydney although that was  
23 the --  
24 A. No. He was never intending --  
25  
26 Q. Let me finish.  
27 A. -- to go anywhere but Victoria, despite his agreement.  
28 He wanted to stay in Victoria. He had interests in  
29 Victoria.  
30  
31 Q. Can I ask you the question now?  
32 A. Sure.  
33  
34 Q. At the time the plan to go to Sydney was to come later  
35 when it could be financed?  
36 A. No, no, no. I would never ever have agreed to have  
37 him in Victoria. Never.  
38  
39 Q. It wouldn't have suited you politically?  
40 A. Well, not politically. The whole business of having  
41 him in Victoria was - I don't know how many times I have to  
42 say - objectionable to me. I had no time for the way he  
43 operated and the sort of individual he was. A little later  
44 I will be able to expand on that.  
45  
46 Q. Come back, if you would, to the money in the Members  
47 Welfare Fund. It seems to me that there is a contradiction

1 in what you say about the funds in that account.

2

3 MR GUIDOLIN: Commissioner, I object to a submission. If  
4 Dr Hanscombe could ask a question.

5

6 DR HANSCOMBE: I am about to. I am trying to give some  
7 context.

8

9 MR GUIDOLIN: You can deal with it without a submission.

10

11 THE COMMISSIONER: I think there is again some force in  
12 Mr Guidolin's objection.

13

14 DR HANSCOMBE: I was trying to help the witness with some  
15 context. I withdraw the context.

16

17 Q. At paragraph 17 of your witness statement, you annex a  
18 letter marked "V". This is 25 July 1995, a letter from you  
19 to Harrison and Cambridge. You say:

20

21 *Bruce Wilson continued to collect some*  
22 *union dues that belonged to the new AWU*  
23 *Victoria branch.*

24

25 In fact, they weren't union dues, were they? They weren't  
26 paid for members? The payments that were made in to that  
27 account by Thiess and John Holland, and so on, were not  
28 union dues paid for members, do you agree?

29

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1 Q. You're saying the moneys in that fund were such union  
2 dues?  
3 A. Not all.  
4  
5 Q. Are you saying some of them were such union dues?  
6 A. Mmm.  
7  
8 Q. Did you ever identify any funds in that account which  
9 were such union dues?  
10 A. I would say probably because - oh, no, no, actually,  
11 probably weren't able to.  
12  
13 Q. You never did, did you?  
14 A. No, we weren't able to and I'll tell you why. When we  
15 took over, we went to the Drummond Street office to find  
16 the place just basically gutted and every piece of  
17 administrative literature or record or membership records,  
18 companies, their names, et cetera, gone, all in the  
19 alleyway, either shredded, torn up, or whatever. It was  
20 almost impossible for us to work out who was who. Now,  
21 I wonder why he did that.  
22  
23 Q. You could have asked the employers, could you not, on  
24 whose behalf --  
25 A. I didn't know where they were. I didn't know who they  
26 were.  
27  
28 Q. In that case you can't possibly know they were union  
29 dues paid by employers, can you?  
30 A. Eventually, as time went by, we were getting cheques  
31 from people we didn't even know existed. I was asking them  
32 for members' names, et cetera. It was a horrendous  
33 situation at the start.  
34  
35 Q. Did you ever get them?  
36 A. Eventually. Eventually. We got some. Some we  
37 didn't.  
38  
39 Q. You say you did identify union members' names for  
40 payments that wound up in the Members Welfare Account. Is  
41 that your evidence?  
42 A. No. I said that eventually we were starting to find  
43 more and more employers and moneys then started to being  
44 redirected to us as we informed them of new addresses,  
45 et cetera.  
46  
47 Q. You see, I suggest to you that they were not union

1 dues at all. They were moneys paid from various companies  
2 by way of support for the establishment of the NCB and by  
3 way of support for election funds.  
4 A. I thought it was a mixture.  
5  
6 Q. You thought it was a mixture?  
7 A. Predominantly it was money given by employers which in  
8 itself makes you think, doesn't it?  
9  
10 Q. Whether it makes you think or not, it is not union  
11 dues, is it?  
12 A. Well, I asked them what it was for. They wouldn't  
13 respond.  
14  
15 Q. If it was money given by employers, not paid on  
16 account of identified members for their membership fees,  
17 then it is not union dues, do you agree?  
18 A. How do I know? I wanted to know what that money was  
19 for. I communicated to those companies and they didn't  
20 respond. I asked them specifically was it for union dues  
21 and, if so, can I have the names of the members to  
22 reconcile it. Nothing.  
23  
24 Q. You never identified members on behalf of whom these  
25 moneys were said to be union dues. It must follow from  
26 what you've just said?  
27 A. Some. Some. Not the ones from those companies. I am  
28 talking about other ones from smaller companies that were  
29 still sending money in and was going to the wrong place.  
30  
31 Q. When was this?  
32 A. He wasn't putting it where it ought to have gone.  
33  
34 Q. When was this?  
35 A. During that transitional period.  
36  
37 Q. When?  
38 A. When he had become the Secretary of the NCB. He  
39 wasn't entitled to have those moneys.  
40  
41 Q. Because he left the NCB you had these moneys coming  
42 in, is that your evidence?  
43 A. Yes. That's why my complaint that he wasn't putting  
44 moneys into the central fund, but continuing to draw  
45 salaries, wages, or whatever out of. Bills were being  
46 expected to be paid by the central fund.  
47

1 Q. Can I take you back to the text of the letter that you  
2 excerpted at your paragraph 17. Over the page:

3  
4 *In addition, subsequent moneys claimed by*  
5 *Bruce Wilson to belong to the NCB have been*  
6 *deposited in the account ...*

7  
8 "Some" or "same", I don't know.

9  
10 *... prior to July 1st. In discussion with*  
11 *Bruce Wilson it was agreed ...*

12  
13 That means by you, does it?

14 A. Yes.

15  
16 Q. This is your letter to Cambridge and Harrison, so you  
17 agreed with Wilson, that some of this money "genuinely  
18 belonged to the NCB"?

19 A. Yes.

20  
21 Q. That is because it was donations from companies for  
22 the establishment of the NCB?

23 A. No, that's because it was the legitimate construction  
24 branch members. It was members of the construction branch,  
25 and that was legitimately his money.

26  
27 Q. And you identified them?

28 A. Well, we must have. We agreed.

29  
30 Q. You did agree?

31 A. We agreed that companies who were legitimately in  
32 like, say, a concrete batching plant, for example, they  
33 were in his branch. So those moneys were legitimately his.  
34 I never at any stage made agreement with him about those  
35 moneys donated by the companies or deposited by the  
36 companies.

37  
38 Q. Your usage "legitimately his" is the same as the usage  
39 in that portion of transcript --

40 A. We were talking --

41  
42 Q. -- I took you to. You mean by that legitimately the  
43 construction branches?

44 A. Yes.

45  
46 Q. Not his personally, construction branch?

47 A. Well, I'm talking to you here and now. I was talking

1 to him about, "Okay. Well, that's in your branch. This is  
2 in my branch", in that vein.  
3  
4 Q. Okay. The Finance Committee meeting that resulted in  
5 the resolution to pay the redundancies, you recall that,  
6 meeting by letter, really?  
7 A. There was --  
8  
9 Q. A circular letter.  
10 A. -- a phone call and fax.  
11  
12 Q. Yes, "meeting" was a loose term. It came from your  
13 paragraph 23. Then later you met with Cambridge, Harrison  
14 and Ludwig in Brisbane. At the meeting you insisted, your  
15 word, "I have Wilson's resignation that day." In fact  
16 Wilson wanted to go, didn't he?  
17 A. I wasn't aware of that. Not at that time.  
18  
19 Q. You weren't?  
20 A. No. When we had the meeting in Brisbane, it was to  
21 demand his resignation. So he couldn't have agreed to go.  
22 He agreed to go subsequently when he realised that Ludwig  
23 had given him up.  
24  
25 Q. In your paragraph 26 you set out a conversation  
26 between Bill Telikostoglou and Terry Muscat. You don't say  
27 Wilson had any knowledge of that conversation, do you?  
28 A. He was there as the advocate or he was the messenger.  
29  
30 Q. Who?  
31 A. Bill. Bill the Greek was the messenger from --  
32  
33 Q. You don't say Wilson had any knowledge of that  
34 conversation, do you?  
35 A. Well, not the actual conversation. Nor do I. It was  
36 a conversation reported to me by Terry between the two of  
37 them. He was conveying Wilson's offer.  
38  
39 Q. Well, you inferred that, but you have no direct  
40 evidence of that?  
41 A. Only what Terry told me, a very trusted, loyal man.  
42  
43 Q. Coming back to the issue of redundancy, you know what  
44 Wilson says about the return of the money to the payers.  
45 He says that he and you in that conversation agreed that  
46 that money which was not union money should go back to the  
47 payers and you said "Yes, that's right"?

1 A. Would you say that again, please?  
2  
3 Q. Yes. Wilson, at paragraph 307 of his witness  
4 statement, says to the effect that he and you agreed that  
5 if you maintained the moneys in that account were not AWU  
6 moneys, then they should go back to the payers and you  
7 agreed with that?  
8 A. I did not. That is - that is just a lie. That is  
9 just an out-and-out lie.  
10  
11 Q. Can I take you to the issue of Mr Spyridis. Have you  
12 had an opportunity to read Mr Spyridis's statement to this  
13 Commission?  
14  
15 THE COMMISSIONER: What is the conflict of primary fact  
16 between - yes. All right. You can proceed.  
17  
18 DR HANSCOMBE: If the Commission please.  
19  
20 Q. Have you had an opportunity to read Mr Spyridis's  
21 witness statement to this Commission?  
22 A. No, I haven't.  
23  
24 Q. Have you had an opportunity to read his sworn  
25 evidence?  
26 A. No, I haven't.  
27  
28 Q. Mr Spyridis has said that he did not work at  
29 Kerr Street and you have no way of saying that's not true,  
30 do you?  
31 A. I can only reiterate what he said to me. He wanted me  
32 to pay for work he had done on the union houses, and then  
33 he nominated the two houses and, as I said to him, "You're  
34 dead out of luck, pal, because we don't have any union  
35 houses."  
36  
37 Q. Are you sure you haven't embroidered that a bit?  
38 A. I'm positive.  
39  
40 Q. So you are suggesting despite the fact he had not  
41 worked at Kerr Street and --  
42  
43 MR STOLJAR: I object to that, Commissioner. That is  
44 putting a hypothesis to the witness which may or may not be  
45 correct. This witness can only say what was said to him.  
46  
47 DR HANSCOMBE: In my submission, there is a proper basis

1 for that to be put. Nobody has challenged the proposition,  
2 Mr Spyridis's evidence, that he did not do work at  
3 Kerr Street is false. There is also no other documentary  
4 evidence to say that it is false. On the state of the  
5 evidence at the moment, Mr Spyridis did not work at  
6 Kerr Street.

7

8 MR STOLJAR: I am not certain that's correct,  
9 Commissioner. But, in any event, regardless of what the  
10 state of the evidence may be, this witness can only say  
11 what was said to him.

12

13 THE COMMISSIONER: I think Mr Stoljar is correct,  
14 Dr Hanscombe.

15

16 DR HANSCOMBE: I might rephrase the question in that case.

17

18 THE COMMISSIONER: Please.

19

20 DR HANSCOMBE: Q. Mr Wilson has given evidence that  
21 Mr Spyridis did not work at Kerr Street. You can't  
22 controvert that evidence, can you?

23 A. I reiterate: I can only say what Mr Spyridis said to  
24 me when he first came to be asking for his money.

25

26 Q. I follow that, and that's all you've got?

27 A. That's all I've got.

28

29 Q. You've never seen any other, or heard any other  
30 independent statement to the effect that Spyridis did work  
31 at Kerr Street?

32 A. No.

33

34 Q. He had, however, done some work at the union offices  
35 in Carlton, had he not?

36 A. I don't know.

37

38 Q. You don't know that?

39 A. I don't know that.

40

41 Q. There were union offices in Drummond Street?

42 A. Yes.

43

44 Q. You don't know that Spyridis did work there?

45 A. No.

46

47 DR HANSCOMBE: If the Commission please.



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THE COMMISSIONER: Thank you, Dr Hanscombe. Mr Guidolin?

MR GUIDOLIN: Thank you.

THE COMMISSIONER: Do you want to come forward?

MR GUIDOLIN: Yes, if that would be convenient to the Commission.

THE COMMISSIONER: Yes. We will have a five minute break to give the Court officials a rest.

**SHORT ADJOURNMENT.**

THE COMMISSIONER: Yes, Mr Guidolin.

MR GUIDOLIN: Dr Hanscombe has a couple more questions.

DR HANSCOMBE: I'm sorry about that, Commissioner, I will not be a moment, and there is a correction I ought make, too. Mr Stoljar has brought to my attention that my memory failed me. It is not correct, as I put to Mr Smith, that Mr Spyridis's evidence that he did no work at Kerr Street was not challenged. It was challenged by Mr Stoljar at transcript 304. Mr Spyridis maintained the position that he had not done such work, but it was challenged. I am sorry to have put an inaccurate question.

THE COMMISSIONER: What are your new questions?

DR HANSCOMBE: Q. Why did you leave the union?

A. Why did I leave the union?

Q. Yes.

A. My race was run. I had 10 years of - I want to say wear and tear. We heard people earlier talking today about award restructuring, enterprise bargaining. My, for want of a better term, career started in the steel mill in Western Port. I was heavily involved; in fact led the restructuring of that work site. I was then offered a position within the union to become the restructuring organiser for Victoria, South Australia, Tasmania. The model we had developed at Western Port was used by the ACTU as the model for Australia Reconstructed, and I became quite expert in training union delegates on the job and members to understanding what award restructuring was

1 about, what was the process, and what was in it for them,  
2 as well as hopefully educating employers as well.

3  
4 Q. So do you say you left the union on --

5  
6 MR GUIDOLIN: I don't think he had finished the answer.

7  
8 THE WITNESS: I will just finish if you don't mind.

9  
10 MR GUIDOLIN: Commissioner, it seems, it if is of  
11 interest, to be remotely relevant to --

12  
13 THE COMMISSIONER: He hadn't finished the answer, though  
14 I am not sure it was a direct answer.

15  
16 Q. Can you complete your answer fairly quickly, Mr Smith?

17 A. As I said at the start, Commissioner, my race was run.  
18 I had 10 years of doing everything that could be done in  
19 terms of restructuring on the job, building a new culture  
20 within the union as well as the workplace, and I'd had it.  
21 I had employed a young man some years earlier with a view  
22 to grooming him, he was a very well educated young man, had  
23 his heart in the right place and with the on the ground  
24 training he had received over a number of years with us, he  
25 was ready and I was ready, so I then went into parliament.

26  
27 DR HANSCOMBE: Q. Do you say you parted from the union  
28 on good terms?

29 A. I do.

30  
31 DR HANSCOMBE: If the Commission please.

32  
33 THE COMMISSIONER: Thank you, Dr Hanscombe. Yes  
34 Mr Guidolin.

35  
36 MR GUIDOLIN: Thank you Commissioner.

37  
38 **<EXAMINATION BY MR GUIDOLIN:**

39  
40 MR GUIDOLIN: Q. Mr Smith, you will recall that  
41 Dr Hanscombe asked you some questions concerning - I think  
42 it is paragraph 18 of your statement and there you set out  
43 the contents of a letter dated 25 July 1995.

44  
45 THE COMMISSIONER: Paragraph 17, I think.

46  
47 MR GUIDOLIN: I apologise, Commissioner, paragraph 17.

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Q. Dr Hanscombe took you to the three paragraphs on the following page, to page 4. My question is: if you go back to the first paragraph, you say in that letter:

*I was advised by you, Ian, than the official bank account of the old AWU ...*

Is this what you have referred to as the central fund?

A. No, that's the old Victorian, for want of a better term, Wilson's branch prior to the establishment of the NCB. That account was being frozen and would be shut down because we only had one account under our rules for the union.

Q. Is that one of the accounts that you discovered with Mr Cain at the CBA after you were elected Secretary of the AWU-FIME Victoria Branch?

A. I don't think so. I think that was the official account.

Q. Can I just clarify: the account you are talking about in the letter dated 25 July 1995 is the official account of the predecessor to the State Branch that you became the Secretary of; correct?

A. Yes.

Q. Thank you.

A. And moneys were still going into that despite the fact that it was supposedly frozen.

Q. Your dispute there is concerned not about the accounts you subsequently discovered, but about the previous account held by, for want of a better description, the previous branch?

A. Certainly that was one of the disputes, yes.

Q. Thank you. Can Mr Smith be shown page 174 of the exhibits to Mr Cambridge's statement.

THE COMMISSIONER: Does it come up on the screen or --

MR STOLJAR: It will. He has a hard copy bundle as well.

THE COMMISSIONER: Has Mr Smith got the hard copy bundle?

MR GUIDOLIN: Yes, I believe he does, Commissioner.

1  
2 THE COMMISSIONER: Page 174.  
3  
4 MR GUIDOLIN: 164, Commissioner.  
5  
6 THE COMMISSIONER: 164.  
7  
8 THE WITNESS: 164?  
9  
10 MR GUIDOLIN: Q. Yes, 164.  
11 A. Yes.  
12  
13 Q. 174 is still being displayed.  
14 A. I have 164 in front of me.  
15  
16 Q. I'm just waiting for it to come up on the screen.  
17  
18 MR GUIDOLIN: Perhaps I'll press on, Commissioner.  
19  
20 THE COMMISSIONER: There we are.  
21  
22 MR GUIDOLIN: Q. Do you see that's a letter dated  
23 16 August 1995?  
24 A. Yes.  
25  
26 Q. You were taken to this document by Mr Stoljar in your  
27 examination by him. It is a letter to the manager of  
28 John Holland Construction. It says in this letter, it's  
29 self-explanatory, but it returns the cheques for \$35,200.  
30 Just note the date of 16 August 1995. Can you remind the  
31 Commission, what was the date of your meeting with  
32 Mr Wilson, Mr Cain at the Commonwealth Bank to pay his  
33 redundancies?  
34 A. Was it the 15th?  
35  
36 THE COMMISSIONER: Paragraph 32 of the statement says it  
37 was the 17th.  
38  
39 MR GUIDOLIN: Q. Does that refresh your memory?  
40 A. Look, it could have been. I'm getting on a bit now.  
41 It's a bit hard to remember dates, times and places.  
42  
43 Q. Thank you. Can Mr Smith be shown page number 221 of  
44 Mr Cambridge's exhibit. Do you have that in front of you?  
45 A. Yes, I do.  
46  
47 Q. Can you go to the second paragraph, the second

1 sentence of that paragraph. It is a letter dated  
2 18 September 1995 but it says:

3  
4 *Bruce agreed to allocate the services of*  
5 *Mark Barnes to the project ... for 2 days*  
6 *per week and in return I agreed to make*  
7 *payment of \$400.00 per day to cover this*  
8 *specific service.*

9

10 At the time of the meeting that appears to have been on  
11 17 August 1995, were you aware of that fact in the second  
12 sentence of that second paragraph?

13 A. I can't really recall.

14

15 Q. Okay. If we go down --

16 A. I'm not sure when I became aware.

17

18 Q. As at 17 August, were you aware of this agreement to  
19 allocate services of Mark Barnes to the project for two  
20 days per week; in return that he would receive a payment of  
21 \$400 per day to cover his specific service?

22 A. No. I wouldn't have had any reason to.

23

24 Q. Thank you. If you go to the third paragraph, the  
25 second sentence. It says:

26

27 *The only exception to this position was the*  
28 *agreement which I reached to pay*  
29 *Mark Barnes an amount of \$800.00 as a*  
30 *"stand-by" payment to make himself*  
31 *available to respond urgently over the*  
32 *Easter holiday period, whilst he was on*  
33 *leave, if he was required.*

34

35 Were you aware of that as at 17 August 1995?

36 A. No.

37

38 Q. No.

39 A. It sounds like that was agreed between them alone.

40

41 Q. Thank you. In your statement you set out a  
42 conversation between yourself and Mr Wilson. It is at  
43 paragraph 13. This is after you visit the Commonwealth  
44 Bank in Victoria Street and you are talking about the money  
45 discovered in the account. If you have a look at the third  
46 and the fourth paragraphs of the discussion that's had, you  
47 said, "If I can prove that I will accept that and hand the

1 money back." Did you receive any proof?  
2 A. Mr Wilson, within hours of that conversation faxed to  
3 me photocopies of cheques from employers and deposited into  
4 those accounts and --  
5  
6 Q. You've given evidence that - sorry, I cut you off.  
7 Can you finish?  
8 A. Yes.  
9  
10 Q. You've given evidence that you subsequently wrote to  
11 those companies and asked them for, at the very least,  
12 proof of the employees that if they were dues, they were  
13 against, and you say you never received a response?  
14 A. Yes, I asked him what the moneys were for and if they  
15 were moneys for union dues, then could they provide me with  
16 the names of the members so I can reconcile them.  
17  
18 Q. Okay.  
19 A. Without that - just to expand on the importance of  
20 that, without that reconciliation, those members would not  
21 have been recognised as members, certainly financial  
22 members; would not have been entitled to a vote or to stand  
23 for office within the union.  
24  
25 Q. In your evidence that you gave in your  
26 evidence-in-chief, it is that Mr Wilson provided to you  
27 bank account records or bank statements about the deposit  
28 of those funds. Did he provide you with any evidence  
29 beyond that in respect of the funds in the account that you  
30 discovered?  
31 A. I'm sorry, I just missed the start of that question.  
32 Could you repeat it?  
33  
34 Q. In your evidence, in your statement, you say that you  
35 asked for evidence and that Mr Wilson provided you with  
36 bank statements by way of a fax. Did he provide you with  
37 any further evidence beyond those bank statements? Did  
38 Mr Wilson provide you with any further evidence beyond  
39 those bank statements?  
40 A. Well, photocopies of the cheques themselves and the  
41 accounts into which they were deposited and the balance in  
42 those accounts.  
43  
44 Q. Beyond the cheques, beyond the bank statements, was  
45 there anything else?  
46 A. I can't recall.  
47

1 Q. You can't recall. Prior to 17 August 1995, did  
2 anybody else within the AWU provide you with any evidence  
3 as to the funds that were in the bank account that you  
4 discovered?  
5 A. I'm just - not that I can think of at the moment.  
6  
7 MR GUIDOLIN: There is nothing further, Commissioner.  
8  
9 THE COMMISSIONER: Thank you, Mr Guidolin. Anything,  
10 Mr Stoljar?  
11  
12 MR STOLJAR: No, nothing, Commissioner.  
13  
14 THE COMMISSIONER: There's no opposition, I take it, to  
15 Mr Smith being excused from further attendance?  
16  
17 MR STOLJAR: No, Commissioner.  
18  
19 THE COMMISSIONER: Mr Smith, thank you for coming today.  
20 You are excused from further attendance.  
21  
22 THE WITNESS: Thank you, Commissioner.  
23  
24 MR STOLJAR: Commissioner, the two remaining witnesses are  
25 able to stay in Sydney overnight and are agreeable to  
26 coming tomorrow. Would it be convenient to commence  
27 tomorrow's proceedings at 9.30am in order to accommodate  
28 the two additional witnesses?  
29  
30 THE COMMISSIONER: Does that suit everybody? We will  
31 resume at 9.30am tomorrow.  
32  
33 **AT 5.10PM THE COMMISSION WAS ADJOURNED TO WEDNESDAY,**  
34 **10 SEPTEMBER 2014 AT 9.30AM**  
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**\$**

**\$100,000** [1] - 588:20  
**\$150,000** [1] - 563:42  
**\$157,000** [7] - 677:15, 688:35, 688:40, 688:41, 691:8, 692:21, 693:29  
**\$341,000** [4] - 687:32, 687:36, 688:33, 688:38  
**\$35,200** [2] - 691:2, 733:29  
**\$36.50** [1] - 621:23  
**\$380,000** [1] - 563:15  
**\$39,000** [2] - 701:7, 701:25  
**\$400** [2] - 697:31, 734:21  
**\$400.00** [1] - 734:7  
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