

**Ashworth, Matthew**

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**From:** Kathy Jackson [REDACTED]  
**Sent:** Tuesday, 29 July 2014 3:43 PM  
**To:** Ashworth, Matthew; Roughley, Fiona  
**Subject:** Fwd: Peter Mac

----- Forwarded message -----

**From:** Kathy Jackson [REDACTED]  
**Date:** 19 July 2014 14:00  
**Subject:** Fwd: Peter Mac  
**To:** Ben Schneiders <[bschneiders@theage.com.au](mailto:bschneiders@theage.com.au)>

Dear Mr Schneiders

Refer you to interviews with David Langmead (barrister for the HSU Victoria No 3 branch in the "Peter Mac" matter) and Kate Wilkinson (former President of the HSU Victoria No 3 Branch at the time) which have been published today at [www.michaelsmithnews.com](http://www.michaelsmithnews.com)

Each of Mr Langmead and Ms Wilkinson make clear that an imputation that the HSU Victoria No 3 Branch received money that was intended for members is a false and defamatory imputation. I put you on notice that I will sue you and Fairfax if you publish any such imputation.

Yours faithfully

Kathy Jackson

----- Forwarded message -----

**From:** Kathy Jackson [REDACTED]  
**Date:** 19 July 2014 12:09  
**Subject:** Fwd: Peter Mac  
T Michael Smith [REDACTED]

Dear Michael

Below is an email that I received from Mr Ben Schneiders at The Age.

You can see from the way that email is written that Mr Schneiders thinks that he finally has me - and is taking malicious delight in putting those matters to me.

This is a rather long letter but I know that many of your readers do not mind having a look at something in detail. I find myself in a situation where it is not sufficient to merely deny the allegations. I am expected to demonstrate by evidence that the allegations against me are false.

NHDA (a bank account established as a discretionary fund with the approval of the Branch Committee of Management of the Victoria No 3 Branch (known as the Australian Health Professionals Association. The small Victorian union of which I was the Secretary and sole full time officer prior to May 2010.

When I was first contacted by journalists about the NHDA I had a very poor recollection of the details of the dispute and settlement that led to the Union receiving a payment of \$250,000.

I subsequently conducted a search for records and made enquires of people involved in the dispute. Almost all of the Union's records are gone.

The Peter Mac dispute was conducted by the Union with the assistance of a barrister, Mr David Langmead. There were no solicitors. The file on the dispute was a union record that has long since disappeared. It may have been destroyed in the flood. It may have been thrown out in the "chuckfest" conducted by Williamson and his people when I was overseas in 2010, addressed in the Royal Commission evidence. I am refused access to Union records that may still exist in relation to this matter.

From my further enquiries, this is what occurred.

The "Peter Mac" money was part of the settlement of a dispute that related to the employees in the Research Division. They were an unusual group of employees. They were a group of world-class scientists performing cutting edge cancer research.

Their research projects were generally funded by grants from a range of Australian and overseas donors. The grants typically were calculated with a specific and agreed provision for wages for the researcher(s) and technicians for the project.

For many years Peter Mac paid employees in accordance with the wages established under the grants. In fact, the employees were covered by enterprise agreements that bound Peter Mac and provided for wage increases that were not paid with the result that it failed to pay the employees what they were entitled to under successive enterprise agreements. The total underpayment amounted to "millions of dollars."

Unsurprisingly, Peter Mac did not have spare funds in its budget to meet that liability and would have had to cut its operations in order to do so. I recollect that that was a concern expressed by a large portion of the employees.

It is the fact that many of that unusual group of employees did not want to pursue their outstanding entitlements, and certainly not to the point where the operations of the research division would be reduced. I recollect that a number of employees were concerned that a claim for outstanding entitlements

might prejudice a continuation of their research beyond the current grand period. Security of tenure was a big issue for these employees whose primary focus was the pursuit of world-class scientific research.

Far from encouraging employees not to claim their outstanding entitlements, I recollect going to a meeting of members to explain to them that it was okay to claim their outstanding entitlements and that they should not fear retribution, because the union would ensure that they would not be treated unfairly for merely pursuing their lawful entitlements.

The significance of the legal advice is that is clear on its face of that the advice was obtained to address employee concerns about a proposed "Deed" of Settlement. It demonstrates that the Union was engaging with the employees and only acting with their informed approval, just as a good union would.

The eventual settlement had strong majority support. Nevertheless, there were several employees who were not happy with the settlement and who wanted the whole of their entitlements.

The settlement obtained by the Union was a settlement that was negotiated openly with the employees. The terms of the settlement were put to the employees in the form of a draft Deed and were and approved by them.

It is clear from the advice that employees were not being forced to surrender any portion of their outstanding entitlements. That is the very point of the passage of the advice that Mr Schneiders points to. The settlement was based on the right of any employee not to sign the Deed (thereby becoming bound to the settlement). The settlement was based on the right of employees to pursue their full entitlements.

If an employee chose not to sign the Deed that the majority had approved (including a separate. Here is the broader context of the line Mr Schneiders has cherry-picked:

"1. I am instructed that the HSUA has agreed in principle with Peter MacCallum Cancer Centre ("Peter Mac") to resolve matters between them arising from alleged breaches of various industrial instruments. **The parties are proposing to enter into a Certified Agreement incorporating agreed terms and conditions including a new salary structure and job security.** As part of this settlement HSUA is agreeing to not pursue any claims in relation to the alleged breaches, and will not assist or encourage claims by others.

2. I am instructed that Peter Mac is asking its employees to enter into a Deed of Release with it in relation to the alleged breaches, and that if employees decline to do so Peter Mac will not proceed to consummate the settlement between it and HSUA.

14. In the present circumstances Peter Mac will have relied on the conduct of the employees in signing the Deed to believe that it has a legal relationship with those employees in settlement of the dispute about back pay which precludes them from bringing an action against it for any back pay. It has relied on that belief to agree to provide undertakings about job security. In those circumstances I consider that a Court may well conclude that the employee should not be permitted to deny the effect of the Deed.

15. Accordingly it is my opinion that the Deed may prevent an employee from bringing an action, particularly when Peter Mac is giving undertakings about job security. I consider that members signing the Deed should presume that they will be thus prevented from bringing such a claim.

16. Regardless of the effect of the Deed, it should be remembered that the alleged breaches are just that; allegations. In order to succeed in any claim for back pay, it would be necessary to prove to the Court that the obligations exist and have the effect that HSUA and its members contend. No matter how strong a case the HSUA or its members may be advised it is, there is always the risk, ever-present in any litigation, of failure.”

Do you see how the settlement that was negotiated in relation to the dispute did not just involve back pay to employees – they got a new “Certified Agreement incorporating agreed terms and conditions including a new salary structure and job security.” Those were significant benefits that the employees obtained in return for not getting all of their back pay – part of a collective quid pro quo for not pressing for the full back pack that could put their put their research projects at risk.

Do you see how it must be inferred that a sufficient number of employees agreed to the settlement and signed the Deed, for the settlement to proceed. There is no suggestion that an employee who refused to sign the Deed was prevented from pursuing their full outstanding entitlements. It was only if they choose to sign the deed that the “legal relationship” would be created that would bind them to the settlement of the Union’s claim for outstanding entitlements.

I believe that the employees did get a significant measure of back pay out of the “millions” that was outstanding. The best recollection of others is that it was capped at 12 months worth of outstanding entitlements for each employee. The employees did not have to accept the compromise. They got to choose whether or not to accept the settlement and sign up to the Deed.

There are many reasons why Peter Mac may not have wage records that show back pay being made – the search was flawed, the wrong period was checked, the records are missing, the records have been misread etc. Of course, I haven’t been shown the records to comment upon.

But does Peter Mac have the settlement Deed it was requiring the employees to sign as part of the settlement? We know there was one. Let them produce the Deed, because it will make the terms of and basis of the settlement clear.

It was right and proper for the Union to receive the settlement money that it did. That component of the settlement related to the claim that the Union had rightly and lawfully brought in its own right, separate to the claims of employees for outstanding entitlements that the Union was pursuing on their behalf in the dispute. That money was that was earmarked by resolution of the BCOM that directed me to establish and operate a discretionary fund that I would control to advance the industrial and political interests of the Union.

I have spoken with Mr Langmead of counsel and he is certain that if any proceedings had issued prior to the settlement, they had issued in the name of the Union making a claim on behalf of employees for their outstanding entitlements but also an additional and separate claim by the Union in its own right for penalties in respect of the statutory breaches that the employer had committed in failing to pay the Research Division employees in accordance with successive enterprise agreements. I will give you Counsel's contact details. I wonder whether Mr Schneiders will bother to call him?

\* \* \*

The key allegation against that the BCOM allowed me to 'siphon' off to the NHDA slush fund, not just money of the Union, but money that represented the actual outstanding entitlements of actual members at the Peter McCallum Cancer Institute.

To steal the outstanding entitlements of particular members is the worst allegation that can be made a union official. That allegation is made against me and the BCOM members and it is just false.

The BCOM members were all health professionals. They were good people who were doing their best, with me, to run a good union. And we ran a very good union. We provided good and effective representation for members and we delivered good outcomes for members.

The establishment of a discretionary fund with the "Peter Mac money" was a use of money that was consistent with the objects specified in the Rules of the Union. It was lawful and proper.

The minutes are missing – taken by my enemies from the South Melbourne office of the union. I have no access to the union records. The auditor gave evidence of having conducted a full scale audit in 2009 and May 2010. His audit papers from the time demonstrate that he tested a number of transactions for BCOM approval and found the approval to be in order.

The real story in relation to the NHDA is in the manner in which, in order to damage me and the threat that my truth-telling represents, those determined to attack and smear me have been prepared to trash the reputation of what was a good and effective union and its BCOM, a group of decent professionals who were doing a good and conscientious job.

It is rather ironic that the attacks on that union and its BCOM are coming from the "progressive" side of politics and commentary, not from the "Right", don't you think? They (including you) are more than prepared to see the Vic 3 Branch of the HSU to be established as yet another corrupt union f\*\*king over its members. That outcome, which is the complete inverse of the truth, gives succour to the real enemies of the labour movement. They have taken a piece of excellent work by a Union, that delivered a very good and practical outcome for members (and which sent a message to other employers: you cannot get away with treating health professional badly), and turned it into something that will be used to attack unions.

Regards

Kathy Jackson

----- Forwarded message -----

From: **Ben Schneiders** [REDACTED]

Date: 18 July 2014 11:48

Subject: Peter Mac

To: Kathy Jackson [REDACTED]

Kathy,

At the Royal Commission you said workers got "millions of dollars" in back-pay on top of the \$250,000 settlement at Peter Mac.

Yet financial accounts from Peter Mac from the time show no evidence of any payment for back-pay let alone "millions". Do you have any evidence that workers received back-pay? How many did? Did you tell the truth under oath at the Commission?

There are also claims by a worker that you encouraged Peter Mac workers to accept the settlement so as to forego the back-pay. What is your response?

The HSU's legal advice, tendered by you at the Royal Commission, also states. "I consider that members signing the deed should presume that they will be thus prevented from bringing such a claim." How does this interact with members getting "millions" in back-pay?

My deadline is 2pm on Saturday,

Regards

Ben

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Senior Writer  
The Age

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