

## STATEMENT OF EVIDENCE OF BRIAN REGINALD COOK

1. My full name is Brian Reginald Cook.
2. On 15 August 2014 I received a letter, via my legal representative, from James Beaton, Solicitor Assisting the Royal Commission into Trade Union Governance and Corruption (**Commission**). The letter asked me to prepare a written statement of evidence addressing a list of items numbered 1 to 8.
3. In preparing this statement I have considered documents provided to me by the Commission in four folders. I have used some of these documents to refresh my memory about events that occurred approximately 11 years ago.
4. I set out below my response to each item.

### 1. My role at Service Industry Advisory Group (SIAG)

5. I am the owner and Managing Director of Service Industry Advisory Group Pty Ltd (**SIAG**), a company that I founded in 1993. SIAG provides employment, human resources and industrial relations services to a broad range of employer clients.
6. SIAG is a small privately owned company with approximately 12 employees.
7. In my role I am responsible for SIAG's overall management.
8. I spend a significant amount of my working time providing industrial relations advice to clients Australia-wide, including negotiating enterprise agreements on behalf of my clients.

### 2. My role (and that of any employees of SIAG) in the negotiations which occurred between the Peter MacCallum Cancer Institute (Peter MacCallum) and the Health Services Union, Victoria No. 3 Branch (No. 3 Branch), in respect of:

#### a. Peter MacCallum's alleged failure to pay wages to its research staff

9. I was engaged by Peter MacCallum in or around early March 2003 to establish the framework for, and then negotiate a certified agreement with the No.3 Branch, which became known as the "Health Services Union of Australia – Health Professionals – Peter Mac Certified Agreement 2000-2004" (**Certified Agreement**).

10. I was informed by representatives of Peter MacCallum that Peter MacCallum was facing a significant compliance issue in respect of its then current industrial instrument, which was an Award made pursuant to section 170MX of the *Workplace Relations Act* 1996 in around 1999 or 2000 (**MX Award**). It had become apparent that, under the MX Award, Peter MacCallum had underpaid its research staff, resulting in a potentially large claim for back pay.
11. My role was to help create the framework to move forward with the Certified Agreement that would deal with the compliance issue. By the end of March 2003, Peter MacCallum and the No.3 Branch had agreed on a Memorandum of Understanding (**MOU**) for negotiating the Certified Agreement (Court Book, vol 3, tab 23). The MOU, among other things, expressed an intention to develop the Certified Agreement, with specific rates for research employees. Those rates, and a new employee classification structure, would apply both prospectively and retrospectively. The intention behind drafting the Certified Agreement in this way was that claims for wages and entitlements by those employees would be extinguished.
12. I believe that in around June 2003, as negotiations were progressing for the Certified Agreement, the No.3 Branch raised the matter of compensation being paid directly to the union as part of the overall settlement of the compliance issue. This was a separate matter from the conclusion of the Certified Agreement, which was my principal role and focus in negotiating with the No.3 Branch on behalf of Peter MacCallum.
13. It became clear, however, that the Certified Agreement could not be finalised and taken to the vote until the overall settlement of the compliance issue had been reached to the satisfaction of the No.3 Branch and the relevant employees.
14. Although I do not recall specific dates or specific discussions, I have read the document at page 862, tab 14 of vol 3 of the Court Book, which is an email sent on my behalf to Ms Katherine Jackson on 20 June 2003.
15. That email indicates that I met with Ms Jackson on 11 June 2003 and 18 June 2003 in relation to 'the finalisation of the EBA'. It also indicates that on 18 June 2003, Ms Jackson and I discussed the Deed to be reached to settle the compliance issue.

16. The first time that I recall the No.3 Branch raised the matter of Peter MacCallum making a payment to the union as reimbursement of its legal and other expenses associated with the compliance issue and the negotiation of the Certified Agreement, was in early to mid-June and it may possibly have been at the meeting on 11 June 2003. I believe that in addition to Ms Jackson and me, David Hillis, Peter MacCallum's Chief Executive Officer or a senior research director from Peter MacCallum represented Peter MacCallum at that meeting, and Erryn Cresshull of the No.3 Branch was also present at that meeting, representing the union along with Ms Jackson.
17. I am certain that it was the No.3 Branch that proposed such a payment being made. I never proposed such a payment, nor to my knowledge did Peter MacCallum propose it.
18. I recall Peter MacCallum subsequently instructing me that if the union was seeking a payment from Peter MacCallum, then the union needed to set out the proposal in detail. I was aware that Peter MacCallum sought legal advice on the nature of the payment, and I recall attending at least one Board meeting at which Rohan Millar, barrister, was also present.
  - b. any threat of proceedings made by No. 3 Branch against Peter MacCallum for penalties
19. I knew that there was a compliance issue in relation to research staff. Where there is a compliance issue, the options for resolution are, in my experience, either for a settlement to be reached, or for enforcement litigation to be commenced.
20. I do not recall a specific threat of proceedings made by No.3 Branch against Peter MacCallum.
21. I have seen the document at page 833, tab 4 of vol 3 of the Court Book which records that I attended Peter MacCallum's Board Meeting on 22 July 2003, along with Mr Millar.
22. It is apparent from the minutes of this meeting that by that stage, the Board had resolved to make a payment to the No. 3 Branch. I am recorded, among other things, as advising the Board that the union was becoming 'hostile' at the lack of progress.
23. I am also now aware from looking at the document at page 874, tab 19 of vol 3 of the Court Book, that Mr Hillis reported to the Board that the No.3 Branch made a threat to commence court proceedings unless the 'Deed issues' were resolved by Thursday 24 July 2003.

3. My role (and that of any employees of SIAG) in negotiating the terms of the "Health Services Union of Australia – Health Professionals – Peter Mac Certified Agreement 2000-2004"

24. I was engaged by Peter MacCallum to negotiate on its behalf with the No.3 Branch for the Certified Agreement.
25. I negotiated directly with industrial officers and organisers of the No.3 Branch, whose names I mostly do not recall, but I do remember dealing with Erryn Cresshull.
26. At the time, SIAG had at least two employees seconded to Peter MacCallum in human resources roles. Of these, only Christina Wilson and Bernie Parsons were involved in negotiating the terms of the Certified Agreement.
27. Ms Wilson was working in the role of Human Resources Director for Peter MacCallum. In that role, she was involved in the Certified Agreement negotiations, and she worked closely with Mr Hillis and other senior managers within Peter MacCallum including research managers.
28. Mr Parsons was located in the Research Team as the Human Resources officer. He worked directly with Research staff, including working on the details for the new classification structure.
29. I do not recall any other employees of SIAG being directly involved in the negotiations.
4. The nature and extent of my dealings with Ms Katherine Jackson in the course of the matters set out in paragraphs 2 and 3 above
30. I had brief dealings with Katherine Jackson, and I do not recall specific dates or details of the direct conversations I had with her. My main contacts were the relevant industrial officers / organisers from the No.3 Branch, including Ms Cresshull.
31. As Branch Secretary, Ms Jackson's role was minimal in the detailed negotiations, and other representatives of the union were more closely involved in that aspect.
32. I have referred above, under Item 2, to some meetings I attended with Ms Jackson. I note that I did not attend any one-on-one meetings with her, but that other representatives from either or both of Peter MacCallum and the No.3 Branch were always in attendance.

5. My knowledge of David Hillis' role and involvement in the matters set out in paragraphs 2 and 3 above.

33. David Hillis was Peter MacCallum's Chief Executive and he was my main contact at Peter MacCallum in relation to negotiations for the Certified Agreement. I always reported back to him, but I also worked with other staff of Peter MacCallum.

34. Mr Hillis was responsible for reporting back internally to Peter MacCallum's Board.

35. Mr Hillis instructed me in relation to dealings with the No.3 Branch regarding both the Certified Agreement and the settlement that resulted in a payment to the union. I would brief him regularly on my meetings with and any responses from the No.3 Branch. He would provide Peter MacCallum's responses to matters raised by the union, which I would then convey to the union.

6. My knowledge of the terms of settlement reached by Peter MacCallum with the No.3 Branch

36. I have seen the terms of settlement reached by Peter MacCallum with the No.3 Branch, and refer to my responses above. I was not involved in deciding on the nature or quantum of the payment. I was aware that the ability for disclosure of the settlement to employees was a condition required by Peter MacCallum.

7. Whether I recall attending a meeting in an auditorium at Peter MacCallum in 2003, at which, representatives of No.3 Branch and research staff were in attendance

37. I have no recollection of attending such a meeting.

8. My knowledge of the document at p.98 of tab 5 of vol 1, being, the itemised list of No.3 Branch's legal and other expenses and expected future expenses, including whether I have any recollection of discussing the contents of that document with any other person in 2003.

38. I have recently looked at the document at page 98 of tab 5 of volume 1, being an itemised list of No.3 Branch's legal and other expenses and expected future expenses.

39. I have no recollection of seeing the document or of discussing the contents of the document with any other person in 2003.

40. I recall that in order for all matters to be settled and finalised, the No.3 Branch was required to provide details of the expenses for which it claimed reimbursement from Peter MacCallum.

Signed:

A handwritten signature in black ink, appearing to read "B Cook". The signature is written in a cursive style with a large initial "B" and a trailing flourish.

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Brian Cook

Date: 20 August 2014