

## WITNESS STATEMENT

**Toby Carl BORGEEEST**

1. I am a Principal Lawyer at Slater and Gordon in the State of Victoria.
2. I have been employed by Slater & Gordon since March 1997.
3. Between 1997 and 2004, I worked in the industrial relations and employment law practice of Slater & Gordon in Melbourne.
4. In 2002, the Health Services Union of Australia, Victoria No. 3 Branch (**No. 3 Branch**), was a client of Slater & Gordon and I was engaged to provide legal services to No. 3 Branch from time to time.
5. In 2004, I was the principal point of contact for industrial officers at No. 3 Branch.
6. At Slater & Gordon, I had sole carriage of a matter concerning the identification of claims advanced by No. 3 Branch against The Peter MacCallum Cancer Institute (**Peter MacCallum**) concerning the alleged underpayment of research staff at Peter MacCallum.
7. Ms Katherine Jackson, Branch Secretary of No. 3 Branch at the time, instructed me to provide a written advice in relation to the matter and I provided written advice. I have recently been shown a copy of that advice, which is dated 12 May 2003, and I am informed by solicitors assisting the Royal Commission that a copy of that written advice is reproduced at Jackson MFI-3, volume 3, tab 26, page 907.
8. On 11 August 2014, Slater & Gordon received service of a Notice to Produce from the Royal Commission, numbered 345, which called for the production of:  
*“Copies of all invoices issued by Slater and Gordon to the Health Services Union Victoria No. 3 Branch for legal work undertaken in 2002 and 2003 concerning The Peter MacCallum Cancer Institute trading as The Peter MacCallum Cancer Centre.”*
9. A copy of the Notice to Produce is annexed to this statement and marked “A”.

10. On 13 August 2014, Slater & Gordon produced to the Royal Commission a copy of Tax Invoice dated 29 October 2004, issued to "AHPA (HSUA Vic No. 3)" which represents the only invoice issued by Slater & Gordon to No. 3 Branch for the work undertaken in relation to this matter.
11. Annexed to this statement and marked "B" is a copy of the Tax Invoice dated 29 October 2004.
12. I am informed by administrative staff of Slater & Gordon, and believe, that the copy Tax Invoice produced to the Royal Commission was extracted from electronic records of Slater & Gordon maintained in its practice management system. Slater & Gordon may have kept a photocopy of the Tax Invoice as delivered to the No.3 Branch, but any such photocopy would, in the ordinary course, have been archived together with other documents created and maintained with the physical file opened for the purposes of the Peter McCallum advice engagement. I am informed by administrative staff of Slater & Gordon, and believe, that that physical file has been destroyed in accordance with Slater & Gordon's usual procedures for files held for a period of more than 7 years after they are closed.
13. I am certain that no other invoices were generated or issued to No. 3 Branch, in relation to the No.3 Branch's dispute with Peter McCallum, other than the Invoice annexed to this statement and marked "B".
14. I am certain of this because I had no involvement in the Peter MacCallum dispute other than the provision of the work described in the narrative of the Tax Invoice.
15. There were no other practitioners at Slater & Gordon involved in either the provision of the advice or in connection with the Peter MacCallum dispute more generally.
16. Annexed to this statement and marked "C" is a copy of the Combined Matter Ledger for Peter MacCallum, matter number 269505, which records one invoice in the amount of \$1,122.



17. I am certain that the Tax Invoice was the only invoice generated because of conclusions I draw from a perusal of the advice I gave in 2003, the narrative contained in the Tax Invoice, and the content of the extract from the Combined Ledger.

**SIGNED:**   
\_\_\_\_\_  
TOBY CARL BORGEEST

**DATED** this 15<sup>th</sup> day of August 2014

"A"



Notice to Produce number: 345

**COMMONWEALTH OF AUSTRALIA**

*Royal Commissions Act 1902*

**NOTICE TO PRODUCE DOCUMENTS  
TO THE COMMISSION INQUIRING INTO  
TRADE UNION GOVERNANCE AND CORRUPTION**

**To:** The Proper Officer, Slater and Gordon Pty Ltd (ACN 097 297 400)

**Of:** 485 La Trobe Street, Melbourne, Victoria 3000

Pursuant to section 2(3A) of the *Royal Commissions Act 1902*, I, the Honourable John Dyson Heydon AC QC, appointed to be a Commission of Inquiry under Letters Patent dated 13 March 2014 to enquire into and report on the matters set out in those Letters Patent (a copy of the text of which is set out in the Annexure to this notice),

**REQUIRE YOU:**

to produce this notice and the documents and other things described in Schedule A, to James Beaton, Solicitor Assisting the Commission, at the Office of the Royal Commission into Trade Union Governance and Corruption, at Level 19, 55 Market Street, Sydney in the State of New South Wales, at or before **10.00am on Wednesday 13 August 2014.**

Dated this 8<sup>th</sup> day of August 2014

Handwritten signature of John Dyson Heydon in black ink.

.....  
The Honourable John Dyson Heydon AC QC  
Commissioner

**Section 3 of the *Royal Commissions Act 1902* provides that, save in the circumstances permitted by the Act, a person served with a notice to produce under section 2(3A) of that Act must not refuse or fail to produce a document or other thing that the person is required to produce in accordance with the notice. A contravention is punishable by a fine of up to \$1,000 or imprisonment for a period not exceeding 6 months.**

### Schedule A

1. Copies of all invoices issued by Slater and Gordon to the Health Services Union Victoria No. 3 Branch for legal work undertaken in 2002 and 2003 concerning The Peter MacCallum Cancer Institute trading as The Peter MacCallum Cancer Centre.

#### Definitions and interpretation:

In the above Schedule:

*Document* includes:

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph.

#### PLEASE NOTE:

- **Production of electronic documents**

The Commissioner has published Practice Direction 1 dealing with specific and important matters concerning the production of electronic documents. If you have electronic documents to produce, you should read Practice Direction 1 carefully. A copy of that Practice Direction is available at the Commission's website, [www.tradeunionroyalcommission.gov.au](http://www.tradeunionroyalcommission.gov.au), or if you have no internet access, by contacting the Office of the Commission on 1800 221 245.

- **Privilege claims**

The Commissioner has published Practice Direction 1 in relation to the practice to be followed in making privilege claims. A copy of that Practice Direction is available at the Commission's website, [www.tradeunionroyalcommission.gov.au](http://www.tradeunionroyalcommission.gov.au), or if you have no internet access, by contacting the Office of the Commission on 1800 221 245.

- **Contact**

If you wish to contact the Office of the Commissioner regarding this notice you may do so on 1800 221 245 or at [legal.tradeunion@ag.gov.au](mailto:legal.tradeunion@ag.gov.au).

Annexure

Terms of reference set out in the Letters Patent

- (a) the governance arrangements of separate entities established by employee associations or their officers (*relevant entities*), with particular regard to:
- (i) the financial management of relevant entities; and
  - (ii) the adequacy of the existing laws as they relate to:
    - (A) the integrity of financial management; and
    - (B) the accountability of officers of employee associations to their members in respect of the use of funds or other assets in relation to relevant entities; and
  - (iii) whether relevant entities are used, or have been used, for any form of unlawful purpose; and
  - (iv) the use of funds solicited in the name of relevant entities, for the purpose of furthering the interests of:
    - (A) an employee association; or
    - (B) an officer of an employee association; or
    - (C) a member of an employee association; or
    - (D) any other person or organisation;
- (b) without limiting the matters in paragraph (a), activities relating to the establishment or operation of any relevant entity as it relates to the following employee associations or any of their branches:
- (i) the Australian Workers' Union;
  - (ii) the Construction Forestry Mining and Energy Union;
  - (iii) the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia;
  - (iv) the Health Services Union;
  - (v) the Transport Workers Union of Australia;
- (c) without also limiting the matters in paragraph (a), activities of any other person or organisation in respect of which you consider that there are credible allegations of involvement in activities mentioned in paragraph (b);

- (d) the circumstances in which funds are, or have been, sought from any third parties and paid to relevant entities;
- (e) the extent to which persons represented by employee associations:
  - (i) are protected from any adverse effects or negative consequences arising from matters associated with, or related to, the existence of relevant entities or activities relating to their establishment or operation; or
  - (ii) are informed of those matters; or
  - (iii) are able to influence or exercise control over those matters; or
  - (iv) have the opportunity to hold officers of the association accountable for wrongdoing in relation to those matters;
- (f) any conduct in relation to a relevant entity which may amount to a breach of any law, regulation or professional standard by any officer of an employee association who holds, or held, a position of responsibility in relation to the entity;
- (g) any conduct which may amount to a breach of any law, regulation or professional standard by any officer of an employee association in order to:
  - (i) procure an advantage for the officer or another person or organisation; or
  - (ii) cause a detriment to a person or organisation
- (h) any bribe, secret commission or other unlawful payment or benefit arising from contracts, arrangements or understandings between an employee association, or an officer of an employee association, and any other party;
- (i) the participation of any person or organisation (other than an employee association or an officer of an employee association) in a matter mentioned in paragraphs (a) to (h);
- (j) the adequacy and effectiveness of existing systems of regulation and law enforcement in dealing with matters mentioned in paragraphs (a) to (i) and, in particular, the means of redress available to employee associations and their members who suffer a detriment as a result of such a matter;
- (k) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (j).

In the terms of reference just described,

*employee association* means:

- (a) an employee organisation as defined in section 12 of the Fair Work Act 2009; or
- (b) any other association of employees that is, or was at any time, registered or recognised as such an association (however described) under the Fair Work (Registered Organisations) Act 2009 or any other Commonwealth law; or

- (c) a recognised State-registered association, or a transitionally recognised association, as defined in section 6 of the *Fair Work (Registered Organisations) Act 2009*, if the association is, or was at any time, entitled to represent the industrial interests of employees under an industrial law as defined in section 12 of the *Fair Work Act 2009*;
- (d) any other association of employees that is, or was at any time, registered or recognised as such an organisation (however described) under a State or Territory law or instrument that is a State or Territory industrial law as defined in subsection 26(2) of the *Fair Work Act 2009*.

*law* means a law of the Commonwealth or of a State or Territory.

*office*, in relation to an employee association, means:

- (a) an office as defined in section 12 of the *Fair Work Act 2009*; or
- (b) an office within the ordinary meaning of that term.

*officer*, of an employee association, means a person who is, or was at any time:

- (a) the holder of an office in the association; or
- (b) an employee of the association; or
- (c) a delegate or other representative of the association.

*organisation* includes any of the following:

- (a) an employee association;
- (b) a corporate entity;
- (c) an association, whether incorporated or not.

*separate entity* means an entity that is, or was at any time:

- (a) a fund, organisation, account or other financial arrangement; and
- (b) established for, or purportedly for, an industrial purpose or the welfare of members of an employee association; and
- (c) a separate legal entity from any employee association;

whether or not the entity is, or has at any time been, covered by the financial reporting obligations to which an employee association is, or was at any time, subject under the *Fair Work (Registered Organisations) Act 2009*.

**A copy of the signed Letters Patent is available on the Commission's website:**

[www.tradeunionroyalcommission.gov.au](http://www.tradeunionroyalcommission.gov.au), or if you have no internet access, by contacting the Office of the Commission on 1800 221 245.





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### Tax Invoice

ABN:

AHPA (HSUA Vic No.3)  
Level 2  
102 Victoria Street  
CARLTON SOUTH VIC 3053

DATE: 29 October 2004

BILL NO: 172217  
OUR REF: 269505

#### Peter MacCallum Cancer Institute - Underpayments

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#### PROFESSIONAL FEES

To our professional fees of acting in this matter

Date	Author	Description	Units	Amount
02/04/03	TCB2	Conference with industrial staff of HSUA Victoria No.3 Branch (AHPA) to obtain instructions for advice on underpayments at Peter MacCallum Cancer Institute	12.00	240.00
07/04/03	TCB2	Review of materials to identify further instructions required before advice may be drafted	1.00	20.00
07/04/03	TCB2	Telephone attendance on AHPA office	1.00	20.00
07/04/03	TCB2	Email to Erryn Cresshull	1.00	20.00
08/04/03	TCB2	Telephone attendance on AHPA office; left message for Erryn C to return call	1.00	20.00
08/04/03	TCB2	Perusal of email received from Erryn Cresshull	1.00	20.00
15/04/03	TCB2	Downloading and printing relevant industrial instruments	4.00	80.00
24/04/03	TCB2	Telephone attendance on Erryn Cresshull	1.00	20.00
26/04/03	TCB2	Drafting letter of advice	29.00	580.00
<b>Total Fees</b>				<b>\$1,020.00</b>
<b>GST 10%</b>				<b>\$102.00</b>
<b>Total Fees Including GST</b>				<b>\$1,122.00</b>

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#### SUMMARY OF THIS TAX INVOICE

Total Professional Fees	1,020.00
GST on Fees	102.00

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**Professional Fees and Expenses Now Due****\$1,122.00**

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With Compliments,

Toby Borgeest  
Practice Group Leader  
**SLATER & GORDON**  
E. & O. E.

**TERMS:** 14 days

**INTEREST:** If this bill is unpaid for more than 30 days interest may be charged at the current Reserve Bank Cash Target plus 2%.

**TRUST MONEY:** If there is money in trust, this is a Notice of Withdrawal notifying you that we will withdraw money from our trust account in payment of this bill.

**NOTICE OF YOUR RIGHTS IN RELATION TO LEGAL COSTS:**

The following avenues are available to you if you are not happy with this bill -

Requesting an Itemised bill  
Discussing your concerns with us  
Having our costs assessed  
Applying to set aside our costs agreement  
Making a complaint to the Legal Services Commissioner

There may be other avenues available in your State or Territory (such as mediation). Time limits apply to the avenues for resolving costs disputes.

For more information about your rights, please read the fact sheet titled "Your right to challenge legal costs". You can ask us for a copy or obtain it from your local law society or law institute (or download it from their website).

## Payment Method

**Amount Due:** \$1,122.00  
**Bill No:** 172217  
**Our Reference:** 269505

Please choose one of the following methods of payment:

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### Cheque Payments

Please make your cheque payable to **Slater & Gordon Limited** and forward it to our office along with a copy of this payment slip.

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### Telephone or Internet Banking - BPAY



Contact your bank or financial institution to make this payment from your cheque, savings, debit, credit card or transaction account. More Info: [www.bpay.com.au](http://www.bpay.com.au)

**Bill Code:** 176412

**Reference Number:**

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### Electronic Funds Transfer / Direct Deposit

Electronic Funds Transfer or Direct Deposit payments can be made by paying the amount owing into the following bank account:

BSB: 033 340

Account Number: 150 866

Please ensure that the following reference **172217** is included in the description field if paying by EFT.

When paying by direct deposit please ask the teller to place our reference into the transaction field of the deposit slip.

It would further assist if you notified us once your payment has been made by emailing [payments@slatergordon.com.au](mailto:payments@slatergordon.com.au)




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### Credit Card Payments

**Ref No: 269505 Bill No: 172217**

Payment by any of the following credit cards is accepted subject to confirmation of the transaction by the Card Organisation. Please complete this payment slip and return it to our office.

Visa       Mastercard

Card No. \_\_\_\_\_

Expiry Date \_\_\_\_\_

Amount of Payment \$ \_\_\_\_\_

Cardholder's Name \_\_\_\_\_

Cardholder's Signature \_\_\_\_\_



Slater & Gordon Pty Ltd  
**Combined Ledger Card (without fees) for unbilled items**

Number 269505  
 Description Peter MacCallum Cancer Institute -  
 Underpayments

Type 7  
 Instructed 02 Apr 2003  
 Partner ID1  
 Author ID3

Client APHA AHPA (HSUA Vic No.3)  
 Level 2  
 102 Victoria Street

Date	Type	Refno	Description	Bill	Disbursements (inc tax)			Debtors (inc tax)			Trust		Balance Direction	From/To	Amount
					Sundries	GST	Anticipate	Disb	Debit	Credit	Debit	Credit			
1/03/2005	Receipt	30763	Slater & Gordon Pty Ltd Trust to Office Transfer	140550						1,122.00				0.00	
<b>Totals</b>								0.00		1,122.00		0.00			
									0.00		0.00				
											Total Trust Receipts			0.00	
<b>Balances</b>						0.00	0.00	0.00	0.00	0.00	1,122.00	0.00	0.00		

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