



Fair Work Australia

Process review of Fair Work
Australia's investigations into the
Health Services Union
CONFIDENTIAL

17 August 2012
This report contains 88 pages
15486513_1

Contents

1	Executive Summary	1
1.1	Introduction	1
1.2	Objectives and scope of this review	2
1.3	Approach	3
1.4	Principal findings	3
2	Background and Scope	7
2.1	Background	7
2.2	Objectives and scope of work	8
2.3	Scope exclusion	9
2.4	Limitations to the scope of work	10
2.5	Period under review	10
2.6	Purpose of this report	10
3	Approach and structure of this report	11
3.1	Approach to review the Fair Work Australia investigation process	11
3.2	Approach to review the integrity of the investigations	12
3.3	Structure of findings	14
4	Preliminary considerations	15
4.1	Scope and objectives of the investigations	15
4.2	Consideration of Fair Work Australia's investigative skills and resources	24
4.3	Fair Work Australia's consideration of the need to appoint external specialists	30
4.4	Reporting requirements	32
5	Investigation planning and management	34
5.1	Case management	34
5.2	Work plan development and implementation	38
5.3	Post investigation strategy	42
6	Gathering information	44
6.1	Sources of information and evidence	44
6.2	Protocols for the collection and retention of evidence	46
6.3	Identification of electronic information	48
6.4	Interviews	50
7	Analysis of information	53
7.1	Financial analysis	53
8	Investigation reports	57

8.1	Reporting	57
9	Communication	62
9.1	Internal and external communication	62
10	Integrity of the investigation process	66
10.1	Background	66
10.2	Interview with persons associated with the investigations	66
10.3	Review of electronic documentation	70
10.4	Correspondence with current and former Health Services Union officials	70
	Appendices	72
A	Appendix A – Scoping exercise work plan	72
B	Appendix B – Investigation assessment framework	78
B.1	Development of the investigation process framework and investigation assessment criteria	78
B.2	Reference material for the development of the investigations process framework and assessment criteria	78
C	Appendix C - Source and nature of documentation relied on for the purposes of this report	80
C.1	Documentation received from Fair Work Australia	80
C.2	Electronic information received from Fair Work Australia	81
C.3	Electronic information received from the Australian Government Solicitor	84

Disclaimers

Pursuant to the engagement contracts dated 20 March 2012 and 10 May 2012 KPMG has prepared this report for the purposes set out in section 2.6 and it is not to be used for any other purpose without prior written consent. Accordingly, KPMG accepts no responsibility in any way whatsoever for the use of this report for any purpose other than that for which it has been prepared.

No party, other than Fair Work Australia, may rely on this report. If you are a party other than Fair Work Australia, KPMG:

- owes you no duty (whether in contract, tort, under statute or otherwise) with respect to or in connection with this report or any part thereof; and
- will have no liability to you for any loss or damage suffered or costs incurred by you or any other person arising out of or in connection with the provision to you of this report or any part thereof, however any such loss or damage is caused including, but not limited to, as a result of negligence but not as a result of any fraud or dishonesty of KPMG.

If you are a party other than Fair Work Australia and you rely upon this report or any part thereof you do so entirely at your own risk.

KPMG has considered and relied upon information which is believed to be reliable, complete and not misleading. Nothing in this report should be taken to imply that KPMG has verified any information supplied or have in any way carried out an audit of any information supplied other than as expressly stated in this report. The statements and findings included in this report are made in good faith and in the belief that such statements and findings are not false or misleading. KPMG's findings are based solely on the information set out in this report.

KPMG reserves the right to amend any findings, if necessary, should any further information become available.

1 Executive Summary

1.1 Introduction

Fair Work Australia ('FWA') is Australia's workplace relations tribunal. FWA was created on 1 July 2009 following the enactment of the *Fair Work Act (Cth) 2009* and associated transitional legislation (including the *Fair Work (Registered Organisations) Act (Cth) 2009* ('RO Act')).

FWA has completed two investigations under section 331 of the RO Act relating to the Health Services Union ('the HSU'), the HSU National Office investigation ('National Office investigation') and the HSU Victoria No.1 Branch investigation ('Vic No.1 Branch investigation'). The National Office investigation was completed in March 2012 and the Vic No.1 Branch investigation was completed in December 2011.

Both investigations commenced as inquiries in 2009¹, and for ease of reference both the inquiry and investigation components of each matter are referred to in this report as the 'National Office matter' and the 'the Vic No. 1 Branch matter', respectively. Collectively they are referred to as 'the matters' or the 'HSU investigations'.

The following table summarises the timeline from the commencement to completion of the matters.

Table 1: Timeline for the completion of the matters

Matter	Status	Commencement	Completion	Approximate duration
National Office investigation	Inquiry	6 April 2009	26 March 2010	12 months
	Investigation	26 March 2010	28 March 2012	24 months
Vic No.1 Branch investigation	Inquiry	29 January 2009	27 April 2010	15 months
	Investigation	27 April 2010	23 December 2011	20 months

Source: HSU investigation reports

The matters were undertaken concurrently by the same Delegate² ('the Delegate') appointed by the then Acting General Manager³ of FWA on 13 July 2009⁴. The Delegate used the same investigation team, comprised of himself, the Lead Investigator⁵ and the Primary Legal Adviser⁶ ('the Investigation team').

¹ The inquiries were initiated by the former Industrial Registrar of the Australian Industrial Relations Commission ('AIRC'), under the provisions of the *Workplace Relations Act (Cth) 1996*, and transitioned to the General Manager under the provisions of the RO Act on 1 July 2009.

² The Delegate's title was the Director, Organisations, Research and Advice of FWA. Prior to 13 July 2009 he was an officer of the AIRC and was not the Delegate, as no such position existed under the WR Act. For ease of reference we refer to him as the Delegate throughout this report.

³ The Acting General Manger of FWA from 1 July 2009 to 25 July 2009.

⁴ Prior to this date, the Delegate was an employee of the AIRC.

⁵ The Lead Investigator's title was Team Member Tribunal Services and Organisations FWA.

⁶ The Primary Legal Adviser was a Senior Executive Lawyer of the Australian Government Solicitor.

KPMG was engaged to provide Forensic services to FWA in relation to the HSU investigations pursuant to separate engagement contracts, dated 20 March 2012 and 10 May 2012, to undertake Phase 1 and Phase 2 of this engagement, respectively, as detailed below.

Refer to the disclaimers set out at page iii of this report.

1.2 Objectives and scope of this review

The engagement was conducted in two phases, as follows:

Phase 1: Development of a work plan that sets out the procedures for Phase 2. The work plan is attached to this report at *Appendix A*.

Phase 2: Review of the FWA investigation process that was followed in relation to the HSU investigations to determine:

- a) Whether the HSU investigations have been conducted appropriately in terms of relevant investigation standards and operating procedures;
- b) Whether there are any opportunities for improvement to FWA's investigation procedures; and
- c) Whether the investigations have considered all reasonable lines of inquiry.

The scope of this review, as agreed with FWA in Phase 1, focused principally on the following aspects of the FWA investigation process:

- Reviewing the planning of the HSU investigations;
- Determining the appropriateness and sufficiency of the people resources applied to the HSU investigations, having regard to the skills and experience of these resources and the nature of the HSU investigations;
- Reviewing and assessing the overall quality of the HSU investigations files, particularly in relation to the gathering and analysis of information, and the preparation of the reports for the matters;
- Reviewing the HSU investigations case management systems and analysing the cause of any delays in the completion of the HSU investigations, including whether such delays could have been avoided;
- Considering the overall integrity of the HSU investigation process and whether there are any indications of potential interference; and
- Reviewing relevant internal and external communications including, for example, deviations from the investigation plans, and restrictions or limitations that may impact the completion of the investigation plans.

The scope of work for Phase 1 and Phase 2 was restricted to a review of the process followed by FWA in undertaking their investigation of the matters and specifically did not include the re-performance of any part of the HSU investigations or the evaluation of evidence presented in support of the any findings made in the HSU investigation reports.

The detailed procedures carried out during the review are set out in the work plan at **Appendix A**.

1.3 Approach

The approach to undertake this review included the following:

- The establishment of an investigation framework, against which the appropriateness of the FWA investigation process was assessed. The framework that was established consisted of the key attributes of an overall investigation process and aligned to those attributes, the various elements that form the detailed investigation process⁷. Further explanation on the methodology to develop the investigation process framework is set out at **Appendix B**;
- Thereafter, specific investigation assessment criteria, linked to the attributes of the investigation process framework, against which the appropriateness of the FWA investigation process could be considered, along with opportunities for improvements in that process⁸. The investigation assessment criteria are described in section 4.1 to section 9.1 of this report;
- Obtain and review relevant documents to identify the documented investigation process which relate to the investigation assessment criteria;
- Interview relevant current and former Australian Industrial Relations Commission ('AIRC') and FWA employees and contractors to obtain additional information relevant to the investigation assessment criteria; and
- Identify, to the extent possible within the scope of this work, whether the investigations had considered all reasonable lines of inquiry.

As this engagement specifically referred to the overall integrity of the investigation process and whether there are any indicators of potential interference, KPMG undertook specific inquiries to address that issue.

1.4 Principal findings

During this engagement the Lead investigator involved in the investigation of the matters emphasised that there was not a proactive enforcement culture at the AIRC, and subsequently FWA, at the time the investigations were undertaken - investigation work "*wasn't considered to be the main work we did*". Consequently, FWA is not experienced in the conduct of investigations, and has not previously had to deal with investigations which have generated as much public interest as the HSU investigations.

It is against this background that the principal findings from this review are set out, conscious that one of the primary objectives of this work was to identify opportunities for improvement to FWA's investigation procedures, and that to do this it is first necessary to understand the process under which the investigations undertaken by FWA have been conducted.

⁷ Refer to the work plan set out at **Appendix A**.

⁸ Further details on the methodology to develop the investigations process framework and assessment criteria is at **Appendix B**.

1.4.1 Whether the investigations have been conducted appropriately in terms of relevant investigation standards and operating procedures

Having reviewed the process followed by FWA to undertake the HSU investigations, KPMG is of the view that the process incorporated many of the investigation assessment criteria set out in this report, but was deficient in a number of key aspects.

This report includes 38 findings in relation to the conduct of the HSU investigations which are summarised as follows:

- FWA did not have and did not refer to any relevant investigation standards and procedures;
- There is a lack of adequate documentation setting out the investigation process followed by FWA;
- FWA did not implement an adequate investigation case management system or process, which resulted in deficiencies in the planning, management and execution of the HSU investigations;
- FWA did not have sufficient appropriately qualified and experienced resources involved in the conduct of the HSU investigations;
- FWA did not consider all potential sources of information, particularly electronic information, and did not appear to fully understand its rights to access all potentially relevant sources of information;
- FWA did not have protocols in place for the collection and retention of documents; and
- The security arrangements over documents were inadequate.

The findings referred to above almost certainly contributed to the time taken to complete the HSU investigations. The following factors may also have played a contributory role to the timeframe:

- The Delegate and the Lead Investigator had 'business as usual' responsibilities, which they continued to perform throughout the HSU investigations, thereby potentially reducing the amount of time they could devote to the HSU investigations;
- The Delegate's decision to remove resources from completing the Vic No. 1 Branch investigation so that there was more focus on completing the National Office investigation contributed to the report in relation to the Vic No.1 Branch taking eleven months to complete from the date at which the Lead Investigator provided it to the Delegate;
- The National Office matter could have been transitioned to an investigation sooner if more resources had been applied to the inquiry phase. With more resources applied to the analysis of information obtained, the conclusions reached by the Investigation team in deciding to move the inquiry to an investigation could have been reached at an earlier date;
- The former General Manager⁹ adopted the position that the progress of the investigations was the responsibility of the Delegate, which included ensuring the progression of the

⁹ The former General Manager of FWA from 27 July 2009 to 8 September 2011.

matters to completion, whereas the current General Manager¹⁰ took proactive steps after her appointment to ensure that the matters progressed in a timely fashion; and

- The analysis of credit card expenditure in the National Office investigation was conducted near the end of the investigation. This analysis could have been conducted at an earlier stage of the investigation, and may have led to the investigation being completed in a shorter timeframe, considering that alleged unauthorised credit card expenditure was a significant focus of this investigation.

The following aspects of the HSU investigations were conducted appropriately in relation to the investigation assessment criteria set out in this report:

- Interviews conducted by the Investigations team;
- The process for the preparation and completion of the National Office report; and
- There was a formal process in place to ensure the accuracy of public statements made regarding the status of the HSU investigations.

1.4.2 Whether there are any opportunities for improvement to Fair Work Australia's investigation process

This report identifies 31 opportunities for improvement to the FWA investigation process as set out in section 4 to section 9.

The key opportunity for improvement is for FWA to develop a formal set of procedures under which it conducts inquiries and investigations. The Australian Government Investigation Standards 2011 ('AGIS 2011') would be an appropriate and relevant minimum 'standard' from which these procedures could be developed. These procedures should also take into consideration the specific legislative framework under which FWA conducts its inquiries and investigations (the RO Act).

The development of these procedures should:

- Address the findings set out in this report;
- Be relevant in undertaking inquiries and investigations of any size or level of complexity; and
- Assist in ensuring future inquiries and investigations are conducted effectively and efficiently.

Once these procedures have been developed, formal training for those involved in inquiries and investigations should be conducted. FWA may need to recruit suitably qualified and experienced investigations specialists and/or put arrangements in place to have suitably qualified and experienced investigations specialists at its disposal.

¹⁰ The current General Manager of FWA from 9 September 2011 to present.

1.4.3 Whether the investigations have considered all reasonable lines of inquiry

Within the scope of work, KPMG identified additional sources of information which may have led to lines of inquiry that could have been followed. The additional lines of inquiry that could have been followed include the review of:

- HSU restored email accounts (including electronic calendars);
- Images of HSU computer hard drives;
- Images of relevant HSU smart phones and hand held devices;
- Restored backups of HSU network drives;
- The electronic calendars of persons considered to be the subject of investigations;
- Other electronic information which may not be apparent on hard copy documents such as:
 - dates and times of transactions occurring or being posted;
 - merchant details including locations; and
 - other identification information contained in electronic metadata (data identification properties).
- Documentation by specialist document examiners;
- Information obtained from relevant financial institutions; and
- Corporate intelligence inquiries.

However, without re-performing the HSU investigations, which is beyond the scope of this report, KPMG is unable to fully advise on all potential additional lines of inquiry in relation to the allegations which were the focus of the HSU investigations.

1.4.4 Considering the overall integrity of the investigation process and whether there are any indications of potential interference

Through the work undertaken KPMG did not identify any indications of potential interference in the HSU investigation process.

2 Background and Scope

2.1 Background

Fair Work Australia is Australia's workplace relations tribunal. FWA also has responsibilities relating to the regulation of registered organisations and their financial accountability. FWA is governed by, and operates under the RO Act in relation to these responsibilities. Prior to 1 July 2009, the functions of FWA were carried out by the AIRC in terms of the *Workplace Relations Act (Cth) 1996*.

A General Manager of FWA is empowered under section 330 of the RO Act to initiate inquiries in relation to possible contraventions of the RO Act. The General Manager is also empowered under section 331 of the RO Act to transition an inquiry to an investigation if he or she is satisfied that there are reasonable grounds for doing so. An investigation conducted under section 331 of the RO Act provides FWA with the ability to use coercive powers.

FWA has completed two investigations under section 331 of the RO Act relating to the Health Services Union, the National Office investigation and the Vic No.1 Branch investigation. The National Office investigation was completed in March 2012 and the Vic No.1 Branch investigation was completed in December 2011.

The matters were initiated by the former Industrial Registrar prior to 1 July 2009 under the provisions of the WR Act and were transitioned to the then Acting General Manager of FWA under the provisions of the RO Act on 1 July 2009. A General Manager has the authority to delegate these powers to a senior employee of FWA. The matters were conducted concurrently by the same Delegate¹¹ and his Investigation team. The Investigation team consisted of:

- The Delegate;
- The Lead Investigator; and
- The Primary Legal Adviser.

Other FWA employees and advisers assisted in the investigation of the matters; however, these three individuals were the primary investigation resources for the duration of the matters.

The following paragraphs set out a brief overview of the two matters.

Vic No. 1 Branch matter

The Vic No. 1 Branch matter arose from an article published in printed media on 18 December 2008, which detailed a number of allegations against the then President of the Branch in relation to possible breaches of fiduciary duty. The inquiry phase commenced on 29 January 2009 when the former Industrial Registrar wrote a letter to the then Secretary of the Vic No. 1 Branch, advising him that he was conducting an inquiry into the matter.

This inquiry became an investigation on 27 April 2010 and concluded with delivery of a report dated 23 December 2011 entitled:

¹¹The Delegate of the General Manager for the matters was FWA's Director, Organisations, Research and Advice. Prior to 13 July 2009 he was an employee of the AIRC. For ease of reference we refer to him as the Delegate throughout this report, recognising that he was not appointed Delegate until 13 July 2009.

'Report of the Delegate to the Acting General Manager of Fair Work Australia. Investigation into the Victoria No. 1 Branch of the Health Services Union under section 331 of the Fair Work (Registered Organisations) Act 2009'.

FWA released its reports detailing its findings in respect of the Vic No. 1 Branch investigation on 16 March 2012.

National Office matter

The National Office matter arose from a letter delivered anonymously to the public counter of the AIRC on 10 March 2009 which described possible irregularities in the financial accounts of the HSU.

KPMG was advised that the receipt of this letter by the AIRC was the event that caused the initiation of an inquiry into the HSU National Office on 6 April 2009. This inquiry was advanced to an investigation status on 26 March 2010 pursuant to section 331 of the RO Act and continued until the date the final report was issued by the Delegate to the General Manager on 28 March 2012 ('the National Office report'). The National Office report was entitled:

'Report of the Delegate to the General Manager of Fair Work Australia. Investigation into the National Office of the Health Services Union under section 331 of the Fair Work (Registered Organisations) Act 2009'.

FWA released its report detailing its findings in respect of the National Office investigation on 7 May 2012.

2.2 Objectives and scope of work

KPMG was engaged to provide Forensic services to FWA in relation to the matters in two phases of work. KPMG undertook the work in Phase 1 and Phase 2 pursuant to separate engagement contracts, dated 20 March 2012 and 10 May 2012, respectively. In considering the investigations, it was also necessary to consider the inquiries that preceded them to fully understand the investigation process.

2.2.1 Phase 1 - scoping exercise

Pursuant to the engagement contract dated 20 March 2012, KPMG was engaged to conduct a scoping exercise to develop a detailed work plan to guide a review of the process followed by FWA in relation to its HSU investigations, to be conducted in Phase 2. A copy of the Phase 1 work plan is set out at **Appendix A**.

Work during Phase 1 included:

- Liaising with relevant FWA staff to gain an understanding of the matters, reviewing available investigation reports, and gaining an understanding of the available information, evidence and exhibits; and
- Identifying the specific procedures required to undertake a review of the investigation process. In agreeing these procedures with FWA, KPMG notes that some of the procedures required it to consider information beyond that required to assess the investigation process itself, such as whether an external contractor represented value for money.

2.2.2 Phase 2 - review of the Fair Work Australia investigation process in relation to the Health Services investigations

Pursuant to the engagement contract dated 10 May 2012, KPMG was engaged to undertake the work set out in the Phase 1 work plan¹². The objectives of the review were to determine:

- a) Whether the HSU investigations have been conducted appropriately in terms of relevant investigation standards and operating procedures;
- b) Whether there are any opportunities for improvement to FWA's investigation procedures; and
- c) Whether the investigations have considered all reasonable lines of inquiry.

In considering the above, the procedures as set out in the work plan included but were not necessarily limited to:

- Reviewing the investigation plans and comparing the plans to any relevant investigation standards and operating procedures;
- Determining the appropriateness of the investigation team's skills, and considering whether sufficient people resources were applied to the investigations;
- Reviewing and assessing the overall quality of the investigation files;
- Reviewing the investigation case management systems and analysing the cause of any delays in the completion of the investigations, and whether such delays could have been avoided;
- Considering the overall integrity of the investigations process and whether there are any indications of potential interference; and
- Reviewing relevant internal and external communications including, for example, deviations from the investigations plans, and restrictions or limitations that may impact the completion of the investigations plans.

The scope of work and procedures performed have focussed on analysing documents and conducting interviews to understand the processes followed by the Investigation team to undertake the matters, and how those processes were planned, documented and managed on an ongoing basis.

Section 3 of this report sets out the approach in conducting this engagement. A list of the documentation that was relied on for the purpose of this report is set out at **Appendix C**.

2.3 Scope exclusion

The scope of work for Phase 1 and Phase 2 was restricted to a review of the process followed by FWA in undertaking their investigation of the matters and specifically did not include the evaluation of evidence presented in support of the any findings made in the investigation reports.

¹² Refer to the detailed work plan set out at **Appendix A**.

2.4 Limitations to the scope of work

KPMG attempted to identify potentially relevant email messages and documents by applying key-word search terms to the data received and relied on for the purposes of this report and the review was limited to those electronic documents identified through these searches. The review has not included an examination of the telephone or mobile telephone call records.

Findings are based on the review of documentation and information obtained during the course of this review. The approach sought to gather all relevant documents relating to the investigation process; however, due to the manner in which the investigations were documented, it is not possible to confirm that all relevant documents and information that may exist have been received, and consequently considered.

KPMG requested that FWA provide access to the following electronic data for the FWA Vice President based in Melbourne ('the Vice President'):

- An extract of the current FWA email account;
- Restored FWA archived email accounts as at December 2011, December 2010, December 2009, and December 2008;
- Extracts of the personal workspace hosted on the FWA network;
- Restored FWA archived personal workspaces as at December 2011, December 2010 and December 2009;
- FWA computers allocated to the Vice President; and
- Any FWA smart phones and handheld devices allocated to the Vice President.

KPMG has not been provided access to the FWA computers or any smart phones and handheld devices allocated to the Vice President.

2.5 Period under review

The period under review is from the date of the first inquiry to the date the Delegate provided the investigation reports to the General Manager ('the period of review'). Accordingly, the period of review for the Vic No.1 matter is from 29 January 2009 to 23 December 2011, and the period of review for the National Office matter is from 10 March 2009 to 28 March 2012.

2.6 Purpose of this report

The purpose of this report is to set out findings in respect of the review of FWA's investigation process and make recommendations for the improvement of the investigation process. It is understood that the General Manager may use this report to guide process improvement. This report is intended for the General Manager and KPMG understands that a copy of the report may be released publicly, either in whole or in part, by FWA.

Refer to the disclaimers set out at page iii of this report.

3 Approach and structure of this report

3.1 Approach to review the Fair Work Australia investigation process

In executing the agreed work plan, the approach to this review was to:

- Establish an investigation framework, against which the appropriateness of the FWA investigation process could be assessed. The framework that has been established consists of the key attributes of an overall investigation process and aligned to those attributes, the various elements that form the detailed investigation process¹³.
- Identify specific assessment criteria within the assessment framework against which the appropriateness of the investigation process could be considered along with opportunities for improvement in that process ('the investigation assessment criteria'). Further explanation on the methodology to develop the investigation process framework is set out at **Appendix B**;
- Obtain and review relevant documents to identify the documented investigation process which related to the investigation assessment criteria;
- Interview former AIRC, current or former FWA employees and contractors associated with the investigations to obtain additional information relevant to the investigation assessment criteria; and
- Consider whether the investigation process was designed to address all reasonable lines of inquiry.

This engagement required KPMG to identify whether the investigations had considered all reasonable lines of inquiry. Within the scope of work KPMG was able to identify additional lines of inquiry that could have been followed, however, without re-performing the investigations, KPMG is unable to provide advice on all potential additional lines of inquiry.

This engagement specifically referred to the overall integrity of the investigation process and whether there are any indicators of potential interference. Specific avenues of inquiry to address that issue were conducted.

3.1.1 Procedures performed to review the Fair Work Australia investigation process

KPMG undertook a review of the electronic data received from FWA and from the Australian Government Solicitor ('AGS') by applying key-word search terms to identify and categorise documentation relevant to investigation assessment criteria for¹⁴:

- The establishment of appropriate scope and objectives for the matters;
- Consideration of appropriate skills and resources for the matters;
- Consideration of the need to engage external specialists by the Investigation team;
- The use of case management protocols and the development of appropriate work plans;

¹³ Refer to the work plan set out at **Appendix A**.

¹⁴ Refer to investigation assessment criteria included in section 4.1 to section 9.1 of this report

- Consideration of post investigation strategies;
- Assessment of the sources of information;
- Consideration of protocols for the collection and retention of evidence;
- Consideration of the need to review electronic information;
- Preparation for and conduct of interviews by the Investigation team;
- Analysis of information;
- Communication protocols; and
- Preparation of investigation reports.

A high-level examination of the FWA reports in relation to the National Office investigation and the Vic No.1 Branch investigation was conducted for the purpose of obtaining information relevant to the investigation assessment criteria.

A review of the FWA investigation files was conducted and the House of Representatives Proof Statement of the Member for Dobell's speech dated Monday 21 May 2012 was reviewed.

Interviews were conducted with the following individuals to obtain further information relating to the process followed by the Investigation team:

- The Delegate;
- The Lead Investigator;
- The former General Manager;
- The former Industrial Registrar;
- The Primary Legal Adviser; and
- The External Accountant¹⁵.

3.2 Approach to review the integrity of the investigations

KPMG is conscious that potential interference in the conduct of any investigation could occur in various ways and through different means. Therefore, it was not practicable within the terms of this review to consider all possible sources of potential interference. The approach has focused on establishing indicators of potential interference by those in the Investigation team or those close to it, either acting on their own volition or at the behest of another party.

This work included conducting interviews with the Delegate, the Lead Investigator, the General Manager, the former General Manager, the External Accountant and the former Industrial Registrar to understand:

- The protocols put in place to mitigate the risk that parties may seek to interfere with the investigation process; and
- Whether they had knowledge of incidences of interference or potential interference.

¹⁵ The External Accountant is an accountant from Enmark Business Advisers.

An examination of the email and other documentation received from FWA, which included current and restored email accounts for the Delegate, the Lead Investigator, the General Manager, the former General Manager, the former Industrial Registrar¹⁶ and their personal assistants was conducted. The review involved the application of key-word search terms to identify any email messages or documentation that may highlight indicators of potential interference. The key-word search terms were developed from:

- An overall understanding of the matters;
- A review of media and other public records relating to the matters, including for example, transcripts of Senate Estimates Hearings and the House of Representatives Proof Statement of the Member for Dobell's speech dated Monday 21 May 2012; and
- An examination of relevant documentation identified through a review of the FWA investigation process and transcripts of interviews that FWA conducted.

In addition, letters were written to the following current or former members of the HSU and a former auditor of the HSU, inviting the provision of any information that may relate to knowledge of potential interference in the investigation process¹⁷:

- Acting National President, Health Services Union;
- Branch Assistant Secretary, West Australia Branch of the Health Services Union;
- The former National Secretary of the Health Services Union;
- The National Trustee, Western Australian Branch, Health Services Union;
- The former Auditor of the National Health Union;
- The National Trustee, NSW Branch, Health Services Union;
- The Secretary, South Australia Branch, Health Services Union;
- The National Secretary of the Health Services Union;
- National Assistant Secretary, Victorian No. 2 Branch, Health Services Union;
- The President, Health Services Union;
- The Senior National Assistant Secretary, East Branch, Health Services Union;
- The Branch Assistant Secretary, Victorian No. 2 Branch, Health Services Union;
- Acting General Secretary, East Branch, Health Services Union;
- Secretary, Victoria No. 4 Branch Health Services Union;
- Branch Assistant Secretary, Tasmania No. 1 Branch Health Services Union; and
- Honorary Secretary, Tasmania No. 2 Branch Health Services.

¹⁶ Refer to *Appendix C* for details of electronic data relied on for the purposes of this report.

¹⁷ The current or former members of the HSU and a former HSU auditor were nominated by the General Manager.

3.3 Structure of findings

The findings in relation to the process followed by the Investigation team, set out from Section 4 to Section 9 of this report, are structured to follow attributes of the investigation assessment framework as follows:

- Section 4 - Preliminary considerations;
- Section 5 - Investigation planning and management;
- Section 6 - Gathering information;
- Section 7 - Analysis of information;
- Section 8 - Investigation reports; and
- Section 9 - Communication.

KPMG's findings are presented in relation to both the National Office matter and the Vic No.1 Branch matter simultaneously to avoid the potential unnecessary duplication of the findings under each of the attributes described above. The findings in relation to the overall integrity of the investigation process are presented in section 10 of this report.

4 Preliminary considerations

4.1 Scope and objectives of the investigations

The purpose of this section is to set out findings from the review of:

- The process followed by the former Industrial Registrar and the Delegate when setting the scope and objectives at the commencement of each inquiry; and
- Whether consideration was given to the continued applicability of the scope and objectives during the course of the inquiries and subsequent investigations.

The analysis included the review of documents and interviews with relevant persons to understand the:

- Process followed to set and agree the initial scope and objectives of each inquiry;
- Process undertaken by the former Industrial Registrar to identify relevant procedural manuals or guidance governing inquiries and investigations undertaken by the AIRC;
- Role played by former employees of the AIRC in the initiation of these inquiries;
- Process followed to allow effective transition of the inquiries from the AIRC to FWA; and
- Process followed to progress the matters to an investigation stage following the completion of the inquiries.

4.1.1 Investigation assessment criteria

- The scope and objectives of every investigation should be determined at the commencement of an investigation in consultation with identified stakeholders;
- In determining the scope and objectives, investigators should make a preliminary assessment of all available information and documentation to ensure that allegations and/or the terms of reference for the investigation are complete;
- Investigators should consider the extent of known allegations, sources of information (electronic or otherwise), and the time period that the scope is to encompass;
- Where possible, the scope should document any known witnesses or persons that might be the subject of the investigation;
- The scope and objectives should set out details of the procedures anticipated to complete the work;
- The scope and objectives should provide an estimate of time to complete the work;
- The scope and objectives should be clearly documented; and
- The appropriate investigation standards should be identified.

4.1.2 The process to set and agree the initial scope and objectives

A single document which comprehensively sets out the scope and objectives for either matter, at the inquiry or investigation stage was not identified.

As a specific scope and objectives document could not be identified it was necessary to look at the process undertaken at the commencement of the inquiries by the former Industrial Registrar, the transfer of the inquiries to FWA, and the transition of the inquiries to investigations in order to determine the extent to which the scope and objectives were appropriately considered.

4.1.2.1 National Office matter

The Delegate, Lead Investigator and former Industrial Registrar stated that the initial scope of the National Office inquiry was informed by a letter dated 11 December 2008 that was left anonymously at the AIRC's counter on 10 March 2009.

The letter referred to a request to investigate possible irregularities in the expenditure of the HSU National Office for the period 16 August 2002 to 31 December 2008, and requested that Slater and Gordon lawyers (to whom the letter was addressed) engage a forensic accounting firm to examine the documents that were to be provided by the author of the letter.

The Lead Investigator has informed KPMG that:

- She reviewed the letter and developed a table setting out the topics and themes in the letter and which rule or section of the WR Act had potentially been contravened;
- She examined the evidence that had been provided and evaluated what further evidence might be available; and
- That the document was provided to the Primary Legal Adviser for an initial scoping meeting held on 24 April 2009.

The Primary Legal Adviser has informed KPMG that the discussion in the meeting on 24 April 2009 considered the available information that the AIRC had at that point and the possible contraventions that might be considered.

The Primary Legal Adviser also stated that subsequent to that meeting, written legal advice was provided to the former Industrial Registrar on 27 May 2009 setting out the AGS's view on the allegations and potential next steps.

The Delegate has informed us that the scope of the subsequent investigation was defined by reference to the WR Act, namely potential breaches or contraventions of:

- Part 3 of Chapter 8 of Schedule 1 to the Workplace Relations Act 1996;*
- The reporting guidelines made under by the then Industrial Registrar on 12 October 2004 under Part 3 of Chapter 8 of Schedule 1 to the Workplace Relations Act 1996;*
- The rules of the Health Services Union relating to its finances or financial administration; or;*
- Section 237 and sections 285-287 of Schedule 1 to the Workplace Relations Act 1996.*

The National Office report¹⁸ sets out the four points (a) to (d) above as being the scope for the investigation. The Delegate states in the report, that a letter was sent on 26 March 2010 to the Secretary of the HSU National Office¹⁹ advising her that the Delegate had commenced an investigation under section 331 of the WR Act. The letter also stated that the investigation would examine whether:

- *“officers of the National Office exercised their powers and discharged their duties with reasonable care and diligence, in good faith for the best interests of the organisation and for a proper purpose during this period;*
- *officers or employees of the National Office have improperly used their position to gain an advantage for themselves or someone else, or to cause detriment to the organisation during this period;*
- *transactions of the National Office of the Health Services Union made during this period were properly authorised;*
- *proper financial records were kept of such transactions by the National Office,*
- *proper financial, expenditure, donation and audit reports were approved by the National Office and filed with the Australian Industrial Registry or Fair work Australia (as appropriate in respect of the 2002/03 to 2008/09 financial years.*

I am also investigating whether the Auditor of the National Office of the Health Services Union has complied with his obligations under section 256 and 257 of Part 3 of Chapter 8 of Schedule 1 to the Workplace Relations Act 1996 in relation to his audit reports in respect of the 2002/03 Financial Year through to the 2006/07 Financial Year.”

4.1.2.2 Vic No. 1 Branch matter

The Delegate stated that the initial scope of the Vic No. 1 Branch matter was developed as a result of an article which appeared in the Herald Sun on 18 December 2008.

KPMG has been advised by the Lead Investigator that the process to set the scope of the Vic No. 1 Branch matter was the same as for the National Office matter in that the Lead Investigator prepared a table of potential contraventions which were then discussed with the AGS on 24 April 2009. The AGS provided formal written advice on 20 May 2009, setting out whether there were reasonable grounds to progress to an investigation and potential next steps.

KPMG has examined the Vic No.1 Branch report and established that, under the section entitled “Scope of this inquiry and investigation” the inquiry, and subsequent investigation, considered:

- Matters considered by the Pitcher Partners Report²⁰ including allegations of unauthorised payments and unauthorised use of credit cards and various other transactions for specific individuals;

¹⁸ Report of the Delegate to the General Manager of Fair Work Australia - investigation into the National Office of the Health Services Union under section 331 of the Fair Work (Registered Organisations) Act 2009.

¹⁹ The National Secretary of the HSU from 2007 to present.

²⁰ Pitcher Partners were engaged by solicitors Macpherson & Kelley on behalf of the Victoria No.1 Branch Committee of Management in early January 2009. We have not seen the engagement letter, however we understand from the Victoria No.1 Branch report that Pitcher Partners were engaged to examine financial and other records of the Branch and report on any irregularities on the financial affairs of the Branch since 1 January 2005, including but not

- Allegations of unauthorised funds transfers by a specific individual;
- Whether proper financial records were kept by the Vic No. 1 Branch;
- Possible contravention of the Schedule 1 of the WR Act ('the RAO Schedule'); and
- Whether audit reports produced by the auditors appointed by the Vic No. 1 Branch met the requirements of the RAO Schedule.

4.1.3 The process followed to transition the inquiries from the AIRC to FWA

4.1.3.1 Background

On the 1 July 2009 the provisions of the WR Act were superseded by the RO Act. From this time the majority of the functions previously carried out by the AIRC and the former Industrial Registrar were transferred to FWA and the position of the General Manager respectively.

When FWA came into existence, the responsibility for the matters initially rested with the then Acting General Manager who held that position from 1 July 2009 to 25 July 2009. Responsibility for the matters was delegated to the Delegate on 13 July 2009. This delegation was subsequently renewed on 10 August 2009 by the then General Manager who took over from the Acting General Manager on 27 July 2009.

4.1.3.2 The former Industrial Registrar's communication relating to the transition of the inquiries to investigation

An email sent by the former Industrial Registrar to the Delegate on 30 June 2009 relating to the matters has been identified. An extract of the body of the email is included below.

"As discussed by teleconference this morning, this is my view about the state of play and next actions required in relation to the two HSU inquiries (i.e. the national organisation and the Victorian No.1 Branch). This note is not intended to be prescriptive about the scope, detail and timing of matters that deserve consideration and action, but it is intended to be clear about certain actions in my capacity as Industrial Registrar.

1. *The Australian Government Solicitor has in writing and orally, advised that reasonable grounds exist to proceed from an inquiry phase to an investigation phase, both in relation to the national organisation and the Victorian No. 1 Branch*
 - a) *I concur that the two investigations should proceed.*
 - b) *Accordingly, the AIRC team should proceed to arrange the following:*
 - i. *A broad strategic plan for conducting the two investigations (which as for the inquiries, should proceed as two separate, but related investigations) should be prepared*
 - ii. *The principle targets for investigation should be clearly identified (and inter alia I would expect to include the national and Victorian No. 1 Branch auditor, the members (past and present) of the two Committees of Management, and any other office bearers and staff that have*

limited to dealings between the business Urban Giftware and the Branch. The Pitcher Partners report was dated 26 March 2009 and was provided to the AIRC by the former Secretary of the Victoria No.1 Branch on 1 April 2009.

- involvement, particularly in ignoring, facilitating, or obscuring (for example) mis-use of funds, conflicts of interest, or the integrity of organisation rules, delegated authorities and governance arrangements. Such other office bearers and staff are likely inter alia to include the Victorian No. 1 Branch Committee Member whose company provided office supplies to the Branch, the Branch Secretary of the Victorian No.1 Branch, the previous National Secretary and the (past and present) bookkeepers for the national office and the Victorian No.1 Branch)*
- iii. The forms of notification to parties of the instigation of the two investigations should be drawn up and issued*
 - iv. Instructions to other (non-AIRC) members of the investigation team, including the forensic accountant, the AGS and any other investigator should be drawn up and issued*
 - v. Sources of facts and documentation to support the investigations should be identified and actions to co-opt documentation from original and other sources taken (inter alia such sources should include Pitcher Partners and BDO Nelson)*
- 2. There should be a clear plan to undertake and complete a thorough assessment of the materials provided arising from the inquiries to date, including in relation to the impact on the scope of the investigations*
 - 3. There should be a clear plan and actions arising from the outcome of the inquiries to date*
 - a. Including inter alia any actions and referrals to other authorities (e.g. to the police because of identified malfeasance, or to professional licencing bodies because of inadequate auditing professional standards) which can occur on the strength of discoveries from inquiries which do not require further investigation*
 - b. None of this should preclude concluding matters of detail of the inquiries, noting that the HSU National Secretary last week requested an interview as part of the inquiries phase and prima facie, there are no obvious grounds to deny that request*
 - i. Accordingly, a request for interview, as was made to the auditor, should be drawn up and issued.*

I am happy to discuss these directions, but otherwise anticipate that the actions identified will be implemented expeditiously”.

The former Industrial Registrar has stated that:

- He sent the email to the Delegate on 30 June 2009, which he intended would act as a “direction” to transition both inquiries into investigations at that point;
- He wished to leave a clear direction of the status of the inquiries as at 30 June 2009 (the final day of his authority as Industrial Registrar) and what the next steps should be in transitioning the inquiries to investigation;
- He took the decision to issue the instruction to progress the matters to investigation as he believed that there were sufficient grounds to do so on the abject governance failures, which he believed to be the substance of each matter; and

- It was his belief that regulators have a duty to their regulated population to investigate quickly in order to minimise the disruption to the entity being investigated.

The former Industrial Registrar further stated that his recollection of his intention in making the statement: “*referrals to other authorities (e.g. to the police because of identified malfeasance, or to professional licencing bodies because of inadequate auditing professional standards)*”, was that, while he had not seen anything at that point that suggested a requirement to refer either matter to the police, he wanted to ensure that the Investigation team drew up a plan for referring such matters to the appropriate authorities if and when it became apparent during the course of either investigation.

KPMG has identified a document entitled “*Subject Briefing – Health Services Union – National Office and Victorian No 1 Branch*” (‘the Subject Briefing’). This document was recovered from the personal workspace of the Delegate on FWA’s network. From the reference in the document to an interview to be conducted on “this Friday” and “Friday 24 July” and its location within the Delegate’s personal workspace, it appears this document would have been written by the Delegate on or around 22 July 2009, although the document itself is undated and unsigned.

The Subject Briefing refers to the 30 June 2009 email written by the former Industrial Registrar (and includes it as an attachment) and states that cooperation in both inquiries to that date had been forthcoming and that, given complications could arise from inquiring into some contraventions while investigating others, up until that date it had not been considered necessary to proceed to the investigation stage for either matter.

The Subject Briefing sets out that following an interview on 24 July 2009, the investigation would be in a better position to determine next steps. The Subject Briefing states that:

“While there is no specific timeline for any decision making, making a decision within the next fortnight as to how to proceed would be beneficial”. The recommendation in the Subject Briefing is that the “*General Manager is asked to note the outcome of the inquiries to date. At this time, the General Manager is also being asked (in general terms) to allow the inquiries to proceed rather than formally commence an investigation.*”

During an interview with the former General Manager, he stated that he does not recall discussing the scope of the inquiries with the former Industrial Registrar in July 2009 and that he does not recall being shown the former Industrial Registrar’s email to the Delegate in July 2009.

The former Industrial Registrar responded to our question during the interview whether the 30 June 2009 email was sent to the then Acting General Manager and the former General Manager by stating that:

- “*There was no need to, because my statutory responsibility was to give a direction to my senior subordinate. That was my responsibility – that is what I did”.*
- He had a meeting with the former General Manager at some time during July 2009 at which he believes, although cannot recall conclusively, that he would have mentioned the status of both inquiries and the contents of the email he sent to the Delegate on 30 June 2009; and
- In his view, at the time, the inquiries were one of the “most important issues” he was dealing with as Industrial Registrar, and as such it was “inconceivable” that he would not have mentioned the 30 June email to the former General Manager.

The former General Manager has informed KPMG that he does not recall seeing the Subject Briefing and KPMG has not seen evidence of the Subject Briefing being emailed to the former General Manager. We cannot, however, conclude whether or not the document was communicated to him in some way.

At the time of interviewing the Delegate and Lead Investigator KPMG was not aware of the existence of the Subject Briefing, however, when interviewed, neither the Delegate nor the Lead Investigator informed us as to whether or not the Subject Briefing had been provided to the former General Manager as a handover or briefing document. KPMG has not had the opportunity to reinterview the Delegate in that regard.

4.1.4 The process to progress the matters to investigation stage following the completion of the inquiries

The National Office inquiry commenced on 6 April 2009 and became an investigation on 26 March 2010. The Vic No.1 Branch inquiry commenced on 29 January 2009 and became an investigation on 27 April 2010.

The Lead Investigator and the Delegate have advised that in the Vic No. 1 Branch matter, there was no requirement to progress the matter to an investigation until all the evidence had been collected.

The Lead Investigator has further stated that all individuals required to attend interviews did so voluntarily and that no coercive powers under section 331 were required to obtain documentary evidence. As such, the Lead Investigator has informed KPMG that the requirement to move the inquiry to an investigation in the Vic No. 1 Branch matter only arose when the Investigation team realised that in order for the General Manager to take action, the report the Investigation team were planning to produce needed to be the product of an investigation under section 331 of the RO Act.

The Lead Investigator has stated that in the National Office matter, one of the factors behind the decision to progress the matter to investigation was the fact that one of the witnesses the Investigation team wished to interview declined an interview in September 2009, which meant that investigative powers of compulsion were used to require the individual to attend an interview. This interview subsequently took place in April 2010. Another factor, according to the Lead Investigator, was that the Investigation team wished to issue notices requiring individuals and or entities to provide documents and this compulsive power was only available to the Delegate if a formal investigation had been launched.

The Lead Investigator has also stated that, in her view, a way in which the National Office matter could have been transitioned to an investigation sooner was if more resources had been applied to the inquiry. The Lead Investigator further stated that, in her view, with more resources analysing the information obtained, the conclusions reached by the Investigation team in deciding to move the inquiry to an investigation would have been reached at an earlier date.

4.1.5 The process undertaken to identify the applicability of investigation standards or manuals for the HSU matters

Through the review of the documentation and interviews with the Investigation team KPMG sought to determine whether the matters were conducted with reference to the provisions of relevant procedural manuals or guidance governing inquiries and investigations.

The former Industrial Registrar stated that the Investigation team did not follow a process to identify relevant procedural manuals or guidance governing inquiries and investigations. He advised, however, that he had established an investigation team that included a legal representative who, in his opinion, had appropriate investigation experience.

The Lead Investigator and the Delegate have also confirmed that no specific process was followed to seek to identify whether either matter should be conducted with reference to any relevant procedural manuals.

The Delegate and Lead Investigator have also both confirmed that the AIRC and subsequently FWA did not have any such manuals governing the process for conducting inquiries and/or investigations.

4.1.6 Summary of findings

Findings in relation to the process followed by FWA to set and agree the initial scope and objectives of the matters are set out below:

Finding 1: There was no specific document setting out the scope and objectives of each inquiry and investigation which fully addressed the relevant investigation assessment criteria.

Finding 2: The Investigation team did have aspects of a scope and objectives set out in various documents and described by them in their interviews. The scope and objectives included the information provided in the source documents (including the letter to Slater and Gordon, the newspaper article and the Pitcher Partners report). There was some reconsideration of scope and objectives throughout the inquiries and investigations.

In relation to the scope and objectives it is not clear to us whether they were complete, were reviewed for relevance during the course of inquiry or investigation or what process was followed to ensure that they were complete.

Further the scope and objectives did not:

- Fully consider the extent of any known witnesses or persons who were the subject of the investigations;
- Set out the detailed procedures anticipated to complete the work;
or
- Provide an estimate of the time to complete the work.

Finding 3: No specific process was followed to seek to identify whether the inquiries or investigations should be conducted under any relevant procedural manuals.

Finding 4: There was a difference of opinion as to the course of action to be taken in relation to the progression of these matters from inquiry to investigation. The former Industrial Registrar was of the view that the matters should be transitioned to investigations as at 30 June 2009 and completed by the end of 2009, but we could not identify a detailed scope and objectives document, supplemented by a work plan, which would support his view of that completion date.

The Delegate, however, did not agree that reasonable grounds for progression to investigation existed as at 30 June 2009 and did not determine how long the inquiry or investigation of each matter might take. As such the Delegate did not formalise a scope and objective document with a completion date in mind.

KPMG did not identify anything in the inquiry or investigation process which indicated that these matters would have progressed more quickly had they been converted from an inquiry to an investigation at an earlier stage.

Having said that, the purpose of properly establishing the scope and objectives of an inquiry/investigation, along with having other critical aspects of the investigation process in place (such as planning and other elements discussed in this report), is to ensure that the investigation is properly focussed, properly resourced, properly planned and executed, accorded the appropriate priority and aimed at achieving completion by a specified date.

This comprehensive investigation process was not present in these matters. KPMG are unable to identify, with any certainty, whether or not the lack of a comprehensive investigation process contributed to the time taken to complete these matters. As a comprehensive investigation process was not present in these matters, it is probable that this ultimately contributed to the time taken to complete the matters.

4.1.7 Opportunities for improvement

Recommendations for improving the investigation process in relation to setting the scope and objectives are set out below.

Recommendation 1: The Australian Government Investigation Standards (AGIS) 2011 provide the framework under which procedures for conducting investigations can be developed. Using the AGIS framework as a minimum standard, FWA should develop its own set of investigation procedures to meet its investigative requirements. These procedures should take into consideration the specific legislative framework

under which FWA conducts its inquiries and investigations (the RO Act).

Recommendation 2: FWA should ensure that the scope and objectives of inquiries and investigations are agreed at the outset with all stakeholders and documented. The documented scope and objectives should address all those requirements set out in the investigation assessment criteria under section 4.1.1. For example, in determining the scope of an investigation into allegations of financial impropriety, investigators should consider and document:

- All known allegations and whether other additional allegations can be established through the review of available documentation (for example bank statements, electronic data and other financial records);
- All known, or possible sources of information to support the investigation;
- To the extent possible, the full extent of transactions to be considered in the investigation; and
- The period of review, or the time parameters that the investigation is to cover, taking the nature of the allegations into consideration.

4.2 Consideration of Fair Work Australia's investigative skills and resources

The purpose of this section is to set out findings in relation to the review of the appropriateness of the Investigation team's skills, and whether sufficient people resources were applied to the matters.

The analysis included the review of documents and interviews with relevant persons to understand:

- The process followed by FWA to appoint the Delegate;
- The process followed by the Delegate to resource the Investigation team;
- The scope of FWA's engagement with the AGS; and
- The process followed by the Delegate to ensure that those involved in the inquiries/investigations had the necessary investigation skills and experience.

4.2.1 Investigation assessment criteria

- | |
|--|
| <ul style="list-style-type: none">• An assessment of the necessary skills and resources is conducted at the commencement of investigations, as well as when there are any critical changes to the investigation; |
|--|

- Skills and resources for investigations vary depending on the matter. In many cases, proficiency within specific industries and/or technical skills is required; and
- The structure of the investigation team, including reporting lines, communication tools and the need for internal or external specialists, should be considered during the preliminary stages of an investigation.

4.2.2 The process followed by FWA to consider the required investigation skills and resources

KPMG could not identify a documented process under which FWA considered the investigation skills and resources required for each inquiry and investigation.

4.2.3 The process followed by FWA to appoint the Delegate

The Delegate for the National Office inquiry was first appointed by FWA on 13 July 2009. The delegation was signed by the then Acting General Manager of FWA. This delegation was subsequently renewed when the former General Manager took up his role on 27 July 2009 with the renewed delegation being signed on 10 August 2009.

The former General Manager of FWA has informed KPMG that the Delegate was appointed due to his experience with the HSU, his Senior Executive Service ('SES') status, the fact that he was already involved in the inquiries and the former General Manager's impression that he was well respected within the organisation.

KPMG has not seen documentary evidence of a process followed to consider the appointment of the Delegate in 2009, although documentation indicating that the General Manager considered the continuing appointment of the Delegate in September 2011 has been reviewed.

Furthermore examination of the Strategy Meeting²¹ minutes dated 14 September 2011 reveals that the General Manager stated that the delegation would not be revoked and that as General Manager, she would not interfere with the running of the HSU investigations.

There was a difference in oversight approach by the respective General Managers. The former General Manager has stated that as he had delegated the power to the Delegate, it would have been inappropriate for him to become involved in managing the matters.

From the information provided by the Delegate, the Lead Investigator and the Primary Legal Adviser, there was an increase in the level of oversight by the General Manager, in that from 14 September 2011 onwards, shortly after her appointment, the General Manager took action to assist the Delegate in finalising both investigations by approving the use of additional resources from the AGS and relieving the Delegate of his other responsibilities to focus on the completion of the investigations.

²¹ The Strategy Meetings were initiated by the former General Manager in March 2011 as a weekly meeting attended by the former General Manager, the Delegate, the Lead Investigator and the Primary Legal Adviser. These meetings are discussed in more detail in Section 9. The General Manager continued these meetings with the same attendees upon her appointment in September 2011.

4.2.4 The process followed by the Delegate to resource the Investigation team

KPMG has not seen documents which describe the process followed by the Delegate or the former Industrial Registrar to identify the number of people and relevant skills and experience required to resource the Investigation team.

From the interviews conducted and the documents reviewed by KPMG, KPMG understand that the matters were primarily resourced as set out in the following table:

Table 2: the Investigation team

Title	HSU matter	Start	End
Delegate	Both	January 2009	March 2012
Lead Investigator	Both	March 2009	March 2012
Primary Legal Adviser	Both	April 2009	March 2012

Source: Interviews with the Delegate, Lead Investigator and Primary Legal Adviser

- The Lead Investigator - Acting Director, Organisations, Research and Advice of FWA. The Delegate has informed us that the Lead Investigator was appointed due to her legal background, understanding of the HSU and the high regard the Delegate had for the standard of her work;
- Primary Legal Adviser from the AGS. The former Industrial Registrar has informed us that the Primary Legal Adviser was appointed due to his previous investigation experience and his knowledge of administrative law inside workplace relations, as it relates to, industrially registered organisations. The Delegate has stated that the Primary Legal Adviser was already known to the Delegate through his work on other matters for the AIRC. The Primary Legal Adviser also stated that he first became involved in the matters on 24 April 2009.

The Investigation team was also assisted by the following individuals in 2009 and early 2010.

- The External Accountant was contracted to the AIRC on a retainer basis. It is understood that the External Accountant was already retained by the AIRC to provide general accounting advice in respect of registered organisations. The former Industrial Registrar has stated that he asked the External Accountant to become involved in the matters to provide technical accounting advice on the issues raised in relation to the matters, especially as there were potential contraventions in respect of the role of the HSU's auditor. It is understood that the External Accountant's involvement in the matters commenced in April 2009 and ended in May 2010; and
- A team member of the Organisations, Research and Advice department of FWA. It is understood that this individual assisted with these matters to do some of the initial drafting of letters and also assisted in the review of MYOB data²². It is understood that this individual's involvement in the matters commenced in January 2009 and ended in December 2009.

²² MYOB is the accounting software package which was used by the HSU National Office.

The former employees of the AIRC who were involved in the initiation of the HSU inquiries became employees of FWA on 1 July 2009. These include the Delegate, the Lead Investigator and the team member from Organisations, Research and Advice.

The Primary Legal Adviser has advised that the Investigation team was under-resourced, and that the Lead Investigator should have been provided with a resource to assist with the administrative aspects of the inquiries and investigations. The Lead Investigator has also informed us that there were delays in producing indexes for files of documents received, due to her not having administrative support to assist her.

During the course of this engagement KPMG has been informed by the Lead Investigator, former Industrial Registrar and the Delegate, that conducting inquiries and investigations was not an ordinary type of activity undertaken by the AIRC as part of its regulatory duties.

The Delegate stated that:

- As far as he was aware, prior to these matters the AIRC had previously conducted only one investigation in 1988, which lasted for 18 months and led to a caution being issued by the Commonwealth Director of Public Prosecutions.

The Lead Investigator stated that:

- Prior enforcement culture at the AIRC effectively amounted to one of writing letters to unions in breach of the WR Act to request compliance, as opposed to taking a more aggressive enforcement approach of requiring action to be taken by the union; and
- Staff within the Organisations, Research and Advice Department of FWA were not, in her view, aware of the regulatory tools at their disposal and that the culture was to write,
“Friendly reminder letters before something is due. If they haven’t lodged it on time, we send them a slightly – slightly assertive letter, telling them that they failed to lodge something and once something is lodged we then examine it and make informal inquiries.”

The former Industrial Registrar and Lead Investigator have also stated that it is within this cultural context, therefore, that the inquiries were initiated and that the *“size, scale and complexity of the HSU matters, particularly the National Office matter”*, was not something that the AIRC (and subsequently FWA) had undertaken before.

4.2.5 The scope of FWA’s engagement with the AGS

KPMG has not seen a formal engagement contract between the AIRC/FWA and the AGS, which defines the scope of AGS’s role in assisting with these matters.

It is understood that prior to his appointment as Delegate, the Delegate had previously used the Primary Legal Adviser on other unrelated matters and, for this reason, the Delegate invited the Primary Legal Adviser to an initial meeting with the AIRC on 24 April 2009 to discuss the matters.

The Primary Legal Adviser has stated that his initial understanding prior to that meeting was that it would be to discuss potentially seconding a junior lawyer from AGS to the AIRC to assist FWA with the matters. The Primary Legal Adviser has advised that it became apparent during the course of the meeting that senior experienced legal assistance would be required and, for

that reason, he became the principal or primary AGS resource assigned to assist the AIRC with legal advice on the matters.

A review of the invoices submitted by AGS and from discussions with the Primary Legal Adviser reveals that the role of the AGS throughout these matters was essentially twofold:

- To provide legal advice on legal procedural matters; and
- To provide strategic advice in relation to the conduct of the matters, including the preparation of investigation plans.

The Delegate and Primary Legal Adviser have advised that the scope of the engagement with AGS increased after the Strategy Meeting on 14 September 2011, from which time further AGS resources were provided to complete the analysis and draft the memoranda, which were used in the National Office investigation to summarise the findings of the investigation.

The Strategy Meeting minutes dated 22 September 2011 record *“that AGS has sourced two additional AGS lawyers to work on the National Office matter (in addition to the Primary Legal Adviser) and an AGS lawyer who is 0.6 FTE and already working on the matter”*.

The Lead Investigator and Primary Legal Adviser have stated that this was in response to a request by the General Manager on 14 September 2011, to prepare project plans for the completion of the matters by the end of 2011.

4.2.6 Summary of findings

Findings in relation to the process followed by FWA to adequately resource the investigations with people with the appropriate investigation skills are set out below:

Finding 5: The consideration as to the appropriate skills and resources required to undertake the matters is not documented.

Finding 6: From interviews with relevant staff, it is understood that the structure of the Investigation team and the need for external specialists was considered during the preliminary stages of each matter. KPMG was advised that these considerations included the complexity of the matters, the potential specialist skills required and the capability of those individuals identified to assist with the matters.

Finding 7: The Certificate IV in Government (Investigation) is a qualification relevant to employees who have a regulatory function in the federal government sector. It is the formal investigation qualification referred to in both the Commonwealth Fraud Control Guidelines and AGIS and is issued under the Australian Qualifications Framework.

In determining the relevant skills and qualifications for these matters consideration should have been given to the need to have a resource with that formal investigation qualification and experience in complex investigations, given that matters of the *“size, scale and, complexity of the HSU matters, particularly the National Office matter”*, were not something that the AIRC had previously

undertaken.

- Finding 8: There was no formal engagement contract between the AIRC/FWA and the AGS, which defined the scope of AGS's role in assisting with these matters. The Lead Investigator and the Delegate essentially appear to have viewed the Primary Legal Adviser as a member of the Investigation team; however this was not a contracted or full time role.
- Finding 9: Both the Delegate and the Lead Investigator had business as usual responsibilities, which they continued to perform whilst conducting the investigations, although it is noted that the current General Manager relieved the Delegate of his business as usual responsibilities from September 2011 onwards to allow him to focus on the completion of the matters.

4.2.7 Opportunities for improvement

Recommendations for improvement are set out below:

- Recommendation 3: As part of the development of investigation procedures recommended above, a requirement should be included to ensure that consideration is given in all investigations to identifying and assessing the skills, experience and quantity of resources required. This process should be revisited on a regular basis throughout the life of an investigation, and should be documented.
- Recommendation 4: FWA should ensure that it has staff available that have the Certificate IV in Government (Investigation) qualification and experience in conducting complex investigations. These staff may be permanent employees of FWA or resources FWA is able to access through panel or other arrangements.
- Recommendation 5: The structure of the investigation team, including responsibilities and reporting lines, should also be documented during the preliminary stages of the investigation. This includes contracted staff.
- Recommendation 6: For large, complex or time critical matters, FWA's investigation resourcing assessment process should include the requirement to consider whether staff allocated to complex matters should have their business as usual commitments removed from them.

4.3 Fair Work Australia's consideration of the need to appoint external specialists

The purpose of this section is to set out findings in relation to the review of the appointment of external specialists to assist with the matters and whether sufficient external resources were applied.

The analysis included the review of documents and interviews with relevant persons to understand:

- The process followed by the Delegate to consider the need for external specialists to be used during the matters;
- The process followed by the Delegate to appoint external specialists (where applicable); and
- The process followed by the Delegate to ensure the quality/value for money of services provided by any external specialists.

4.3.1 Investigation assessment criteria

- Skills and resources for investigations vary depending on the project. In many cases, proficiency within specific industries and/or technical skills is required;
- The structure of the investigation team, including reporting lines, communication tools and the need for internal or external specialists, should be considered during the preliminary stages of an investigation; and
- When the work of an external specialist or subcontractor is used, evidence should be obtained concerning that party's reputation for competence.

4.3.2 The process followed by the Delegate to consider and appoint external specialists

KPMG could not identify a documented process under which the Delegate considered the need for external specialists to be appointed to assist with either matter.

The following external specialists were used during the investigation of the matters:

- The Primary Legal Adviser from the AGS;
- An accountant from Enmark Business Advisers;
- PKF, an accounting firm; and
- Corrs Chambers Westgarth, a law firm.

The process to appoint the AGS is set out above. The process to appoint the External Accountant to assist with the matters was, we understand, informal given that the External Accountant was already contracted to the AIRC.

The External Accountant has advised that the scope of the services he would provide to FWA was documented in his contract, which was on a retainer basis. The Delegate has stated that one of the reasons for using the External Accountant on these matters was because he was one of a "*few accountants nationally who knew about registered organisations and reporting issues*". The External Accountant has advised that the retainer did not specifically refer to his role in

respect of these matters, however, he was able to assist in the matters as he had experience in conducting investigations having previously led an investigation into a trade union in 1989.

It is understood that PKF provided some accounting advice to the Lead Investigator. The Lead Investigator has stated that this advice was requested due to the External Accountant no longer being contracted to FWA.

4.3.3 The process followed by the Delegate to ensure the quality/value for money of services provided by any external specialists

The process for ensuring the quality of external specialists (the Primary Legal Adviser and the External Accountant) is set out above. In relation to the process for ensuring value for money, KPMG has been informed that the Lead Investigator would monitor the extent of the services provided by AGS and the External Accountant. KPMG has seen correspondence from the Lead Investigator in which she requested that the External Accountant provide more detail on invoices.

4.3.4 Summary of findings

Findings in relation to the process followed by FWA to consider the need for external specialists with appropriate skills and resources to assist with the inquiries/investigations are set out below:

Finding 10: The consideration as to the appropriate external skills and resources required to support the inquiries and investigations was not documented.

Finding 11: The need for external skills and resources was recognised by both the Industrial Registrar and the Delegate, which resulted in the appointment of the Primary Legal Adviser and the External Accountant. However, given that FWA did not have a Certificate IV qualified experienced investigator or other specialist investigation resources (for example computer forensic technology specialists, document examiners, corporate intelligence providers), the process undertaken did not identify the full extent of investigation support potentially required.

Finding 12: In appointing the external resources engaged FWA did consider the quality of the external specialists and monitored their value for money.

4.3.5 Opportunities for improvement

Recommendations for improvement are set out below:

Recommendation 7: The requirement or otherwise for external specialists should be considered during the formal scoping phase and on an ongoing basis during the investigation and the process should be formally

documented.

Recommendation 8: FWA should appoint, or have access to, a panel of skilled external investigation resources to provide FWA with a number of options in obtaining additional resources to assist with investigations.

Recommendation 9: As part of the development of investigation procedures recommended above, a requirement should be introduced for all investigations to consider the need for external assistance from specialists such as:

- Certificate IV Government (Investigation) qualified and experienced investigators;
- Document examiners (including handwriting specialists);
- Computer forensic technology specialists; and
- Corporate intelligence specialists (background checks or research on companies and individuals).

4.4 Reporting requirements

The purpose of this section is to set out findings in relation to the Investigation team's consideration of reporting requirements during the planning of the matters.

The analysis included the review of documents and interviews with relevant persons to understand the process followed by the Investigation team to plan for and deliver on the reporting requirements.

4.4.1 Investigation assessment criteria

- The format of the report is an important first step in the report preparation process and it should be agreed early in the process of an investigation;
- It is important to identify the audience of any report, the needs of the selected audience, and the level of complexity required;
- It is important to consider the intended use of the report and design the report to meet that requirement; and
- Where a brief of evidence is required, the investigator must ensure that it is well organised to assist the prosecution. Investigators should have a written procedure for the preparation of briefs of evidence.

4.4.2 The initial consideration of reporting requirements in respect of the HSU investigations, including the potential recipients of any reports

It is understood that under the RO Act, it is only the General Manager who can initiate civil proceedings and refer a matter to the Commonwealth Director of Public Prosecutions ('CDPP')

in relation to those reported as having committed contraventions and that therefore the General Manager would be the expected recipient of any report.

KPMG has been advised by the Primary Legal Adviser that the Investigation team were aware that the investigations could result in a referral to the CDPP in relation to potential criminal proceedings, but they did not consider that a brief of evidence would be required, in addition to an investigation report, should a referral be made.

4.4.3 Summary of findings

Findings in relation to the initial consideration given by FWA to reporting requirements, including the potential recipients of any report are set out below.

Finding 13: No consideration was given to the potential need to prepare a brief of evidence at the commencement of the HSU investigations. As a result it is understood that the CDPP was initially unable to progress any potentially criminal matters raised in the report(s).

4.4.4 Opportunity for improvement

A recommendation for improvement is set out below:

Recommendation 10: As part of the development of investigation procedures recommended above, FWA should ensure that a procedure is included that requires the investigation team to consider the potential recipients of the investigation report, as well as the potential that a brief of evidence may be required, during the investigation planning stage.

5 Investigation planning and management

5.1 Case management

The purpose of this section is to set out findings in relation to the review of the Investigation team's consideration of the case management processes.

5.1.1 Investigation assessment criteria

Case management is a particular model of project management with objectives relating to quality, time and cost. As opposed to having a pre-determined fixed outcome from project management, case management allows for flexibility and a variety of valid outcomes.

There are a number of elements that comprise an investigation case management system including:

- Planning;
- Identification of work streams and tasks;
- Allocation of responsibilities;
- Tracking investigation progress;
- Recording critical decisions;
- Recording electronically, or in written form, on a suitable investigations management system using case notes, chronologies or running sheets; and
- Regularly reviewing the investigation plan to ensure its purpose and objectives are being met.

Through sound case management, the case manager should be able to:

- Better understand the current case status, progress, options for future activity and the likely outcomes; and
- Ensure each step in the investigation process is then implemented based on full knowledge of the current situation and having considered the alternatives, to help ensure the efficient and effective conduct of the investigation. This approach should reduce the likelihood of serious errors of judgment, or omission.

To this end, characteristics of professional case management include:

- Decisions focused on achieving the specific outcomes;
- Investigation to be performed objectively with clear and concise directions;
- Break-up of investigative tasks into distinct work streams;
- Investigations are subject to the realities of challenges with resourcing and available information;
- The investigation process is open to administrative review;

- The investigation management system is flexible; and
- Communication is regular, clear and unambiguous.

5.1.2 The Fair Work Australia case management system

KPMG could not identify that FWA implemented a formal and documented case management system which met the assessment criteria for an investigation case management as set out above.

5.1.3 The planning and case management process followed by the Delegate to mitigate the risk of delays to the investigations

KPMG has been specifically requested to review the planning and case management process followed by the Delegate to mitigate the risk of delays to the investigations.

The Delegate has informed KPMG that:

- At the initiation of the National Office inquiry, no process was put in place to mitigate the risk of delays to the investigations and no consideration was given to a potential end date for the inquiry or subsequent investigation; and
- The first occasion a potential end date for the National Office investigation was considered was in February 2011 when it was discussed by the Delegate with the former General Manager.

It is noted that the Delegate stated at Senate Estimates on 30 May 2011 his “aim *has always been to do this quickly as possible. At this stage I would be suggesting that the latter half of this year would be the completion date.*”

In terms of planning documents, it is noted that the investigation plans provided by AGS did not include a reference to a timeframe or end date for either matter.

5.1.4 Consideration of case management files to determine any delays in the completion of the investigations and if so, whether these delays could have been avoided

KPMG has been specifically requested to review the case management files to determine any delays in the completion of the investigations and if so, whether these delays could have been avoided.

The Delegate has informed KPMG that:

- His concern throughout the inquiry and investigation phases of the National Office matter was to ensure that the investigation was conducted in a thorough manner and that the overall quality of the investigation did not suffer; and
- A report on the National Office investigation could have been written after one year of investigation, however it would not have been as complete as the National Office report dated 28 March 2012, as by 28 March 2012 the information received from Fairfax Media had been analysed and incorporated into the findings.

As set out above, FWA did not operate an investigation case management system for either matter.

In respect of the National Office matter:

- The first time an end date was considered for the National Office matter was in February 2011, when an end of 2011 date was assigned;
- The first time a project plan was put in place for completing the National Office matter by the end of 2011 was in September 2011;
- It became apparent in November 2011 that the end of December 2011 deadline was likely to be missed due to the analysis of the information taking longer than had been anticipated when the project plan was drawn up in September 2011; and
- This was confirmed by the current General Manager at Senate Estimates on 15 February 2012 when she stated that *"It took longer than anticipated to complete the letters setting out the possible findings of contraventions"*.

In respect of the Vic No. 1 Branch matter:

- The initial draft of the Vic No. 1 Branch report was written by the Lead Investigator between 24 April 2010 and 26 April 2010;
- The Primary Legal Adviser reviewed a draft of the report on 30 June 2010;
- Notices requiring the production of documents were sent to two individuals on 22 June 2010 and 23 July 2010. The documents requested were provided to FWA on 6 July 2010 and 17 August 2010 respectively;
- Subsequent to the receipt of this information, letters setting out proposed findings against the four subjects of the investigation were sent out between 14 October 2010 and 17 December 2010. Only one response to the letters was received by FWA and this was received on 10 December 2010;
- The draft Vic No.1 Branch report and draft letters of contravention were first provided to the former General Manager on 28 July 2011, who provided them to Corrs Chambers Westgarth on that day for commentary;
- The Lead Investigator informed KPMG that the last date she worked on the draft Vic No.1 Branch report, before it was issued by the Delegate to the General Manager in July 2011, was in January 2011. There is, therefore, a period of approximately six months when the draft Vic No.1 Branch report was with the Delegate before it was provided to the General Manager; and
- The final Vic No.1 Branch report was issued by the Delegate to the General Manager of FWA on 23 December 2011. There is, therefore, a period of approximately five months when the draft Vic No.1 Branch report was being finalised by the Delegate.

From the information provided above, it appears that from the point at which the Lead Investigator finished working on the Vic No.1 Branch report, it took a further eleven months for the report to be completed. In respect of the delay apparent in this timeline, the Delegate has stated that the delay could have been avoided and that the work to finish the Vic No. 1 Branch investigation could have been completed sooner, however, he took the decision to remove the

Lead Investigator and the Primary Legal Adviser from the day to day work on completing the Vic No. 1 Branch investigation due to the fact that there was more focus on completing the National Office matter. The Delegate also informed us that the issues in the Victoria No. 1 Branch report had already been ventilated in open court and as such, he did not believe that the level of public interest in the final report would be high.

5.1.5 Summary of findings

Findings in relation to the case management processes followed by the Delegate and the Investigation team are set out below.

Finding 14: There was no formal and documented investigation case management system which met the investigation assessment criteria set out in 5.1.1 above.

Finding 15: The purpose of having an investigation case management system is to ensure that the investigation is properly focussed, properly resourced, properly planned and executed, accorded the appropriate priority and aimed at achieving completion by a specified date.

KPMG are unable to identify, with any certainty, whether or not the case management process followed by the Delegate mitigated the risk of delays to these matters. As a comprehensive investigation case management system was not present in these matters, it is probable that it ultimately contributed to the time taken to complete these matters.

5.1.6 Opportunities for improvement

Recommendations for improvement are set out below.

Recommendation 11: As part of the development of investigation procedures recommended above, FWA should introduce an investigation case management system for all investigations to ensure that investigations are properly established, managed and executed within agreed timeframes.

Recommendation 12: FWA should ensure that the investigation case management system is implemented at the outset of the investigation and addresses all the requirements set out in the investigation assessment criteria in Section 5.1.1 above.

Recommendation 13: FWA should incorporate a process to review draft investigation reports in a timely manner to mitigate the risk of delays in finalising investigations.

5.2 Work plan development and implementation

The purpose of this section is to set out findings in relation to the investigation planning processes followed by the Delegate and the Investigation team, to understand how the investigation plan was developed and updated through the life of the investigation and how it was ensured that all activities considered in the investigation plans had been completed.

The analysis included the review of documents and interviews with relevant persons to understand:

- Whether comprehensive documented investigation plans were developed at the outset of the matters;
- The process followed by the Delegate to plan the matters;
- Whether the investigation plans meet required investigation standards and/or operating procedures;
- How any changes to planned investigation work, including potential delays in the process, were agreed and recorded;
- The process followed by the Delegate to ensure that all procedures detailed within the investigation plans had been completed; and
- To understand whether the investigation plans were being executed as agreed.

5.2.1 Investigation assessment criteria

Each investigation should commence with an overall planning process which should result in a written investigation plan. This plan should be referred to and updated during the course of the investigation.

Investigation plans should:

- Summarise the nature of the investigation and the background to it;
- Outline objectives of the investigation, potential contraventions or conduct to be investigated, scope of investigation, possible outcomes from investigation;
- Detail the activities planned and the objectives of those activities;
- Identify the detailed procedures required to complete the planned activities;
- Identify and manage risks, including necessary knowledge and skills required for the completion of the planned activity;
- Identify possible inquiries, sources and methods to be utilised to obtain relevant information and/or evidence as appropriate;
- Identify available and/or required resources;
- Outline work phases, timelines and milestones; and

- Establish the structure of the investigation team, including reporting lines, communication tools, and identify needs for specialist assistance from internal or external experts (IT, accountants, lawyers, subject matter experts etc.).

5.2.2 The process followed by the Delegate to plan the investigations

KPMG could not identify a dedicated planning document which comprehensively sets out the investigation plans for each matter.

However, KPMG has identified some documents in different forms that relate to planning at various stages during the course of the investigations that were prepared by the Investigation team including the AGS. KPMG has been informed, however, that these documents are not investigation plans that were referred to and updated throughout the life of each matter. The table below sets out details of the documents prepared by the Delegate and/or or the Lead Investigator which have been identified in email correspondence reviewed.

Table 3: FWA investigation planning documents

Date of document	Content	Description	Prepared by
23 April 2009	<i>Vic No 1 Matrix 23 Apr 09 – Health Services Union of Australia – Vic No 1 Branch - Examination of Matters Potentially Requiring Investigation.</i>	Matrix setting out the alleged behaviour, the year of the behaviour, the provision (RAO Schedule, Reporting Guideline, or Rule) that has potentially been breached, source of information/relevant documentation, and comments upon 'reasonableness'.	AIRC (Lead Investigator)
23 April 2009	<i>Fed Matrix 23 Apr 09 – Health Services Union of Australia – Federal - Examination of Matters Potentially Requiring Investigation.</i>	Matrix setting out the alleged behaviour, the year of the behaviour, the provision (RAO Schedule, Reporting Guidelines, or Rule) that has potentially been breached, source of information/relevant documentation, and comments upon 'reasonableness'.	AIRC (Lead Investigator)
15 September 2011	<i>Project Plan for completion of HSU National Office Investigation; Project Plan for completion of HSU Vic No 1 Branch Investigation</i>	Tables showing tasks to be completed for completion of matters (essentially for drafting of memoranda and provision of letters of contravention and reports to the Acting General Manager of FWA). Also shows resources required for each matter from both FWA and AGS. Produced as an action from HSU Strategy Meeting 14 September 2011.	FWA (Lead Investigator and the Delegate)

Source: Documentation received from FWA²³

5.2.3 How any changes to planned investigation work, including potential delays in the process, were agreed and recorded

KPMG has not seen evidence that the Investigation team made a record of how any changes to planned investigation work, including potential delays in the process, were recorded and managed.

The Lead Investigator and Primary Legal Adviser have stated that changes to planned investigation work would be discussed with the Delegate, and the Delegate would make a decision.

The Lead Investigator has advised that such decisions would not be routinely recorded, as the Investigation team was small and decisions were known to all members as they would be present in meetings.

5.2.4 The process followed by the Delegate to ensure that all procedures detailed within the investigation plan had been completed

The planning documents prepared by the AGS detail tasks to be completed and/or steps to be taken, however, KPMG has not seen evidence of a process being followed by the Delegate to ensure that all procedures within an investigation plan were completed.

KPMG is, however, aware of the following procedures being performed on the National Office investigation to assist in ensuring that all documentary evidence collected had been reviewed and assessed:

- The import of all documents considered relevant into an AGS database;
- The coding of all documents as being relevant to one or more issues;
- The drafting of memoranda summarising the findings on each issue;
- The drafting of letters of contravention based on the memoranda; and
- The drafting of the investigation report based on the letters of contravention and responses from the recipients of the letters of contravention.

It is noted that this process was not followed for the Vic No.1 Branch report. The AGS database for the Vic No.1 Branch matter was created to house all relevant documents in respect of that matter; however it is understood that this was created in 2012, subsequent to the finalisation of the Vic No.1 Branch report. As such, FWA are not able to readily demonstrate that documents obtained and imported into the Vic No.1 Branch document database were all considered and linked to issues that were reported in the Vic No.1 Branch investigation report.

5.2.5 Summary of findings

Findings in relation to the investigation planning processes followed by the Delegate and the Investigation team are set out below.

²³ Refer to *Appendix C*

- Finding 16: There was no specific document setting out the investigation plans for each matter which fully addressed the relevant investigation assessment criteria.
- Finding 17: The Investigation team did undertake aspects of investigation planning throughout the inquiry and investigation process which address some aspects of the investigation assessment criteria. However, the planning documents created were not sufficient to be considered comprehensive investigation plans and lacked particular detail, including:
- The nature of the investigation and the background to it;
 - The detail of the activities planned and the objectives of those activities;
 - The detailed procedures required to complete the planned activities;
 - The identification and management of risks, including necessary knowledge and skills required for the completion of the planned activities; and
 - The identification of available and/or required resources.
- Finding 18: The investigation planning documents that were created were not reviewed and updated in the light of evidence identified as the inquiries and investigations proceeded. As such:
- No record was made of how any potential delays to the investigations were managed;
 - Changes to planned investigation work were not recorded; and
 - There was no process followed to ensure that all procedures within a work plan had been completed.
- Finding 19: Some relevant procedures were undertaken in the National Office matter but were not undertaken in the Vic No.1 Branch matter, reflecting a lack of consistent planning.

5.2.6 Opportunities for improvement

Recommendations for improvement are set out below:

Recommendation 14: As part of the development of investigation procedures recommended above, a requirement should be introduced for all investigations to be properly planned and documented at the commencement of the investigation and continuously reviewed for relevance and updated as necessary throughout the conduct of the investigation.

Recommendation 15: FWA should ensure that investigation plans are developed and documented at the outset of investigations and address all the

requirements set out in the investigation assessment criteria in Section 5.2.1 above.

Recommendation 16: Decisions that relate to changes to the planned investigation work, potential delays or any other matters that impact on the investigation (referred to as “Critical Decisions” in the investigation process), should be clearly recorded.

5.3 Post investigation strategy

The purpose of this section is to set out findings in relation to the primary steps taken by the General Manager following the receipt of each investigation report.

The analysis included the review of documents and interviews with relevant persons to identify the main decisions taken by the General Manager following the receipt of the investigation reports from the Delegate.

The table below summarises the primary steps taken by the General Manager following the receipt of the final Victoria No.1 Branch report on 23 December 2011.

Table 4: Victoria No 1 Branch

Date	Action
23/12/2011	Vic No. 1 Branch report completed.
2/03/2012	Consideration by General Manager of FWA investigation into Vic No.1 Branch completed.
8/03/2012	Notice of contraventions sent to HSU East Branch, three former officials of the branch and to another individual.
16/03/2012	Vic No. 1 Branch report tabled in Educations, Employment and Workplace Relations Senate Estimates in conjunction with General Manager’s opening statement.
23/05/2012	Originating Application and Statement of Claim submitted to the Federal Court of Australia’s Victoria District Registry by AGS on behalf of FWA as the applicant.

Source: General Manager’s administrative files: HSU General Part 2 - January 2012 - present

The table below summarises the primary steps taken by the General Manager following the receipt of the final National Office report on 28 March 2012.

Table 5: National Office

Date	Action
28/03/2012	National Office report completed.
2/04/2012	National Office investigation report provided to the CDPP.
4/04/2012	Response back from CDPP stating the CDPP is not an investigation agency.

Date	Action
27/04/2012	General Manager engages a legal firm to provide advice relating to the investigation report of the Delegate to the General Manager.
30/04/2012	The legal firm responds to the General Manager with their assessment of FWA's findings from the investigation into the HSU National Office.
4/05/2012	Notice of actions letter issued to the HSU National Office.
4/05/2012	Notice of contraventions letters issued to HSU National Secretary, HSU former National Secretary, the former HSU auditor and the former National President of the HSU.
4/05/2012	Report of FWA's investigation into the National Office of the HSU provided to the Chair of Senate Standing Committee on Education, Employment and Workplace Relations.
4/05/2012	General Manager letter to Acting Commander of Fraud and Cybercrime Squad, NSW Police, offering support within the powers of the General Manager.
4/05/2012	General Manager letter to Acting Assistant Commissioner Crime, Victoria Police, offering support within the powers of the General Manager.
23/05/2012	General Manager instructs a legal firm to initiate proceedings in relation to the outcome of the HSU National Office investigation.

Source: General Manager's administrative files

KPMG does not provide any specific findings in relation to the steps taken by the General Manager following the receipt of each investigation report or the post investigation strategy in general.

6 Gathering information

6.1 Sources of information and evidence

The purpose of this section is set out KPMG's understanding of the process followed by the Investigation team to identify potential sources of information and evidence.

The analysis included the review of documents and interviews with relevant persons to understand the process followed by the Investigation team to identify and gather information relevant to the matters.

6.1.1 Investigation assessment criteria

- All potential witnesses and subjects of investigation should be identified at the outset and should be updated as the investigation progresses;
- Witnesses should be interviewed as soon as appropriate in accordance with the investigation plan;
- All specific documentary evidence should be identified at the outset and updated as the investigation progresses; and
- All relevant documentation should be provided to the investigation teams in a timely manner.

6.1.2 The process followed to identify potential sources of information and evidence

National Office matter

KPMG has identified that as part of the investigation planning process, relevant sources of documentary evidence and potential witnesses were identified. These sources were first documented around 4 June 2009 and there were a number of updates, with the last being undertaken in February 2010, as far as can be ascertained.

Through the interviews conducted with the Lead Investigator, the Delegate and the Primary Legal Adviser, KPMG was informed that the primary sources of information in the National Office matter were:

- The HSU National Office, primarily through the National Secretary;
- Material obtained from Fairfax media under cover of an affidavit;
- Interviews with relevant individuals; and
- Internal background or corporate intelligence inquiries.

It is understood that ongoing information requests were submitted to the HSU National Office during the life of the investigation, which were generated as a result of reviewing interview transcripts and identifying documents referred to which were not, at that time, in the possession of the Investigation team. In investigating these matters, the Investigation team have stated that FWA did not have any legal power to require third parties to produce documents. As such, any

requests for information required by the Investigation team to third parties were required to be made through the HSU National Office.

The Lead Investigator, the Delegate and the Primary Legal Adviser have confirmed that, other than the initial consideration of available information mentioned in the original planning documents referred to in Section 5.2.2 above, the process to identify further sources of information was largely iterative, based on the results of the review of documentation and information gathered during interviews.

KPMG has seen correspondence from the Investigation team in June 2010 which discusses whether obtaining credit card statement information directly from the issuer was an option and whether this was something that FWA would be able to request. The correspondence indicates that the view of the Investigation team was that this was something that they could reasonably ask the HSU National Office to obtain on their behalf. This is indicative of the level of uncertainty around the nature of an investigative step the Investigation team could have followed.

A major source of information that was used in the National Office investigation was information obtained from Fairfax Media on 6 June 2011. It is understood that this was information that Fairfax Media had prepared for the defence of defamation proceedings, which had been commenced by the former National Secretary of the HSU.

Vic No.1 Branch matter

KPMG has identified that as part of the investigation planning process for the Vic No.1 Branch matter, relevant sources of documentary evidence and potential witnesses were identified. These sources were first documented around 4 June 2009 and there were a number of updates, with the last being undertaken around 22 June 2009, as far as can be ascertained.

Through the interviews conducted with the Lead Investigator, the Delegate and the Primary Legal Adviser, KPMG was informed that the primary sources of information in the Vic No. 1 Branch matter were:

- The Pitcher Partners report, and associated supporting documentation as was in Pitcher Partner's possession, provided by Minter Ellison;
- Information provided by the Vic No.1 Branch;
- Documents provided by the subjects of the investigation at the request of AIRC/FWA; and
- Interviews with relevant individuals.

The Lead Investigator, the Delegate and the Primary Legal Adviser have confirmed that, other than the initial consideration of available information mentioned in the original planning documents referred to in Section 5.2.2 above, the process to identify further sources of information was largely iterative, based on the results of the review of documentation and information gathered during interviews.

The Investigation team's consideration of electronic evidence is set out separately at Section 6.3.2 below.

6.1.3 Summary of findings

Findings in relation to the process followed to identify potential sources of information and evidence are set out below.

Finding 20: Some relevant sources of documentary evidence and potential witnesses were identified and documented during the inquiries. However, not all potential sources of information were identified, for example:

- Relevant financial institutions and telephone companies (via the HSU); and
- Email accounts and other digital documents.

Furthermore, whilst it appears that the Investigation team continued to identify sources of information, they were not formally documented.

Finding 21: There are indications of uncertainty within the Investigation team as to what sources of information were potentially available to them and whether or not they could reasonably have accessed those sources of information. This uncertainty also indicates that the appointment of a suitably qualified and experienced investigator may have proved beneficial.

6.1.4 Opportunity for improvement

A recommendation for improvement is set out below.

Recommendation 17: As part of the development of investigation procedures recommended above, a requirement should be introduced for all investigations to properly identify and document potential sources of evidence at the outset of, and be continuously updated throughout, the investigation.

6.2 Protocols for the collection and retention of evidence

The purpose of this section is to set out findings in relation the protocols put in place during the inquiries and investigations governing the collection and retention of evidence.

The analysis included the review of documents and interviews with relevant persons to understand the protocols in place, during the inquiries and investigations, for the collection and retention of evidence.

6.2.1 Investigation assessment criteria

- Documentation received should be referenced to a central document or exhibit log to ensure control over the origin, integrity and continuity of documentation;

- Continuity of possession (chain of custody) should be maintained and documented by the creation and maintenance of a record of the documents;
- Documents should be securely stored and are accessible only to authorised personnel;
- All collected evidence is subjected to review; and
- Standard preservation of evidence principles are to be maintained (i.e. originals should not be marked or altered; they should remain in the same physical condition as when they were received, etc.)

6.2.2 The protocols in place during the inquiries and investigations in respect of evidence collection and retention

The Lead Investigator and the Delegate have stated that there were no specific protocols developed for the HSU investigations in respect of evidence collection and retention. In respect of document collection, the Lead Investigator and the Delegate have informed us that no record was kept of documents or information requested.

The Lead Investigator has also stated that a contemporaneous log of documents was not kept, to record all the documents received during the course of the investigations, their source and where they were stored. Further, the Lead Investigator also stated that there were delays in producing indexes for files of documents received due to her not having administrative support to assist her.

The Lead Investigator informed KPMG that all hard copy investigation files for the matters were stored in her office. She also stated that she began locking this office from mid 2011 onwards because she became 'nervous' and at that point recognised the need to securely store hard copy documentation relevant to the matters.

In respect of document retention, the Lead Investigator has stated that FWA and the AIRC used an electronic content management system known as CMS Plus. Both of the HSU matters had a case file opened on CMS Plus, which KPMG has viewed.

The entries on the *HSU National Office case file* run from 10 March 2009 to 4 February 2010, and the entries on the *HSU Vic No. 1 Branch case file* run from 18 December 2008 to 5 March 2010.

KPMG has been advised by the Lead Investigator that she stopped using CMS Plus as she became concerned that confidential documents stored on the system could be accessed by all staff within FWA, which meant that non-Investigation team members could have access to them. The Lead Investigator stated that from the point that she stopped using CMS Plus in early 2010, she stored all electronic documents and working papers relating to the matters on her personal workspace on the FWA network. The Lead Investigator stated that this issue was raised with both the Delegate and FWA's IT manager, however, the Lead Investigator was unsure as to whether the security issue had been resolved, had not had time to follow it up, and had therefore resolved not to use CMS Plus for document storage going forward.

KPMG has been informed by the Lead Investigator that she provided the documents obtained by FWA in relation to the matters, to the AGS throughout the course of the matters for storage on an AGS document database, which KPMG has viewed.

6.2.3 Summary of findings

Findings in relation to the protocols in place during the inquiries and investigations governing the collection and retention of evidence are set out below.

- Finding 22: There were no protocols in place for document collection and retention, which would ensure the continuity of evidence collected.
- Finding 23: Documents were only securely stored and accessible solely to authorised personnel from mid-2011 onwards.
- Finding 24: Access to the CMS Plus electronic content management system was not solely restricted to members of the Investigation team, which means that there was a risk that confidential information could be accessed by FWA personnel not involved in the matters.

6.2.4 Opportunities for improvement

Recommendations for improvement are set out below.

- Recommendation 18: As part of the development of investigation procedures recommended above, a requirement should be introduced for all investigations to adopt protocols for the collection and retention of information and evidence.
- Recommendation 19: In undertaking investigations, FWA should ensure that it adopts the protocols for the collection and retention of evidence in line with the investigation assessment criteria set out in Section 6.2.1.
- Recommendation 20: FWA should ensure that functionality is enhanced in the CMS Plus system, such that access to case files can be restricted to designated employees, or consider alternative approaches to secure document management.

6.3 Identification of electronic information

The purpose of this section is to set out findings in relation to the review of the process followed by the Investigation Team to identify potential sources of electronic information.

The analysis included the review of documents and interviews with relevant persons to understand:

- The process followed by the Investigation team to identify potential sources of electronic information; and
- The process followed to collect information in an evidentiary sound manner.

6.3.1 Investigation assessment criteria

- All potential sources of electronic evidence should be identified at the outset and should be updated as the investigation progresses; and
- Protocols should be developed to ensure that all electronic information is captured and preserved in an evidentiary sound manner.

6.3.2 The process followed to identify potential sources of electronic information

From the interviews conducted and documents reviewed, there is no evidence of a formal process being in place throughout the investigation of the matters to identify and acquire relevant electronic information.

The Lead Investigator and Primary Legal Adviser have stated that no consideration was given to obtaining electronic information during the investigation of the matters, although both believed that the powers under the RO Act were sufficient to request such information.

For the purposes of this section electronic information may include:

- HSU restored email accounts (including electronic calendars);
- Images of HSU computer hard drives;
- Images of relevant HSU smart phones and other handheld devices;
- Restored backups of HSU network drives; and
- Other electronic information relevant to financial transactions which may not be apparent on hard copy documents, such as:
 - Dates and times of transactions occurring or being posted;
 - Merchant details, including locations; and
 - Other identification properties contained in electronic identification properties (metadata), such as the time of creation of a document, the author of a document and the location on a computer network where the document was created.

The Lead Investigator stated that obtaining the electronic calendars of persons considered to be the subject of investigations may have proved helpful during the National Office investigation.

6.3.3 Summary of findings

Findings in relation to the process followed to identify, collect and retain electronic information are set out below:

Finding 25: There was no process in place to identify and acquire potentially relevant electronic information.

Finding 26: No consideration was given to obtaining electronic information that may have assisted the Investigation team.

6.3.4 Opportunities for improvement

Recommendations for improvement are set out below.

Recommendation 21 As part of the development of investigation procedures recommended above, a requirement should be introduced to adopt protocols for the identification and collection of electronic information.

Recommendation 22: In undertaking investigations, FWA should ensure it follows a process for the identification and collection of electronic information in line with the investigation assessment criteria set out at 6.3.1 above.

6.4 Interviews

The purpose of this section is to set out findings in relation to the process followed by the Investigation team to identify persons to be interviewed and to ensure the quality and completeness of the interviews conducted.

The analysis included the review of documents and interviews with relevant persons to understand:

- The process followed to identify individuals to be interviewed during the matters; and
- The process followed to ensure the quality and completeness of interviews conducted.

6.4.1 Investigation assessment criteria

- Ensure interviews are planned and that plans should cover the elements of any offences or civil contraventions and or known and anticipated defences;
- An interview plan should be prepared, where possible, before any interview. The plan should cover the elements of the offences or civil contraventions and any anticipated or known defences; and
- An interview guide, including legislative requirements, should be used.

6.4.2 The process followed to identify individuals to be interviewed during the investigation

The Primary Legal Adviser stated us that the strategy followed for identifying individuals to be interviewed was to select those persons the Investigation team considered had some information on the matter and interview them, prior to interviewing the next individual who may have further information given their proximity to the allegations. This strategy was employed to the point that the final person interviewed was generally considered to be the person of highest interest, to mitigate the possibility that the individual could mention something which had not already been asked of a previous interviewee.

The Primary Legal Adviser further explained that this strategy was indicative of the “linear approach” adopted by the Delegate. The Primary Legal Adviser informed us that while a number of individuals were considered as potential targets to be interviewed, the Delegate

preferred to schedule an interview with one individual, prepare for and conduct that interview, review the transcript for any potential areas to follow up and then would schedule the next interview.

The Primary Legal Adviser stated that an alternative approach could have been taken to send out requests for interview to a number of individuals concurrently, however the Delegate's preference was to maintain a linear approach.

The Primary Legal Adviser also stated that decisions taken in respect of who was to be interviewed were taken by the Delegate, after consultation with the Lead Investigator and the Primary Legal Adviser. The Delegate, Lead Investigator and Primary Legal Adviser have advised that records documenting decisions made in respect of which individuals to interview were not kept.

6.4.3 The process followed to ensure the quality and completeness of interviews conducted.

6.4.3.1 *Process to prepare interview questions*

The Lead Investigator, Primary Legal Adviser and Delegate have stated that the process to prepare interview questions was that they would either be prepared by the Lead Investigator and then reviewed/expanded upon by the Primary Legal Adviser or vice versa. The questions would then be discussed with the Delegate, who would have the opportunity to further edit the questions. On occasions, further input would be sought, most notably from the External Accountant when preparing the questions for the former auditor of the HSU.

KPMG has examined documents setting out iterations of draft interview questions being sent via email between Investigation team members, which corroborate the statements made by the members of the Investigation team mentioned above. KPMG has also examined the interview plans prepared by the investigation team in advance of their interviews.

6.4.3.2 *Process to review interview transcripts*

KPMG has established that interviews were electronically recorded and transcribed. The Lead Investigator, Primary Legal Adviser and the Delegate have stated that once interviews had been completed and the transcripts returned to FWA, the transcripts would then be reviewed by the Lead Investigator and Primary Legal Adviser to identify potential new lines of inquiry and statements, which either corroborated or conflicted with evidence obtained during other interviews.

KPMG has not undertaken procedures to determine whether all new lines of inquiry were identified in the Investigation team's evaluation of transcripts, or whether any such lines of inquiry were followed up by the Investigation team, given the scope of this review was to consider the process followed by the Investigation team and not the evidence gathered.

6.4.4 Summary of findings

Findings in relation to the process followed by FWA to identify individuals to be interviewed and the process to ensure the completeness of the interviews conducted are set out below.

- Finding 27: Interviews conducted by the Investigation team were planned and documented and interview plans were prepared prior to the conduct of interviews.
- Finding 28: A formal process to review interview transcripts, aimed at identifying new lines of inquiry and statements which corroborated or conflicted with other evidence, was undertaken.
- Finding 29: Records documenting the decisions made in respect of which individuals to interview were not kept.

6.4.5 Opportunities for improvement

Recommendations for improvement are set out below.

- Recommendation 23: Whilst it is noted that the Investigation team prepared and documented interview plans prior to the conduct of interviews, this procedure should be formally documented as part of the development of investigation procedures recommended above.
- Recommendation 24: FWA should record the rationale for selecting persons for interview.

7 Analysis of information

7.1 Financial analysis

The purpose of this section is to set out findings in relation to the review of the process undertaken by the Investigation team during the course of the HSU investigations to analyse financial information, including the timing and scope of that analysis.

The review included the examination of documents and interviews with relevant persons to understand the timing, scope and nature of the financial analysis undertaken by the Investigation team in relation to the matters.

7.1.1 Investigation assessment criteria

- When designing financial analysis procedures, investigators should develop an understanding of the entity's business processes and environment;
- At a high level, investigators should obtain an understanding of the potential risks in relation to the types of transactions subject to the investigation and the controls in place to manage those risks;
- The financial analysis must be designed to identify relevant transactions within the scope of the investigation and be performed in a timely manner;
- Initial financial analysis should be considered at the outset of the investigation, to identify and categorise financial indicators of suspect transactions to assist in guiding the investigation process; and
- The financial analysis should focus on specific areas to quantify the extent of suspect transactions to assist in guiding the investigation process.

7.1.2 The timing, nature and extent of any financial analysis undertaken

KPMG has been advised that there were two primary types of financial analysis undertaken:

- Analysis of credit card and other transactional data, and associated supporting documentation; and
- Analysis of the role of the former auditor of the HSU, and of the HSU financial returns (to the extent they were provided).

The Primary Legal Adviser has stated that the extent of the financial analysis undertaken in respect of the National Office investigation increased over the period between September 2011 and November 2011, when the memoranda underpinning the letters of contravention and the final report were being produced.

The Primary Legal Adviser has stated that when the financial analysis was being undertaken in September and October 2011, it became apparent that the level of detail in the underlying documentation was sufficient to allow the total expenditure on items such as dining, entertainment and accommodation to be presented in the report. He also stated that the rationale for presenting the quantum of funds spent on these expense categories was to illustrate that even

if (as FWA had been informed) the expenditure had been properly authorised, it was still so high as to appear unreasonable.

The Primary Legal Adviser has advised us that because the full benefit of this analysis had not previously been considered, the amount of time it would take to complete had also not been factored into any planning. According to the Primary Legal Adviser, it became apparent to him as this analysis was being undertaken, that more work would be required and that FWA would therefore miss the end of year 2011 deadline for completion of the investigation.

The Primary Legal Adviser has informed us that the information that was being analysed in the final quarter of 2011, had been in FWA's possession for a period of time, and could have been analysed in more detail at an earlier date. The Primary Legal Adviser advised that the reason why this financial analysis did not take place until the final quarter of 2011, was that it was not until the analysis was initiated, that its value to the strength of the findings that would ultimately be made in the National Office report, was appreciated.

7.1.3 Resources assigned to undertake the financial analysis

KPMG has been informed by the relevant members of the Investigation team that the analysis of the role of the former auditor of the HSU and associated financial returns of the HSU was primarily undertaken by the External Accountant, and that the transactional analysis of how and where expenditure was incurred was primarily undertaken by the Lead Investigator and the AGS during September, October and November of 2011.

The External Accountant, Delegate and Primary Legal Adviser have stated that the External Accountant was contracted to the AIRC and subsequently FWA on a retainer basis, to provide technical accounting and audit advisory services.

The External Accountant further advised that he had been a partner in an accounting firm for 25 years and had delivered audit, consulting services and investigations to government clients for most of his career. The External Accountant also stated that he had specific experience in conducting audits of trade unions and had run an investigation into a trade union in 1989 which had led to a Royal Commission.

The Primary Legal Adviser and Lead Investigator have confirmed that the financial analysis that was primarily undertaken by the AGS and Lead Investigator was to analyse transactional records (credit card statements, bank statements) to ascertain the amounts expended by various individuals in the National Office investigation, and to classify that expenditure. The Lead Investigator, while confirming that this analysis was time-consuming, was of the view that it did not require a great deal of financial skill and experience.

Although this report addresses the relevant skills and experience of the team members and external specialists in Sections 4.2 and 4.3 above, it is also noted, under this area, that:

- The Primary Legal Adviser has advised that in his view the work conducted by the External Accountant was of value and he was concerned when FWA informed him that the External Accountant's contract was not going to be renewed after 1 July 2010.
- The Primary Legal Adviser has stated that he raised this as being a potential issue with the Delegate and Lead Investigator and suggested at the time in mid 2010 that another specialist accountant be retained. The Primary Legal Adviser explained that he believed this to be a potential issue from an efficiency point of view.

- The Primary Legal Adviser specifically mentioned that Chapter 8 of the National Office report explains the need for a large amount of financial analysis, as it deals with the extent to which funds of the National Office were prioritised for campaign expenditure over the ordinary activities of the Union. The Primary Legal Adviser stated that the preparation of this chapter, or the analysis underpinning it was one that “*might more, far more effectively have been dealt with by a relevant expert.*”

Based on the above, it appears that, the financial analysis aspect of the National Office investigation could have been more effectively conducted by an appropriately skilled resource. This highlights the importance of the requirement to consider the necessary skills and experience of the investigation team and external specialists, as set out in Sections 4.2 and 4.3 of this report.

7.1.4 Summary of findings

Findings in relation to the financial analysis process followed by FWA are set out above.

- Finding 30: Considering that a focus of the National Office investigation was alleged unauthorised credit card expenditure, a full analysis of that expenditure (as was undertaken from September 2011 onwards) should have been conducted at an earlier stage of the investigation. This finding is also relevant to Section 5.2 *Work plan development and implementation.*
- Finding 31: The financial analysis conducted by the AGS and Lead Investigator in the National Office investigation could have been more effectively conducted by an accounting professional. This finding is also relevant to Section 4.3 *Consideration of the need to appoint external specialists.*
- Finding 32: At the time the financial analysis in the National Office investigation was conducted, FWA no longer had access to an accounting professional (the External Accountant) as his contract had not been renewed after June 2010, despite the Primary Legal Adviser raising this as an issue with the Delegate at the time.

7.1.5 Opportunities for improvement

Recommendations for improvement are set out below.

- Recommendation 25: As part of the development of investigation procedures recommended above a requirement should be introduced for financial analysis to be considered at the outset of the investigation where that may be appropriate to inform the investigation approach.
- Recommendation 26: In undertaking investigations, FWA should ensure that it considers financial analysis in line with the investigation assessment criteria set out in 7.1.1 above and in particular, ensuring that financial analysis from primary records is undertaken as early as possible in an

investigation to allow the investigation team to understand the full extent and impact of any suspected unauthorised expenditure.

Recommendation 27: FWA should ensure that proper consideration is given to the appropriate skills and experience required to undertake financial analysis.

8 Investigation reports

8.1 Reporting

The purpose of this section is to set out findings in relation to the process followed by the Delegate to produce the investigation reports for the matters, the timelines for the preparation of the reports and any divergence from those timelines.

The analysis included the examination of documents and interviews with relevant persons to understand the process followed to produce the investigation reports.

8.1.1 Investigation assessment criteria

- Communicate reporting timelines and regular status updates;
- Collect and organise information for the various sections of the report;
- Review the report for consistency in format, style and content;
- Clarify ambiguities and provide feedback to authors on drafts;
- Collate all relevant exhibits and appendices; and
- Consider the appointment of a report coordinator who will have responsibility for the above tasks.

8.1.2 The process followed to compile both investigation reports

In respect of the National Office matter, the Delegate, Lead Investigator and Primary Legal Adviser have advised that the process was as follows:

- The evidence collected in the investigation was assessed and assigned to a particular topic in an “issues tree”;
- Topics within the issues tree were documented in memoranda, summarising the evidence and the conclusions to be drawn;
- Memoranda were summarised into schedules that were attached to letters of proposed contraventions which were sent to the subjects of the investigation; and
- The schedules were used as the basis for chapters in the investigation report.

This is a simplified explanation of the report preparation process as it has been described by the Lead Investigator and the Primary Legal Adviser. KPMG has seen emails and electronic evidence that supports this description of the process. Further relevant information provided by the Investigation team includes:

- The compilation of the issues tree was a joint process conducted by the Lead Investigator and the AGS²⁴;

²⁴ As noted in Section 4.2.5, from around 22 September 2011, other lawyers in addition to the Primary Legal Adviser from the AGS were engaged to assist with the compilation of the National Office report.

- Memoranda were drafted either by the AGS or by the Lead Investigator and were then reviewed by whichever party had not drafted them, at which point changes could be incorporated. Once the AGS and the Lead Investigator had agreed upon the memoranda it would be passed to the Delegate for review, after which further changes could be made;
- Changes to the drafting of the memoranda could also be made when they became schedules to the letters of proposed contraventions; and
- Changes to the memoranda/schedules could also be made during the chapter drafting process, either because of a change in focus requested by the Delegate, or due to a response received from one of the subjects upon receipt of a letter of proposed contraventions.

The quality assurance process around the drafting of the investigation report was, therefore, that the Lead Investigator and the AGS would check each other's work and then the Delegate would agree the draft once any changes he requested had been taken into account.

The Lead Investigator has stated that the process to produce the Vic No.1 Branch report was different, in that it was a report she wrote over the course of a few days and that she sought guidance on an ongoing basis from the Delegate during that period.

8.1.3 **The timelines for the preparation of both investigation reports and any divergence from those timelines**

From a review of the minutes of the Strategy Meeting of 14 September 2011, it is understood that the General Manager requested that project plans be prepared showing the tasks required to meet the end of 2011 deadline for the completion of both investigations, and the dates that those tasks would be completed by. As such, prior to 14 September 2011, there was no timeline for the preparation of the reports.

National Office report

The target completion dates set in the initial project plan for the finalisation of the National Office report are shown in the table below which also shows the dates the tasks were completed.

Table 6: National Office report target completion date vs. actual completion date

Task	Target completion date as at 15 September 2011 ²⁵	Final completion date
Provision to the Delegate of memoranda summarising evidence and analysis as basis for delegate's proposed findings and report	21 October 2011	24 November 2011 ²⁶
Preparation and finalisation of letters setting out draft findings to the reporting unit (HSU National Office) and individuals	28 October 2011	14 December 2011 ²⁷

²⁵ The completion dates recorded in this column have been obtained from the project plan prepared by the Investigation team dated 15 September 2011.

²⁶ This date has been obtained from the minutes of the Strategy meeting on 24 November 2011.

²⁷ The date the final letter of draft findings was sent by the Investigation team has been obtained from the National Office report.

Task	Target completion date as at 15 September 2011 ²⁵	Final completion date
Responses due from reporting unit/individuals. During 4 week period (17 October 2011 to 25 November 2011) memoranda will be compiled into a report by the Delegate to the Acting General Manager for the purposes of her consideration under subsection 336(2) RO Act.	25 November 2011	2 March 2012 ²⁸
Finalise report and letter/notice of contraventions in light of responses from reporting unit and individuals to draft findings. Report and letter(s) of contravention provided to Acting General Manager.	9 December 2011	28 March 2012 ²⁹
Acting General Manager determines any actions that are to be taken under subsection 336(2) and notifies reporting unit/individuals as appropriate.	23 December 2011	4 May 2012 ³⁰

The data contained in the table above supports the Primary Legal Adviser's view that the drafting of the memoranda, took longer than anticipated, the result of which was that each of the subsequent milestones were missed and contributed to the end of 2011 deadline not being met.

The progress of drafting of the memoranda was also monitored by the Lead Investigator and Primary Legal Adviser by producing bar charts which depict the status of completion of each memorandum.

Vic No. 1 Branch report

The target completion dates set in the initial project plan for the finalisation of the Vic No. 1 Branch report are shown in the table below which also shows the dates the tasks were completed.

Table 7: Vic No.1 Branch report target completion date vs. actual completion date

Task	(Target) Completion date as at 15 September 2011 ³¹	Final completion date
Finalise report and letter/notice of contravention	23 September 2011	23 December 2011 ³²
Report and letter(s) of contravention	23 September 2011	23 December 2011 ³³

²⁸ The date the final response was received from a subject of the National Office investigation has been obtained from the National Office report.

²⁹ This is the date of the Delegate's report to the General Manager for the National Office.

³⁰ This date was obtained from the General Manager's correspondence with the Senate Standing Committee on Education, Employment and Workplace relations.

³¹ The completion dates recorded in this column have been obtained from the Project plan prepared by the Investigation team dated 15 September 2011.

³² This is the date of the Delegate's report to the General Manager for the Vic No.1 Branch matter.

³³ This is the date of the Delegate's report to the General Manager for the Vic No.1 Branch matter.

Task	(Target) Completion date as at 15 September 2011 ³¹	Final completion date
provided to Acting General Manager		
Acting GM determines any actions to be taken under subsection 336(2) and notifies reporting unit/individuals as appropriate	7 October 2011	8 March 2012 ³⁴

The data contained in the table above shows that, while the Vic No. 1 Branch investigation report was completed later than planned, it was completed prior to the end of 2011. As stated in Section 5.1.4 above, the Delegate has advised that the work to finish the Vic No. 1 Branch investigation could have been completed sooner, however, he took the decision to remove the Lead Investigator and the Primary Legal Adviser from the day-to-day work on completing the Vic No. 1 Branch investigation due to the fact that there was more focus required on completing the National Office investigation.

8.1.4 Summary of findings

Findings in relation to the report preparation process followed by FWA are set out below:

Finding 33: The process for the preparation and completion of the reports met most of the investigation assessment criteria in that:

- In relation to the National Office report a formal structured process was adopted, which assisted in ensuring the completeness and quality of the report. This process ran throughout the preparation of the National Office report, however, the same process was not applied to the Vic No.1 Branch report; and
- A project plan was put in place for the completion of both reports, albeit this was not considered earlier during the inquiry or investigation process.

Finding 34: The timeline put in place for the completion of the National Office report was not met, with the report being produced some four months after the planned date, which appears to have been the result of not fully appreciating the amount of work required when developing the project plan.

Finding 35: Although it met the ultimate end of year 2011 reporting date, the Vic No.1 Branch report may have been concluded earlier had resources not been moved on to the National Office investigation.

³⁴ This is the date the General Manager notified the reporting unit and individuals of the actions she was taking in respect of the findings in the Vic No.1 Branch report.

8.1.5 Opportunities for improvement

Recommendations for improvement are set out below.

Recommendation 28: As part of the development of investigation procedures recommended above, a requirement should be introduced in relation to the planning for and production of investigation reports.

Recommendation 29: In preparing investigation reports, FWA should establish a plan which considers the investigation assessment criteria set out in Section 8.1.1 above that fully considers the amount of work required to develop the report and is aimed at delivering the report within an agreed timeframe. This plan should be considered early in the investigation process and regularly monitored for the ongoing ability to meet required deadlines.

9 Communication

9.1 Internal and external communication

The purpose of this section is to set out findings in relation to the process followed by the Delegate and Lead Investigator to record and communicate:

- The progress of the investigations;
- Deviations from the investigation plans;
- Restrictions or limitations which may impact on the completion of any investigation plans; and
- The process followed by FWA to ensure the accuracy of statements made by FWA regarding the status of the investigations.

The analysis included the review of documents and interviews with relevant persons to understand the process followed by the Lead Investigator and the Delegate to record and communicate the progress of the investigations.

9.1.1 Investigation assessment criteria

- The progress of an investigation should be reported to relevant people within the investigation team and relevant stakeholders on a regular basis. These progress reports should include progress achieved, deviations from initial plans, problems/risks and future actions; and
- The reporting process should be considered and defined at the investigation planning phase.

9.1.2 The process undertaken by the Delegate and Lead Investigator to record the progress of the matters

KPMG has not seen evidence to suggest that the process to record the progress of the matters was considered during the investigation planning stage.

The principal records made of progress during the matters were the minutes of the Strategy Meetings which were initiated in March 2011, at the former General Manager's request.

The minutes of the Strategy Meeting on 17 March 2011 record the former General Manager as stating that the "*meetings are to consider high level strategy with broad parameters of balancing resources and time against producing a report with integrity that can be acted upon under s.336(2)*".

The table below has been compiled from a review of the Strategy Meeting minutes from when the meetings commenced in March 2011, through to September 2011.

Table 8: Strategy Meeting minutes – discussion of progress of the matters

Date of meeting	Progress of National Office investigation discussed?	Progress of Vic No.1 Branch investigation discussed?
10 March 2011	Yes	Yes
17 March 2011	Yes	No
24 March 2011	No	No
31 March 2011	Meeting cancelled	Meeting cancelled
28 April	Yes	No
5 May 2011	Meeting cancelled	Meeting cancelled
12 May 2011	No meeting	No meeting
19 May 2011	Yes	Yes
26 May 2011	Yes	Yes
2 June 2011	No meeting	No meeting
9 June 2011	No	No
16 June 2011	No meeting	No meeting
23 June 2011	No	No
21 July 2011	No	Yes
28 July 2011	No meeting	No meeting
25 August 2011	Yes	Yes

Source: Minutes of the Strategy Meetings

Other than the Strategy Meeting minutes, KPMG has not seen or been informed of any other records made by the Lead Investigator or Delegate which were maintained to record the progress of the matters on a regular basis.

9.1.3 The process followed to communicate the progress of the matters

The Delegate and Lead Investigator have informed stated that within FWA, the progress of the matters was not discussed outside the Investigation team other than at the Strategy Meetings from March 2011 onwards.

The Lead Investigator has also advised that given the Investigation team essentially comprised herself and the Primary Legal Adviser, who worked closely together, there was no need to formally document and communicate the progress of the matters to the Delegate, as he was also aware of progress, given the Lead Investigator's daily interaction with him.

9.1.4 Deviations from the investigation plans and restrictions or limitations that may impact the completion of any investigation plans

The Lead Investigator stated that the investigation plans which were developed by the AGS in June 2009 were not regularly referred back to by the Investigation team. The Delegate has also stated that National Office investigation ultimately considered a broader range of issues than initially scoped; however, these changes to scope were not formally recorded as such in an investigation plan.

9.1.5 The process followed by Fair Work Australia to ensure the accuracy of public statements made regarding the status of the Health Services Union investigations

For clarity, public statements can be defined as: media releases made by FWA and statements made at Senate Estimates, either as responses to questions or general opening statements. During the course of the investigations, FWA has also provided responses to Senate Estimates questions that were taken on notice at the time.

From the documents reviewed, KPMG has seen evidence of the General Manager sharing drafts of proposed statements and media releases with the Delegate to ensure their accuracy. KPMG has also seen evidence that the General Manager would seek independent legal advice, when they considered it appropriate to do so, regarding proposed statements and media releases.

9.1.6 Summary of findings

Findings in relation to the communication process followed by FWA are set out below:

Finding 36: The internal recording and communication process was not considered and defined at the investigation planning phase.

Finding 37: The progress of the matters was not formally recorded or communicated to relevant people within the Investigation team and other relevant stakeholders on a regular basis until the Strategy Meetings started in March 2011. Prior to that date, communication of progress and planned activity was informal and primarily oral.

Finding 38: There was a formal process in place to ensure the accuracy of public statements made regarding the status of the matters.

9.1.7 Opportunities for improvement

Recommendations for improvement are set out below.

Recommendation 30: As part of the development of investigation procedures recommended above, a requirement should be introduced in relation to the methodology to record the progress of the investigation and how that progress is to be communicated.

Recommendation 31: In undertaking investigations FWA should ensure that the:

- Recording process is considered and defined at the investigation planning phase. This process should include progress achieved, deviations from initial plans, problems/risks and future actions; and
- Progress of investigations is reported to relevant people within the Investigation team and relevant stakeholders on a regular basis.

10 Integrity of the investigation process

10.1 Background

The purpose of this section is to set out findings in relation to the consideration of the overall integrity of the HSU investigations, in particular, to establish to the extent possible, whether there are indications of potential interference in the investigation process. It is not practicable within the terms of this review to consider all possible sources of potential interference, so the approach to this review has been focused on establishing indicators of potential interference by those in the Investigation team or those close to it, either acting on their own volition or at the behest of another party.

In undertaking this work we:

- Conducted interviews with the Delegate, the Lead Investigator, the General Manager, the former General Manager and the former Industrial Registrar;
- Examined the electronic data³⁵ received from FWA and from the AGS by applying key-word search terms to identify documentation that may suggest indications of potential interference; and
- Forwarded letters to current or former HSU officials and the former auditor of the National Office, inviting the provision of any information relating to allegations of potential interference with respect to the HSU investigations, so that any such information may be considered as part of this review.

Refer to section 3.2 for a detailed description of the approach and procedures performed in relation to the review of the integrity of the investigation process.

10.2 Interview with persons associated with the investigations

10.2.1 The Delegate

During an interview KPMG advised the Delegate that part of the scope of this review was to consider the process put in place by the Delegate to mitigate the risks that other parties may seek to interfere in the investigation process. The Delegate was also asked to define what he might consider interference to mean in the context of the HSU investigations.

The Delegate responded by stating that *“interference is when there’s a direction about the outcome and how to conduct the inquiry”*.

The Delegate further stated *“if interference has occurred it hasn’t involved me”*.

In the Delegate’s Report to the General Manager in relation to the National Office investigation, the following reference is made in relation to allegations of interference. *“I also reject as baseless the allegation that there has been political interference in the investigation....”*

In response to KPMG’s inquiry about the processes put in place to mitigate the risks that other parties may seek to interfere in the investigation process, the Delegate advised that:

³⁵ Refer to *Appendix C*

- A protocol that he put in place to manage the risk of interference in the investigation process was to use the Lead Investigator as a “firewall” in respect of any contact with external parties;
- In practice this meant that if the Delegate were to receive a telephone call or email message from known or unknown persons in respect of the HSU matters, the Lead Investigator would return the call to ascertain the nature of the inquiry or request; and
- A further protocol implemented throughout the course of the matters to mitigate the risk of interference was that the offices containing documents relating to the matters were locked at all times when not occupied, although it is noted that the Lead Investigator has also advised that this protocol did not operate until mid-2011.

10.2.2 The Lead Investigator

During interview the Lead Investigator was also advised that part of this scope was to consider the process put in place by the Delegate to mitigate the risks that other parties may seek to interfere in the investigation process. The Lead Investigator was also asked to define what she might consider interference to mean in the context of the HSU investigations.

In response, the Lead Investigator stated: “*Well, given that it’s a delegated power, someone even telling [the Delegate³⁶] how to do it, for a start, would be interference - was not aware of any situation or incident that may be perceived as an attempt to influence the investigation*”.

The Lead Investigator stated that she was not aware of any instances of interference. Additionally, the Lead Investigator corroborated the Delegate’s response relating to the process to mitigate the risks of potential interference, whereby she would return telephone calls on his behalf.

10.2.3 The External Accountant

During interview the External Accountant provided a definition of what he thought interference might be perceived to be. He stated “*Probably withdrawal of staff, allocating staff other work to do that would take them away. People – someone using their position to get a staff member to do something that would be outside of what would be considered the norm.*”

The External Accountant further stated that he was not aware of any instances that might be perceived to be interference.

10.2.4 The former General Manger

The former General Manager defined interference as “*An attempt, successful or otherwise, to influence the conduct and/or the outcome of the investigation.*”

In relation to KPMG’s questions on whether the former General Manager was aware of any potential interference, he stated:

- “*I was not made aware of any attempts to seek to interfere in the investigation by the Delegate*”; and

³⁶ For the purposes of this report the Delegate’s name has been removed.

- *"I was given no reason to suspect that [the Delegate] was compromised, and I was – and still don't have any reason to suspect that he was. And he didn't raise with me that he felt compromised in any way".*

Through the review of minutes from the Strategy meetings, the following entry in the minutes for the meeting held on 25 August 2011 attended by the former General Manager, the Delegate, the Primary Legal Adviser and the Lead Investigator is noted:

"As a result of questions asked by Senator Ronaldson of Minister Evans in the Senate on 17 August 2011, [the former General Manager] advised that he had received a telephone call from the Minister's office regarding the expected timeframe for completion of the national office investigation. [The former General Manager] directed the Minister's office to FWA's appearance before Senate Estimates on 30 May 2011 in which the delegate advised that the investigation may be completed in the latter half of 2011"

Further to this point, KPMG has established that the Delegate stated at Senate Estimates on 30 May 2011 that: *"My aim has always been to do this quickly as possible. At this stage I would be suggesting that the latter half of this year would be the completion date"*.

The process followed by the former General Manager, set out in the meeting extract documented above in relation to this matter, provides an indication of the approach adopted by the former General Manager to mitigate the risk of potential or perceived interference.

10.2.5 The former Industrial Registrar

In defining the term interference, the former Industrial Registrar advised that:

"I would define interference reasonably broadly. It would, of course, include the obvious that people who had no particular role in making the inquiries would seek to engage us to influence how we went about our business. But I would also think of it in terms of those that we were seeking to engage were behaving in a way that was, whether they intended or otherwise, obfuscation"

When asked whether he was aware of interference in relation to the HSU matters, the former Industrial Registrar stated: *"I can only talk about the time when it was my remit, that is, up until June 30, 2009. What happened subsequent to that is a matter for Fair Work Australia, whether I became conscious of it while I was in office or subsequently. So my general answer to your proposition is that I'm not aware of and don't believe that I was the subject of any form of influence, whether intended or otherwise and certainly none that would have any impact on what I did or didn't do."*

KPMG refers to the response to Senates Estimates question on notice number 2781 in relation to whether the Minister for Employment and Workplace relations received communication from the former Industrial Registrar, on or around 8 April 2009, advising that inquiries had commenced in relation to the HSU. An extract of the response to the question on notice states:

"The Australian Industrial Registrar telephoned (then Chief of Staff to the Minister for Education, Employment and Workplace Relations) ("Minister's Chief of Staff") on 8 April and advised that the enquiries under section 330 of Schedule 1 of the Workplace Relations Act 1996 had been commenced in relation to the Health Services Union National Office and Victorian No1 Branch and that the investigation(s) under section 331 may ensue. [the Industrial Registrar] indicated that he would not be making any public comment on the matter."

“ [the Minister’s Chief of Staff] responded to this communication verbally during the same telephone call with the Industrial Registrar by asking him whether he was comfortable for the Minister to respond to any parliamentary or media question about whether an inquiry was being undertaken by the Industrial Registrar in the following terms:

the responsibilities of the Industrial Registrar include the financial accountability of unions and employer associations.

the Registrar is currently undertaking inquiries into the Health Services Union and is engaged in discussions with that union.

given it is an inquiry currently with the Registrar, it would be inappropriate to discuss the matter further.

[The Industrial Registrar] confirmed he was comfortable with this approach. No information concerning this communication was conveyed to the Prime Minister or the Prime Minister’s office.”

During interview, the former Industrial Registrar stated that he had only one telephone communication with the Minister’s Chief of Staff in respect of the matters when the Minister’s Chief of Staff telephoned him in April 2009. He acknowledged that he had sent a memo to the Minister and the “Department” as a matter of courtesy to “*let them know that I had instigated the inquiry*”. The Industrial Registrar stated that it was possible that *someone at Fair Work Australia has probably dragged that memo out and dropped it in to context*”.

KPMG identified an email retrieved from the FWA computer system purportedly sent from the Minister’s Chief of Staff to the former Industrial Registrar with the subject line “*[Industrial Registrar³⁷]- can you pls give me a call as soon as possible? [mobile number³⁸]. thanks*”. The email is dated Wednesday 8 April 2009.

The former Industrial Registrar stated that he did not recall the email and maintained that there had been only the one telephone conversation with the Minister’s Chief of Staff in relation to the HSU matter.

In that regard the former Industrial Registrar stated that he did receive a telephone call from the Minister’s Chief of Staff during April 2009, “*in April 2009 when one evening, after I’d got home, it was around 7/7.30 in the evening, I got a telephone call at home and, counter-intuitively, unexpectedly, on my home landline phone from the Minister’s Chief of Staff*”

The former Industrial Registrar stated that the Minister’s Chief of Staff had inquired whether he was involved in the HSU matters and whether [the HSU’s former National Secretary’s name³⁹] was associated with his inquiries: “*it was a short, sharp conversation. There were no preliminaries of note. It was kind of, “[former Industrial Registrar], you’re looking at the HSU”, or something to that effect. “Yes, I am”. “Has the name [the former HSU National Secretary] come up” and to which my answer was no. And that, by and large, was the end of the conversation.*”

As shown above, there are inconsistencies in the versions of events relating to alleged communication between the former Industrial Registrar and the Minister’s Chief of Staff on or

³⁷ For the purposes of this report detail of the recipient’s name has been excluded.

³⁸ For the purposes of this report detail of the mobile number has been excluded.

³⁹ For the purposes of this report detail of the former HSU National Secretary’s name has been replaced with his title.

about 8 April 2009. KPMG is, however, unable to conclude that this amounts to a concern around the integrity of the investigation process without further investigation.

10.3 Review of electronic documentation

The review of the current and restored email messages received from FWA⁴⁰ through applying key-word search terms has not revealed communication that might be considered to be potential interference or attempts to influence the investigations.

10.4 Correspondence with current and former Health Services Union officials

KPMG received three responses to correspondence sent to current or former HSU officials and the former auditor of the National Office, inviting them to provide any information in relation to any allegations of potential political interference to be considered as part of this review. Details of these responses are set out below:

KPMG received a letter of response dated 13 June 2012 from the Acting National President of the HSU. The Acting National President stated in his letter that he was responding on behalf the following members of the HSU National Executive who had also received similar letters from KPMG:

- Acting President;
- Senior National Assistant Secretary;
- National Assistant Secretary;
- Assistant Secretary, Victoria No.2 Branch;
- Assistant Secretary, Tasmania No.1 Branch;
- National Trustee;
- Assistant Secretary, Western Australia Branch;
- Secretary Victoria No.4 Branch;
- Secretary, South Australian Branch; and
- Secretary, Tasmania No.2 Branch.

The Acting National President stated in the letter that:

“I advise that we have no documents or information which would indicate political interference in either of the investigations. While allegations of political interference have been made by the HSU National Secretary, no evidence of any description has been provided to the National Executive.”

⁴⁰ Refer to *Appendix C* for details of email data relied on for the purposes of this report.

KPMG received an email response to the letter addressed to the Branch Assistant Secretary, Victorian No. 2 Branch, Health Services Union on 31 May 2012 from the current Assistant State Secretary of the Health and Community Services Union ('HACSU') in which he states:

"I have no information or knowledge on this matter. I started in this position May 2011".

KPMG received an email from the former Auditor of the HSU on 13 June 2012 in which he states:

"I have no information or documents that indicate that there was any political interference into Fair Works (sic) investigations into the Health Services Union National Office and Victoria No 1 Branch. If you feel I can provide any other information please contact me."

Appendices

A Appendix A – Scoping exercise work plan

Attribute		Element		Procedure
1	Preliminary considerations	1.1	Scope & objectives of the HSU investigations	<ul style="list-style-type: none"> • Review documents detailing initiation of the inquiries into the investigation by the Industrial Registrar to understand the process followed to set and agree the initial scope and objectives of each inquiry; • Review documents to understand the process undertaken by the Industrial Registrar to identify relevant procedural manuals or guidance governing inquiries and investigations undertaken by the Industrial Registrar/Fair Work Australia; • Interview relevant employees/ former employees of the Industrial Registrar involved in initiation of the inquiries to understand their role in the abovementioned processes; • Review documents to understand the process followed to allow effective transition of the inquiries from the Industrial Registrar to Fair Work Australia; • Review documents to understand the process followed to progress both matters to investigation stage following the completion of the inquiries; and • Supplement the review of documentation referred to above with interviews with relevant persons including but not necessarily limited to the former Industrial Registrar, the Delegate, the former General Manager of Fair Work Australia and the Lead Investigator ('relevant persons').
		1.2	Skills and	<ul style="list-style-type: none"> • Review documents and conduct further

Attribute		Element		Procedure
			resources	<p>interviews with relevant persons to understand the process followed by Fair Work Australia to appoint the Delegate;</p> <ul style="list-style-type: none"> Review documents and conduct further interviews with relevant persons to understand the process followed by the Delegate to resource the investigation team; Review engagement contracts and related documentation to understand Fair Work Australia's scope of the engagement with the Australian Government Solicitor; and Review the process followed by the Delegate to ensure that those involved in the inquiries/investigations had the necessary investigation, skills and experience.
		1.3	External specialists	<ul style="list-style-type: none"> Review the process followed by the Delegate to consider the need for external specialists to be used during the inquiries and investigations; Review the process followed by the Delegate to appoint external specialists (where applicable); and Review the process followed by the Delegate to ensure the quality/value for money of services provided by any external specialists.
		1.4	Reporting requirements	<ul style="list-style-type: none"> Review documentation and conduct further interviews with relevant persons to understand initial consideration of reporting requirements in respect of the investigations, including the potential recipients of any reports.
2	Planning & management	2.1	Case management	<ul style="list-style-type: none"> Review the planning and case management process followed by the Delegate to mitigate the risk of delays to the investigations; Review the case management files to

Attribute	Element	Procedure
		<p>determine any delays in the completion of the investigations and if so, whether these delays could have been avoided.</p> <ul style="list-style-type: none"> • Consider the overall integrity of the investigations process through a review of the case management protocols put in place by the Delegate to mitigate the risk that other parties may seek to interfere in the investigation process; and • Review evidence on file to demonstrate the abovementioned protocols were operating effectively.
	2.2 Work plan development and implementation	<ul style="list-style-type: none"> • Review the schedule of issues and other documentation produced to understand the process followed by the Delegate to plan the investigations; • Review investigation plans to determine whether plans meet required investigation standards and/or operating procedures. • Conduct further interviews with the Delegate and Lead Investigator and review documents to understand how any changes to planned investigation work, including potential delays in the process, were agreed and recorded; • Review documentation to understand the process followed by the Delegate to ensure that all procedures detailed within the work plan had been completed; and • Conduct further interviews with the Delegate and Lead Investigator and review documents to understand whether the work plan was being executed as agreed.
	2.3 Post investigation strategy	<ul style="list-style-type: none"> • Conduct interviews with the General Manager of Fair Work Australia and review relevant documentation to understand the process followed by the

Attribute		Element		Procedure
				Delegate to decide next steps following the completion of each investigation report by the Delegate.
3	Gathering information	3.1	Sources of information and evidence	<ul style="list-style-type: none"> Review investigation planning to understand the process followed to identify potential sources of information and evidence; and Conduct further interviews with the Delegate, Lead Investigator and representative of the Australian Government Solicitor to understand the process followed to identify the sources of information.
		3.2	Protocols for the collection and retention of evidence	<ul style="list-style-type: none"> Conduct further interviews with the Lead Investigator to understand protocols in place during the inquiries and investigations in respect of evidence collection and retention; and Review information gathered and stored during the investigations to understand the protocols followed.
		3.3	Digital information	<ul style="list-style-type: none"> Review investigation planning to understand the process followed to identify potential sources of digital information; and Review digital information collected to understand the process followed to collect information in a forensically sound manner.
		3.4	Interviews	<ul style="list-style-type: none"> Review planning to understand the process followed to identify individuals to be interviewed during the investigations; and Review interview transcripts to understand the process followed to ensure the quality and completeness of interviews conducted.
4	Analysis of information	4.1	Financial analysis	<ul style="list-style-type: none"> Conduct further interviews with the Delegate and the Lead Investigator to

Attribute		Element		Procedure
				understand the nature and extent of any financial analysis undertaken; <ul style="list-style-type: none"> Review any financial analysis undertaken against the scope and objectives of the investigations; and Consider the skill and experience of the team undertaking the financial analysis.
		4.2	Non-financial analysis	<ul style="list-style-type: none"> Conduct further interviews with Lead Investigator to understand the nature of any non-financial analysis undertaken; Review any non-financial analysis undertaken against the scope and objectives of the investigations; Consider the skill and experience of the team undertaking non-financial analysis; and Consider possible improvements to the investigation process.
5	Investigation deliverable	5.1	Reporting	<ul style="list-style-type: none"> Interview the Delegate, Lead Investigator and the Representative of the Australian Government Solicitor to understand the process followed to compile both investigation reports; and Review timelines for the preparation of both investigation reports and any divergence from those timelines.
6	Communication	6.1	Investigation diaries	<ul style="list-style-type: none"> Review any records made by Lead Investigator and Delegate to record the progress of the investigations.
		6.2	Internal and external communication	<ul style="list-style-type: none"> Review internal communications between the Delegate, Lead Investigator, Industrial Registrar, and current and former General Managers of Fair Work Australia to understand the process followed to communicate the progress of the investigations; Review internal and external communication to identify, for

Attribute		Element		Procedure
				example, deviations from the investigation plans and restrictions or limitations that may impact the completion of any investigation plans; and <ul style="list-style-type: none"> • Review the process followed by Fair Work Australia to ensure the accuracy of public statements made regarding the status of the investigations.

B Appendix B – Investigation assessment framework

B.1 Development of the investigation process framework and investigation assessment criteria

For KPMG to be able to undertake the review of the HSU investigation process and to advise FWA on:

- a) whether the HSU investigations have been conducted appropriately in terms of relevant investigation standards and operating procedures; and
- b) whether there are any opportunities for improvement to FWA's investigation procedures,

it was necessary to develop an investigation process framework and the criteria against which the HSU investigations could be assessed, as there is no benchmark investigation standard in Australia (or internationally as far as KPMG is aware) which comprehensively sets out the requirements for an investigation.

To develop the investigation framework and assessment criteria, KPMG assembled the key overarching attributes which should be present in any investigation process, identified the key elements of the investigation process which related to each of those attributes⁴¹ to establish the investigation process framework, then developed investigation assessment criteria which would represent an appropriate standard for an investigation process under that investigation framework.

In undertaking that, KPMG was able to draw on publications and research relevant to investigation standards and processes (set out further in B.2 below) and then taking into account the nature of the HSU investigations being undertaken by the FWA, apply professional judgment to determine the assessment criteria which represented an appropriate standard for that investigation.

In making recommendations for improvement opportunities in the way FWA undertakes investigations, in addition to considering the same framework and processes described above, KPMG considered that the Australian Government Investigations Standards ("AGIS") 2011 provided the minimum specific framework under which FWA should develop its own investigation procedures.

B.2 Reference material for the development of the investigations process framework and assessment criteria

Within Australian Government, the AGIS, first developed in 2003 and updated in 2011, provides a set of better practice case handling standards⁴² and establishes the minimum standards for Australian Government Agencies conducting investigations⁴³.

Whether or not the adherence to AGIS is mandatory in relation to an agency, it does set a relevant standard for investigations⁴⁴. However, AGIS only provides the framework under

⁴¹ Referred to in the work plan set out at *Appendix A* as 'Modules and Components'.

⁴² Introduction to AGIS 2003.

⁴³ Introduction to AGIS 2011.

⁴⁴ AGIS has been used by other non Federal Government entities as a benchmark to develop investigation procedures.

which detailed investigation procedures need to be developed by the investigating agencies. So of itself, it does not provide sufficient criteria against which to assess the appropriateness of the FWA investigations.

In 2004, KPMG undertook an extensive global research project to identify what were the key processes involved in undertaking investigations. That research drew on the investigation processes used by a range of law enforcement agencies, regulatory bodies and the collective experience of KPMG's international network of investigators.

From an Australian perspective, the research included the AGIS 2003, the Australian Federal Police Management of Serious Crime Methodology, the practices and procedures of various State and Federal investigation agencies and the training standards applied under the Australian Qualifications Framework to Australian Government agencies undertaking investigations.

That research was developed into a global investigation methodology, which sets out the key investigations processes which should be present in an investigation of any complexity, size or scope. The research was refreshed and the methodology updated in 2010.

C Appendix C - Source and nature of documentation relied on for the purposes of this report

C.1 Documentation received from Fair Work Australia

The documents relied upon for the purposes of this report were provided to us by FWA and are listed below at C.1.1 and C.1.2

C.1.1 Fair Work Australia's investigation files

KPMG was provided with copies of the following investigation files prepared by the Lead investigator:

- *Health Services Union, National Office (Financial Inquiries FR 2009/224 - Folder 1);*
- *Health Services Union, National Office (Financial Inquiries FR 2009/224 - Folder 2);*
- *Health Services Union, Victoria Branch (Financial Enquiries FR 2009/201 - Folder 2A);*
- *Health Services Union, Victoria Branch No 1 Branch (Financial Enquiries FR 2009/201 Folder A);*
- *Health Services Union, Victoria No 1 Branch (Financial Enquiry s.330 Fair Work (Registered Organisation) Act 2009 FR 2009/201 - Folder 3);*
- *Health Services Union, Victoria No. 1 Branch (Financial Enquiries FR 2009/201 – Folder B);*
- *Health Services Union, Victoria No1 Branch (Financial Enquiries FR 2009/201 Folder 2B)*
- *HSU Inquiry - Federal (Folder 2);*
- *HSU Inquiry – Federal (Folder 2b);*
- *HSU Investigation - Federal (Folder 3);*
- *HSU Investigation – Federal (Folder 3b); and*
- *HSU Investigation – Federal (Folder 4)*

C.1.2 General Manager's administrative files

KPMG was provided with the General Manager's administrative files prepared in relation to the investigation:

- *HSU No.1 Branch - GM Consideration;*
- *HSU National Office – GM Consideration;*
- *HSU Meeting Minutes & Agendas;*
- *Attachments to letter to [General Manager] from Marcus Clayton of 27 March 2012-06-15;*

- *HSU Legal Advice;*
- *“HSU FOI – Documents Released 2011 – 2012”;*
- *“HSU FOI”;*
- *“HSU General - Part 1 June 2010 to December 2011”;* and
- *“HSU General – Part 2 January 2012 – “*

C.2 Electronic information received from Fair Work Australia

KPMG sought to obtain electronic data from relevant FWA employees for the period under review. This included the General Manager, the former General Manager, the Delegate, the Lead Investigator, a Team Member, Organisations, Research and Advice Department, the Vice President and their assistants.

This required the retrieval of current and restored historical backed up email and other electronic data. For the purposes of this review KPMG considered the restoration of available historical backed up data for the years ended 2011, 2010, 2009 and 2008 in addition to the current extracts.

The following electronic information was provided to us by FWA and relied upon for the purposes of this report:

C.2.1 Current Fair Work Australia email accounts

Extracts of FWA email accounts were obtained as at 16 May 2012 for:

- The General Manager;
- The former General Manager;
- The Delegate;
- The Lead Investigator;
- A Team Member, Organisations, Research and Advice Department;
- Executive Coordinator, Organisations, Research and Advice Department; and
- Administrative Assistant to the General Manager.

Extracts of FWA email accounts were obtained as at 31 May 2012 for:

- The Vice President;
- Executive Assistant to the General Manager; and
- Executive Assistant to the former General Manager.

C.2.2 Restored Fair Work Australia email accounts

KPMG has been advised that FWA retain annual back-ups of users email accounts. KPMG requested that FWA provide us with restored back-up email accounts for relevant persons for the following preceding four years:

- Year 1 - 31 December 2011;
- Year 2 - 31 December 2010;
- Year 3 - 31 December 2009; and
- Year 4 - 31 December 2008.

Table C1 below describes the restored email data received from FWA for each of the four years:

Table C1: Restored email accounts

FWA employee	Yr1	Yr2	Yr3	Yr4
• Lead Investigator;	✓	✓	✓	✓
• Delegate;	✓	✓	✓	✓
• General Manager;	✓	✓	✓	
• former General Manager;	✓	✓	✓	
• Vice President;	✓	✓	✓	✓
• Administrative Assistant to the General Manager;	✓	✓		
• Team Member, Organisations, Research and Advice;	✓	✓	✓	✓
• Former Industrial Registrar;			✓	✓
• Executive Coordinator, Organisations, Research and Advice;	✓	✓	✓	✓
• Former Acting General Manager;			✓	✓
• Executive Assistant to the General Manager;	✓	✓	✓	
• Former Executive Assistant to the Former General Manager; and	✓	✓		
• Former Executive Assistant to the Former Industrial Registrar.			✓	✓

C.2.3 Personal workspaces hosted on the Fair Work Australia network

KPMG obtained extracts of personal workspaces (referred to as the H-drive) retained on the FWA network as at 16 May 2012 for the:

- Lead Investigator;
- Delegate;
- General Manager;
- Former General Manager;

- Administrative Assistant to the General Manager;
- Team Member, Organisations, Research and Advice; and
- Executive Coordinator, Organisations, Research and Advice.

KPMG obtained extracts of personal workspaces (referred to as the H-drive) retained on the FWA network as at 5 June 2012 for the:

- Executive Assistant to the General Manager; and
- Former Executive Assistant to the former General Manager.

C.2.4 Restored personal workspaces hosted on the Fair Work Australia network

KPMG requested that FWA provide us with restored back-ups of the personal workspaces for the previous four year. Table C2 sets out detail of back-up H-Drive data received from FWA:

Table C2: Restored H-Drive personal accounts

FWA Employee	Yr1	Yr2	Yr3	Yr4
• Lead Investigator;	✓	✓	✓	✓
• Delegate;	✓	✓	✓	✓
• General Manager;	✓	✓	✓	
• former General Manager;	✓	✓	✓	
• Vice President;	✓	✓	✓	
• Administrative Assistant to the General Manager;	✓			
• Former Industrial Registrar;	✓	✓	✓	
• Team Member, Organisations, Research and Advice;	✓	✓	✓	✓
• Executive Coordinator, Organisations, Research and Advice;	✓	✓	✓	✓
• Former Acting General Manager;			✓	✓
• Executive Assistant to the General Manager; and	✓	✓	✓	
• Former Executive Assistant to the former General Manager.	✓	✓		

C.2.5 Common workspace hosted on the Fair Work Australia network

KPMG was provided with a copy of the folder identified as the General Manager's folder located on the FWA network (referred to as the N-drive) as at 25 June 2012.

C.2.6 Imaged Fair Work Australia computer hardware

KPMG was provided with access to FWA computer hard drives allocated to the following persons:

15486513_1 - 17 August 2012

- Lead Investigator (2 computers);
- Delegate (1 computer);
- General Manager (2 computers);
- Former General Manager (2 computers);
- Administrative Assistant to the General Manager (1 computer);
- Executive Coordinator, Organisations, Research and Advice (1 computer);
- Executive Assistant to the General Manager (1 computer); and
- Former Executive Assistant to the former General Manager (2 computers).

C.2.7 Fair Work Australia mobile devices

FWA provided us with access to the FWA mobile devices over the period 15 to 21 June 2012 allocated to:

- Lead Investigator - obtained access on 18 June 2012;
- Delegate - obtained access on 21 June 2012;
- General Manager - obtained access on 15 June 2012;
- Former General Manager; and - obtained access on 15 June 2012; and
- Executive Assistant to the General Manager - obtained access on 15 June 2012.

C.3 Electronic information received from the Australian Government Solicitor

The AGS provided us with electronic data extracted from their document review system. It is understood that this data was hosted by AGS and contained material of relevance to the HSU investigations.