

## NOTICE OF FILING

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### Details of Filing

Document Lodged:	Defence - Form 33 - Rule 16.32
File Number:	VID1042/2013
File Title:	Health Services Union v Katherine Jackson
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 23/03/2015 4:24:57 PM AEDT

A handwritten signature in blue ink, which appears to read "Warwick Soden".

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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## Defence

Federal Court of Australia  
District Registry: New South Wales  
Division: Fair Work

No. NSD 1501 of 2013

**Robert Elliott**  
Applicant/First Cross-Respondent  
**Health Services Union**  
Respondent/Cross-Claimant  
**Michael Alexander Williamson**  
Second Cross-Respondent  
**Katherine Jackson**  
Third Cross-Respondent

No. VID 1042 of 2013

**Health Services Union**  
Applicant/Cross-Respondent  
**Katherine Jackson**  
Respondent/Cross-Claimant

### DEFENCE OF KATHERINE JACKSON to the HSU's Further Amended Statement of Claim of 16.2.15

The Respondent in matter VID1042 of 2013 and Third Cross-Respondent in matter NSD1601 of 2013 (**Jackson**) responds to the Further Amended Statement of Claim dated 16 February 2015 as follows:

1. Jackson admits paragraph 1(a) to (c) but denies paragraph 1(d) or, alternatively does not admit that the *Corporations Act 2001 (Cth)* applies or applied to the affairs of the Health Services Union (**Union**).
2. Jackson does not admit paragraph 2(d) and says in further answer that she was appointed Acting National Secretary and was appointed National Secretary following declaration of a ballot of National Councillors in January 2008 and has held the office of National Secretary since that time. Jackson otherwise admits paragraph 2.
3. Jackson admits paragraph 3.

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Filed on behalf of:	Katherine Jackson, Respondent
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4. Jackson admits paragraph 4.
5. Jackson admits that the Union had rules (**Rules**) but does not otherwise plead to the proposition of law asserted in paragraph 5 or admit paragraph 5.
6. In answer to paragraph 6 Jackson says that the Rules speak for themselves, and will rely on them for their full force and effect.
7. In answer to paragraph 7 Jackson admits that she had authority to commit the Union to expend funds on solicitors in the circumstances specified in paragraphs 7(a) and (b) but otherwise does not admit paragraph 7.
8. Jackson does not admit sub-paragraphs 8(a) to (e), does not plead to sub-paragraph 8(f) and says in further answer to sub-paragraphs 8(a) to (e):
  - (a) On the proper construction of the Rules, including in particular, the autonomous branch rules, the employment of staff within a Branch of the HSU is a matter for the Branch and does not occur pursuant to the rules relied upon by the Cross-Claimant in paragraph 8.

#### **Particulars**

The Rules generally including Rule 44, Rules 49(a) and (d) and Rule 52 and Rule 57 and, in particular, Rule 52(e) and (g) and Rule 57(f) and (k).

- (b) In executing the Elliott Memorandum, Jackson was not fixing remuneration for an employee engaged by the Union under rules 21(c), 21(e) or 27, or in the other ways pleaded in paragraph 8.
- (c) On the proper construction of the Rules, prior to the amalgamation coming into legal effect, the employment of a person within the proposed amalgamated branch was a matter for the amalgamating branches rather than the National Officers or the national organs of the Union.
- (d) In executing the Elliott Memorandum, Jackson was entering into a contract that was mutually intended by the signatories (and the parties to the contract) to relate to Mr Elliott's employment within the proposed HSU East Branch (and HSUeast) as a matter within the area of responsibility of that branch (once it came into existence) as delineated under the autonomous branch structure in the Rules.
- (e) In executing the Elliott Memorandum Jackson was acting for and behalf of the Victoria No 3 Branch and Williamson was acting for and on behalf of the NSW Branch and in each case:
  - (i) in furtherance of implementation of the proposed amalgamation; and
  - (ii) in circumstances where the employer obligations under the Elliott Memorandum were intended by the signatories of (and the parties to) the Elliott memorandum, to be the obligations, under the Rules, of the Union qua HSU East Branch but if and only if the amalgamation took effect and HSU East Branch came into existence.
- (f) In executing the Elliott Memorandum, Jackson and Williamson were each acting pursuant to their power to manage the business of their respective branches, being the power pursuant to which the amalgamation was being implemented (beyond

the consideration of rule changes by the National Executive and National Council).

### Particulars

The Rules generally but the opening words of Rule 57 and Rule 57(f) in particular.

(g) At all material times Jackson genuinely believed each of matters in (a) to (f).

9. In answer to paragraph 9 Jackson:

- (a) admits that there was a document entitled "Financial Governance Procedures for the National Office" adopted by the National Executive at a meeting on 18 March 2008, effective from 19 March 2008, that remained in place at the time the Elliott Memorandum was executed (**financial policy**); and
- (b) says that the document speaks for itself and that she will rely upon it for its full force and effect,

but otherwise does not admit paragraph 9.

10. Jackson responds to paragraphs 10 and 11 as follows:

(a) *Equitable Obligations*

In answer sub-paragraphs 10(a) and (b) and 11(a) and (b), Jackson admits that she had duty not to misuse her position to gain an improper advantage for herself or others and to refrain from exercising her powers in the capacity in which she was acting for an improper purpose but does not otherwise admit those sub-paragraphs.

(b) *General Law Duties*

Jackson does not admit sub-paragraphs 10(c) and 11(c) and says in further answer, that even if she owed such a common law duty of care in connection with the execution of the Elliott Agreement etc, such duty did not, in particular circumstances, have a greater scope than the duties admitted in sub-paragraphs (a) and (c) of this paragraph.

(c) *Statutory Duties*

In answer to sub-paragraphs 10(d) to (f) and 11(d) to (f), Jackson admits that she was bound by the duties imposed by s.285, s.286 and s.287, subject to the limitation in s.283, of the FWRO Act but otherwise does not admit those sub-paragraphs.

## TOOMEY PEGG MATTER

*December 2011 letters from FWA*

11. Jackson admits paragraphs 12 to 14.

*15 December 2011 - Finance Committee*

12. Jackson admits paragraph 15 but in further answer to paragraph 15 says that:
- (a) Jackson was under no obligation to inform the Finance Committee of the Nassios-Jackson letter.
  - (b) As at 15 December 2011 Jackson did not propose to retain, and expend funds of the Union retaining, solicitors to provide a response to the matters in the Jackson-Nassios letter and intended, at that time, to prepare a response to the Nassios-Jackson letter herself without retaining solicitors.

*19 December 2011 - National Executive*

13. Jackson admits sub-paragraphs 16(a) to (f), denies sub-paragraph 16(g) and says in further answer to those paragraphs 16:
- (a) Jackson was under no obligation to inform the National Executive that she had received the Nassios-Jackson letter.
  - (b) As at 19 December 2011 Jackson did not propose to retain, and expend funds of the Union retaining, solicitors to provide a response to the matters in the Jackson-Nassios letter and intended, at that time, to prepare a response to the Nassios-Jackson letter herself without retaining solicitors.
  - (c) It was reasonable for Jackson to ensure that any advice in relation to the Nassios-Jackson letter provided on a retainer by the union, as part of the management of the business of the union, be provided by a firm other than Slater & Gordon.

*12 January 2012 National Executive*

14. Jackson admits paragraph 17 but says in further answer to paragraph 17 that:
- (a) on about 11 January 2012 there was an Officers' meeting that was preparatory for a meeting of the National Executive on 12 January 2012 during which:
    - (i) Jackson informed the Officers meeting that she received material from Fair Work Australia of the same sort that had been received by the Union; and
    - (ii) Jackson informed the Officers meeting that she thought it appropriate to seek independent legal advice in relation to that material rather than use the same solicitors as the Union; and
    - (iii) no one present at the Officers' meeting raised any objection;
  - (b) in the premises, Jackson was under no obligation to inform the National Executive that she had received the Nassios-Jackson letter; and
  - (c) as at 12 January 2012 Jackson still did not propose to retain solicitors in connection with her response to the matters in the Jackson-Nassios letter and was in the process of finalising her response to the Nassios-Jackson letter without the assistance of retained lawyers.

*Retainer of Toomey Pegg*

15. In answer to paragraph 18 Jackson admits that she retained Toomey Pegg in her capacity as National Secretary of the Union to review and comment upon her final draft response

to Fair Work Australia and refers to the facts pleaded in paragraph 17(a) to (j) below, but otherwise denies paragraph 18.

*24 January 2012 -National Executive*

16. Jackson admits paragraph 19 but in further answer to sub-paragraphs 19(c) and (d), Jackson repeats paragraph 14 above.

*Jackson's position*

17. In further answer to paragraphs 15 to 19 Jackson says:
- (a) The Nassios-Jackson letter was served on Jackson on 14 December 2011.
  - (b) Two of the three contraventions alleged in the Nassios-Jackson letter related to the non-filing of a Financial Statement for the National Office for the 2006-2007 year, being a matter that arose only because Craig Thomson had failed to sign and file a 2006-2007 Financial Statement for the National Office that had been prepared by the auditor and approved by the National Executive whilst Thomson was still National Secretary.
  - (c) The Nassios-Jackson letter required Jackson's response by 20 January 2013.
  - (d) Initially, Jackson intended to prepare a response herself without resort to solicitors.
  - (e) Without reliance on retained solicitors, Jackson prepared a full response (together with a bundle of documents) that was in its settled final form by 14 January 2013 (**final draft response**).
  - (f) Shortly before 14 January 2012, having reflected upon the nature of the Nassios-Jackson letter, the broader context in which that letter was sent and the nature of the emerging draft response, Jackson decided that it would be prudent and proper for her to have a legal expert review of her draft final response and provide comment upon it.
  - (g) To that end, on 14 January 2012 Jackson had a conversation with Mr John Trew QC and asked him to proceed with a review of the final draft response and provide comment on:
    - (i) whether its reasoning was valid and objective and its arguments clear; and;
    - (ii) whether any form of expression was intemperate or inappropriate.

**(the Toomey Pegg Instructions).**
  - (h) Given the nature and context of the Nassios-Jackson letter, it was reasonable for Jackson to seek advice from a senior practitioner with experience and skill in industrial matters such as Mr Trew QC.
  - (i) Mr Trew QC was a consultant to the firm Toomey Pegg and he required that instructions be agreed by a partner of the firm before they could be formally accepted.
  - (j) Mr Trew QC informed Jackson that he had other matters to attend to and could not immediately commence the review she had requested.

- (k) On 18 January 2012 Jackson, as National Secretary, retained Toomey Pegg for Mr Trew QC to carry out the Toomey Pegg Instructions.
- (l) Jackson was authorised to retain Toomey Pegg and give the Toomey Pegg Instructions under the Rule 32(n) as a matter of "the control and conduct the business of the Union".
- (m) Jackson further relies upon Rule 32(a) as providing a right to provide instructions when the proper administration of the Union calls for seeking legal advice in relation to a matter affecting the Union.
- (n) Properly characterised, Jackson's retainer of Toomey Pegg to carry out the Toomey Pegg Instructions committed the Union qua the National Office to expenditure:
  - (i) that was part of "the control and conduct the business of the Union" within the proper meaning of Rule 32(n) and authorised by Rule 32(n);
  - (ii) that was "expenditure on the general administration of the HSU or for purposes reasonably incidental to the general administration of the HSU" with the meaning of the Financial Policy and therefore authorised by clause 2.1 of the Financial Policy;
  - (iii) alternatively, that was, in the circumstances, within her authority under clause 3.1 of the Financial Policy such that National Executive approval was not required.
- (o) For the above reasons, it was reasonable and proper for Jackson, acting in her capacity as National Secretary, to retain Toomey Pegg and give the Toomey Pegg Instructions.
- (p) On or about 18 January 2013 Mr Trew QC advised Jackson that:
  - (i) Jackson was obliged to treat the contraventions alleged against her as a serious matter for her in her office as National Secretary, and for the Union;
  - (ii) he could not properly advise on the final draft response unless he read at least some of the background material and that, given:
    - his other commitments; and
    - his view that a response to allegations of the sort levelled by Fair Work Australia should not be rushed but instead undertaken with necessary reflection befitting the significance of the matter

it was impractical to provide the required advice by the impending deadline of 20 January 2012, and
  - (iii) Jackson should instruct Toomey Pegg to seek an extension of the deadline for providing her response so that advice could be provided without the pressure of the deadline of 20 January 2012.
- (q) Jackson reasonably accepted and relied on that advice and gave those instructions.

- (r) Toomey Pegg sought an extension of the deadline for Jackson's response to Fair Work Australia and an extension was granted until 3 February 2012.
- (s) At the time that Jackson, as National Secretary, retained Toomey Pegg, Jackson genuinely and reasonably believed that the cost of carrying out the Toomey Pegg Instructions would be less than \$10,000.
- (t) Jackson did not know or appreciate that Mr Trew QC had determined that it was necessary to undertake the amount of work that he did undertake until that work had already been substantially performed and with an impending deadline that rendered it impractical to consider instructing new solicitors.
- (u) In retaining Toomey Pegg, and in providing the Toomey Pegg Instructions and the instructions of 18 January 2012 to seek an extension of time, Jackson acted in good faith genuinely believing that such actions were reasonable and proper and in the interests of the Union.
- (v) In the premises, each of Jackson's retainer of Toomey Pegg, her provision of the Toomey Pegg Instructions and her provision of instructions on 18 January 2012:
  - (i) was reasonable and proper and within Jackson's proper authority as National Secretary,
  - (ii) did not involve her in any breach of duty or obligation however arising.

*Toomey Pegg First Invoice*

18. Jackson admits paragraphs 20 to 23.

*17 February 2012 -Finance Committee*

19. Jackson admits paragraph 24 but in further answer repeats paragraph 16 above and says that all work under the retainer had been completed at that time such that the non-notification pleaded was not causative of any loss to the union with the consequence that the conduct pleaded in paragraph 24 cannot give rise to liability in Jackson.

*Toomey Pegg Second Invoice*

20. Jackson admits paragraph 25.

*15 March 2012 -Finance Committee*

21. In answer to paragraph 26 Jackson admits that the Finance Committee passed a resolution that was recorded in the minutes in the terms set out in paragraph 26 but does not otherwise admit paragraph 26 and denies the reasonableness and validity of the resolution.

*29 March 2012 -National Executive -Resolution refusing payment*

22. In answer to paragraph 27 Jackson admits that the National Executive passed a resolution that was recorded in the minutes in the terms set out in paragraph 27 but does not otherwise admit paragraph 27 and denies the reasonableness and validity of the resolution.

*Toomey Pegg Demand and payment of Toomey Pegg fees*

23. Jackson admits paragraphs 28 to 31.



*The authority of Jackson to commit the Union to expend its funds*

24. In answer to paragraph 32 Jackson repeats paragraph 17 above and
- (a) in relation to sub-paragraphs 32(a) and (c) Jackson repeats paragraphs 13 and 14 above;
  - (b) in relation to sub-paragraph 32(b), Jackson repeats paragraph 12 above;
  - (c) in relation to sub-paragraph 32(c), Jackson repeats paragraphs 16 and 19 above;
  - (d) in relation to sub-paragraph 32(d), Jackson admits that she did not advise the National Executive or the Finance Committee of the fact of the retainer with Toomey Pegg prior to 3 February 2012 when work under the retainer was completed, and
  - (e) Jackson does not otherwise admit paragraph 32.
25. In answer to paragraph 33 Jackson says that by virtue of the matters specified in paragraphs 17 above, she was, as National Secretary, entitled to act as she did and that she required no consent from the Finance Committee, the National Executive or the National Council and otherwise does not admit paragraph 33.

*Claims - Expenditure of Union funds without authority*

26. Jackson denies paragraph 34 and 35. In further answer to paragraph 35:
- (a) Jackson denies that that she breached the Financial Policy, properly construed, in the manner alleged against her or at all.
  - (b) To the extent that a breach is alleged against Jackson by virtue of non-compliance with the Financial Policy, Jackson says that Clause 3.2 of the Financial Policy is invalid because it purports to empower the Finance Committee to approve expenditure of the Union's funds when, under the Rules (operating in conjunction with the *Fair Work (Registered Organisations) Act 2009*) there was no power to confer that function on the Finance Committee.

*Claims - Misuse of Position*

27. Jackson denies paragraphs 36 to 39
28. Jackson denies that the Union is entitled to relief sought in paragraph 40.

*Claims - Failure to exercise powers and discharge duties with due care*

29. In answer to paragraphs 41 and 42 Jackson repeats paragraph 17 above and otherwise does not admit those paragraphs.
30. Jackson denies paragraph 43.

*Indoor Business Rule*

31. In further answer to paragraphs 34 to 44, Jackson relies on the indoor business rule (which rule, in all the circumstances, qualifies each of the duties pleaded against Jackson) and says that in:
- (i) entering the Toomey Pegg Retainer;

- (ii) giving the Toomey Pegg Instructions; and
- (iii) causing the Union to incur a liability to Toomey Pegg

she genuinely believed that in doing those things she was acting in a proper and reasonable manner in the bona fide discharge of the legitimate business of the Union.

*Causation, Loss and Damage*

32. Jackson denies paragraphs 44 and 45.

33. In further answer to paragraphs 44 to 45, and given:

- (i) the circumstances in which the Toomey Pegg fees were incurred as set out in paragraph 17 above;
- (ii) the explanation Jackson had provided at the meeting of the National Executive on 29 March 2012; and,
- (iii) considered in the context of other amounts of legal fees expended by the Union with the approval and support of the Branch Secretaries,

Jackson says that if she had

- (iv) informed the Finance Committee and or National Executive of the Nassios-Jackson letter; and
- (v) sought the approval of the Finance Committee and or National Executive in the period prior to 18 January 2012 to retain Toomey Pegg and give the Toomey Pegg Instructions,

the Finance Committee and or National Executive, if each were acting reasonably and in good faith, would have approved Jackson retaining Toomey Pegg and providing the Toomey Pegg Instructions and the National Executive had no proper basis to refuse to meet the expenditure incurred under the Toomey Pegg retainer.

34. In the premises, the actions and omissions pleaded against Jackson were not the cause of any loss or damage to the Union and the Union has not suffered any loss or damage for which Jackson should be held liable.

**ELLIOTT MEMORANDUM MATTER**

35. In answer to paragraph 46 Jackson relies upon the terms of the Elliott Memorandum.

36. In relation to paragraph 47 Jackson:

- (a) admits paragraph 47(a) but says that she was not required to report those matters to the National Council or the National Executive;
- (b) admits paragraph 47(b) but says that no such authorisation was required;
- (c) admits paragraph 47(c) in so far as it relates to Jackson's function of controlling and conducting the business of the National Office of the Union between National Executive meetings, admits that the execution of the Elliott Memorandum etc was

not part of her function *as National Secretary*, but otherwise denies paragraph 47(c);

- (d) admits paragraph 47(d) in so far as it relates to general expenditure of the National Office but otherwise denies paragraph 47(d) and says further that it did constitute expenditure on the general administration of the HSU East Branch and or HSUeast or for purposes reasonably incidental thereto.
- (e) say in answer to paragraph 47(e) that
  - (i) the execution of the Elliott Memorandum etc was the business of the Victoria No 3 Branch and the NSW Branch as branches that were in the process of amalgamating,
  - (ii) the execution of the Elliott Memorandum did not relate to employment within the National Office and was not the business of the National Office; and
  - (iii) accordingly, that the financial procedure had no application in relation the execution of the Elliot Memorandum etc.

and otherwise denies paragraph 47(e); and

- (f) denies paragraph 47(f) and says further that the execution of the Elliott memorandum , the employment of Elliott and the fixing of remuneration by the Elliott Memorandum was authorised under the HSU Rules.

37. Jackson denies paragraph 48 and does not plead to particulars.

*Alleged misuse of position re Elliott Memorandum*

- 38. Jackson denies paragraph 49 and says in further answer that she executed the Elliott memorandum in good faith, genuinely believing that it was appropriate and in the interests of the Victoria No 3 Branch and the proposed amalgamated branch for the Elliott memorandum to be executed and does not plead to particulars.
- 39. Jackson denies paragraph 50 and says further that Elliott did not gain any improper advantage under the Elliott memorandum.
- 40. Jackson does not admit paragraph 51 and says further that there was no obligation or occasion to raise the Elliott Memorandum with the National Finance Committee, the National Executive or the National Council because of the matters specified in paragraph 8 and paragraph 36(e).
- 41. Jackson denies paragraph 52.
- 42. Jackson denies paragraph 53.
- 43. Jackson does not plead to paragraph 54.
- 44. Jackson denies that the Cross-Claimant is entitled to the relief claimed in paragraph 55 or any other relief in respect of the matters pleaded in the Cross-Claim.
- 45. Jackson does not plead to paragraph 56.

46. In answer to paragraph 57 Jackson:
- (a) repeats her answer to paragraph 10 above;
  - (b) says further that the duty pleaded in paragraph 57(b) is irrelevant because the duties admitted in paragraph above arose in the context of the Elliott Memorandum because she occupied the office of Secretary of the Victoria No 3 Branch and, after amalgamation, was to occupy the office Executive President of HSU East Branch (and HSUeast); and
  - (c) does not otherwise admit paragraph 57 and Jackson does not plead to particulars.
47. In answer to paragraph 58, Jackson does not admit that any duty owed by her was as pleaded in paragraph 58 or that the degree of care and diligence required by the properly applicable legal principles extended to the matters specified in paragraph 58, in the manner specified in paragraph 58.
48. Jackson denies paragraph 59 and says in further answer to the sub-paragraphs in paragraph 59:
- (a) In answer to paragraph 59(a), Jackson genuinely believed that she had power and authority, as Branch Secretary of the Victoria No 3 Branch, one of the three amalgamating branches, to execute the Elliott Memorandum.
  - (b) In answer to paragraph 59(b), Jackson genuinely did not believe that an advertised recruitment process was appropriate or required in the all circumstances. In particular:
    - (i) Elliott was an existing employee of the Victoria No 3 Branch.
    - (ii) It was a term of the agreement between the three amalgamating branches (and HSUeast), pursuant to which the amalgamation was being implemented, that all employees of the amalgamating branches would become employees of the amalgamated HSU East Branch (and HSUeast) as part of the amalgamation.
    - (iii) It was intended by the amalgamating branches that Elliott's employment with the Victoria No 3 Branch would be continued as employment in the HSU East Branch (and HSUeast), just as it was to be with all other employees of the amalgamating branches.
    - (iv) Elliott's true role, both as an employee of the Victoria No 3 Branch and as an employee of the HSU East Branch (and HSUeast) was in the nature of a consultant.
    - (v) It was intended by Jackson and Williamson and the amalgamating branches that Elliott would perform that consultancy role within HSU East Branch (and HSUeast).
    - (vi) Jackson genuinely and reasonably believed that the terms of the Elliott Memorandum reflected the true nature of Elliott's intended role as a consultant, were appropriate and that it was in the interests of the members of the Victoria No 3 Branch, as an amalgamating branch, that the services of Elliott be secured for the proposed HSU East Branch (and HSUeast) on those terms.

- (vii) It is within the range of reasonable action for a person in Jackson's position to select a consultant on the basis of past performance, known high level skills and existing engagement without putting the role to tender or advertisement.

Further:

- (viii) The Elliott Memorandum, along with other contracts of employment for employees of the Victorian amalgamating branches, was approved and ratified by the Branch Council of HSU East Branch and the Council of HSUeast as a contract of employment assumed by HSU East Branch and HSUeast respectively, curing any lack of authority in Jackson (which is denied).
- (c) In answer to paragraph 59(c), Jackson says that she did not consider the remuneration payable to Elliott to be excessively generous and genuinely and reasonably considered it to be appropriate having regard to her knowledge of:
- (i) Elliott's particular skill set including high level, policy and strategic skills, legal skills, knowledge of the industrial history of the union's area of coverage, knowledge of the industrial environment of the union's area of coverage, the Rules of the union, knowledge of the statutory and regulatory framework in which the union functioned, the governance issues facing the union, the political and governance environment governing employers in the sectors of industry in which the union operated; and legal and policy knowledge of governance issues generally.
  - (ii) the cost of securing the advice and assistance of the sort for which the union had a continuing need and of the sort that Elliott had provided, was providing and was able to provide,
  - (iii) a plan that Elliott would help establish, foster and develop an "aged care forum" auspiced by the HSU East Branch but also involving employers and investors in the aged care sector which would generate income from donations and subscriptions as well as from services provided,

and her conscientious belief that:

- (iv) Elliott was an significant asset who should be retained in the interests of the amalgamated branch,
- (v) the cost of obtaining equivalent assistance to that which was likely to be required of Elliott would be at least as expensive and subject to greater risk of less satisfactory outcomes having regard to the matters referred to in (i); and
- (vi) Elliott's annual salary of \$150,000 plus entitlements for a guaranteed 75 days per year was in substance a consultancy retainer and was a reasonable and appropriate expense in the interests of the members of a branch the size of HSU East Branch (and HSUeast) with some 60,000 members and income in the order of \$23,000,000 per year.

Further, Jackson denies that a reasonable person in her position would have regarded the remuneration in the Elliott Memorandum as so excessively generous

as to require her to decline Williamson's request that Jackson sign the Elliott Memorandum.

- (d) In answer to paragraph 59(d), Jackson says that the "Financial Governance Procedures for the National Office" applied to the National Office and did not apply to the business of the Victoria No 1 Branch, the Victoria No 3 Branch and the NSW Branch or, after their amalgamation, the business of HSU East Branch (let alone HSUeast).
  - (e) In answer to paragraph 59(e), Jackson says that the appointment and its terms were reported to the relevant governing body, the Branch Council of HSU East Branch and the Council of HSUeast, both of which ratified the appointment.
  - (f) In answer to paragraph 59(f), Jackson says that, following the amalgamation, as a matter of the power to direct and to control, Elliott was not subject to her direction or control, which remained the power of Williamson as General Secretary, but was subject to her general supervision pursuant to a direction by Williamson. Further, Jackson does not admit that reasonable records were not kept as pleaded in paragraph 59(f) and says that among the records that she kept (but which were acquired by Peter Mylan in early 2012, are said to be lost and are not available to her) were records that would have enabled her to identify the amount of work performed by Elliott at her request and on the Branch's behalf.
  - (g) In answer to paragraph 59(g), Jackson says that Elliott had a long record of effective and committed service and that the power to terminate the contract for serious breach of its express and implied terms was sufficient protection and that, in the circumstances that obtained, she genuinely and reasonably concluded that it was reasonable for Elliott to have negotiated the relevant terms with Williamson.
  - (h) In answer to paragraph 59(h), Jackson repeats her answer to sub-paragraph 59(g).
49. Jackson denies paragraph 60 and further denies that the Union has suffered any loss or damage and denies that any breach of duty by her has caused any loss or damage to the Union.
50. Jackson denies that the Cross-Claimant is entitled to any of the relief sought in paragraph 61.
51. In answer to paragraph 62, Jackson repeats her answer to paragraphs 10.
52. Jackson denies paragraph 63 to the extent that it is pleaded against her and says that she genuinely believed that execution of the Elliott Memorandum etc was in the interests of the members of the Victoria No 3 Branch and the members of the amalgamated HSU East Branch (and HSUeast).
53. Jackson denies paragraph 64.
54. Jackson denies that the cross-claimant is entitled to the relief sought in paragraph 65.
- 54A In answer to paragraph 66A:
- (a) Jackson joins issue with the Union on paragraph 66A(a).
  - (b) Jackson joins issue with the Union on paragraph 66A(b).
  - (c) Jackson denies paragraph 66A(c).

- (d) Jackson denies paragraph 66A(d).
  - (e) Jackson denies paragraph 66A(e).
  - (f) In response to paragraph 66A(f), Jackson denies that Elliott gained any improper advantage under the Elliott Memorandum or that the Union suffered any improper detriment.
  - (g) Jackson denies paragraph 66A(g).
- 54B Jackson denies paragraph 66B.
- 54C In answer to paragraph 66C:
- (a) In respect of paragraph 66C(a), Jackson repeats her answer to paragraphs 11(b) and (e).
  - (b) Jackson denies paragraph 66C(b).
  - (c) Jackson denies paragraph 66C(c).
- 54D In answer to paragraph 66D, Jackson repeats her answer to paragraphs 11(c) and (d) on the facts assumed in paragraph 66D.
- 54E Jackson denies paragraph 66E.
- 54F Jackson denies paragraph 66F.
- 54G Jackson denies paragraph 66G.
- 54H Generally, the actions and omissions pleaded against Jackson in relation to the Elliott Memorandum were not the cause of any loss or damage to the Union and the Union has not suffered any loss or damage for which Jackson should be held liable.
55. Generally, if Jackson is liable to the Union in relation to her execution of the Elliott Memorandum, which is denied, Jackson relies upon section 9 of the *Law Reform (Miscellaneous Provisions) Act 1965 (NSW)*.

## THE NHDA PAYMENTS

56. Jackson admits paragraph 67 of the Further Amended Statement of Claim.
57. In answer to paragraph 68 Jackson relies upon each of the provisions referred to in paragraph 68 for their full force and effect.
58. Jackson admits paragraph 69(a) and (b). In answer to paragraph 69(c) Jackson relies upon the Rules of the union, particularly rule 56 (1), for their full force and effect. Jackson does not admit paragraph 69(d).
59. Generally in relation to paragraphs 70 to 95, Jackson says that “NHDA” is an acronym that refers to a Commonwealth Bank account number 063023 1015 3719 styled “National Health Development Account” that came into existence in the following circumstances:
60. In about 2003 the Vic 3 Branch had a dispute with the Peter MacCallum Institute (employer) in relation to award breaches that had led to a substantial underpayment of a large number of employees in the Research Division over an extended period, all of

whom were all world-class research scientists working on cutting edge cancer research, most undertaking research projects funded by grants.

61. The Victoria No 3 Branch advanced two claims against the employer:
  - (i) a claim on behalf of a large number of employees for outstanding back pay arising as a result of underpayment over a period of several years (**the back pay claim**);
  - (ii) a claim on behalf of the Union, qua the Victoria No 3 Branch, in its own right, for penalties in respect of the statutory breaches involved in those underpayments (**the penalties claim**).
62. The backpay claim was settled on the basis that the employees would receive a significant pay increase (6.6%), security of employment guarantees and an improved structure that, over time, would see them receive more than the amount of the outstanding back pay. In return the union, with the overwhelming majority support of employees, did not receive any back pay in circumstances where, the amount of outstanding back pay, if paid, would have resulted in approximately a quarter of the employees team made redundant and being unable to complete their research projects which was, for most employees, the most important consideration.
63. The penalties claim was settled by the payment of \$250,000 to the union, which Jackson regarded as being in substance and in truth referable to the penalties the union was likely to obtain should it have pursued the award/agreement breach proceedings) in return for the union providing a release in relation to the penalties claim.
64. At the time that settlement amount was received, the Vic 3 Branch had no debt, had a considerable amount of cash on deposit in the bank and was able to meet its budgeted expenses from the income stream of membership fees contained in the budget such that the amount received by way of fines against the employer was properly characterised as a “windfall”.
65. At all material times that amount has been referred to as “the Peter Mac money”.
66. In early 2004 the BCOM discussed what should be done with the windfall “Peter Mac money” and resolved it should be earmarked as a discretionary fund to be spent over time to advance the industrial and political interests of the Vic 3 Branch and the Union more generally (Fund) and authorised Jackson to spend that money at her discretion for the purposes specified in the resolution, including an amount of \$4,000 that she was authorised to spend on her own personal expenses (“the BCOM Peter Mac Approval”).
67. The BCOM Approval was recorded in the minutes of the Vic 3 Branch BCOM.
68. Jackson opened the NHDA bank account as the vehicle through which the BCOM Approval could be implemented. The NHDA was a nothing more and nothing less than a bank account.
69. Some additional amounts were approved by resolution of the BCOM for payment into the Fund.
70. All funds transferred from the Vic 3 Branch to the NHDA were transferred pursuant to the BCOM Approval or the approvals referred to in (g).



71. In answer to paragraph 70 Jackson admits that between February 2004 and 24 May 2010 funds earmarked for the purpose were transferred to the NHDA. Jackson does not plead to the particulars.
72. Jackson admits paragraph 71, repeats paragraph 59 above and in further answer Jackson denies that she had a beneficial interest in the NHDA and says that she regarded herself as what the law would consider a trustee in relation to that money to ensure that it was spent in accordance with the BCOM Approval.
73. In answer to paragraph 72 Jackson:
- (a) admits subparagraphs (a) to (c);
  - (b) denies subparagraphs (d) and (e); and
  - (c) denies subparagraph (f) save as to an amount of \$4000 per year and in further answer repeats paragraph 72 above.

*2003-4 NHDA transfer - \$80,000*

74. In answer to paragraph 73 Jackson:
- (d) admits subparagraphs (a) and (b);
  - (e) denies subparagraph (c).
  - (f) admits subparagraphs (e) and (f) but says in further answer to those subparagraphs:
    - (i) that decisions in relation to the audit treatment of the 2004 NHDA transfer was a matter determined by the auditor alone; and
    - (ii) the preparation of financial statements and necessary returns and declarations relating to the financial affairs of the Branch was the responsibility of the auditor without direction or request from Jackson.
75. In further answer to sub-paragraphs (e) and (f), Jackson says that at no relevant time did she regard transfers to the NHDA as a grant or a donation to her personally. She regarded those monies as monies that she was obliged to spend in accordance with the BCOM approval.

*2004-5 NHDA transfer of \$20,000*

76. In answer to paragraph 74 Jackson repeats her response to paragraph 73.

*2005-6 NHDA transfer - \$18,000*

77. In answer to paragraph 75 Jackson repeats her response to paragraph 73.

*2006-7 NHDA transfer - \$5000*

78. In answer to paragraph 76 Jackson repeats her response to paragraph 73.

*2007-8 NHDA transfers - \$8,000 + \$8,000 + \$7,000*

79. In answer to paragraph 77 Jackson repeats her response to paragraph 73.

*2008-9 NHDA transfers - \$8,000 + \$5,000 + \$12,000 + \$50,000*

80. In answer to paragraph 78 Jackson repeats her response to paragraph 73.

*2009-10 NHDA transfers - \$7,500 + \$8,000 + \$8,000 + \$22,000*

81. In answer to paragraph 79 Jackson repeats her response to paragraph 73.

*2010-11 NHDA transfer - \$6,000 on 13 October 2010*

82. In answer to paragraph 79 Jackson repeats her response to paragraph 73.

*NHDA Payments alleged as related party transactions*

83. Jackson does not admit paragraphs 81 to 86.

68A. In answer to paragraph 87 Jackson:

(a) admits the withdrawals and deposits on the dates and in the amounts pleaded in paragraph 87

(g) denies that all of the expenses listed in sub-paragraphs (b), (e) and (f) were personal

(h) denies that all or most of the expenses listed in subparagraph (c) related to holiday spending.

(i) admits subparagraph (g)

but does not otherwise admit paragraph 87.

*Alleged Misuse of position etc: the NHDA transactions*

84. Jackson denies paragraphs 88 to 101.

*Alleged Misappropriate: the NHDA transactions*

85. Jackson admits paragraph 102.

86. Jackson denies paragraphs 103 to 105.

*Re Relief sought against Jackson: the NHDA transactions*

87. In answer to paragraph 105, Jackson denies that the Union has suffered loss or damage as pleaded in paragraph 105 or at all in relation to the transfers to the NHDA. Further, if, which is denied, Jackson has breached any duty as alleged in the Further Amended Statement of Claim in relation to transfers to the NHDA such breach was not causative of any loss to the Union.

88. Jackson denies that the Union is entitled to the relief sought in paragraphs 106 and 107.

### THE CASHED CHEQUES

89. Jackson admits paragraph 108.
90. In answer to paragraph 109 Jackson agrees that cash cheques as specified in the table in the paragraph were drawn from the Victoria No 3 Branch cheque account in the amounts, and on the dates, specified in the table but otherwise does not admit paragraph 109.
91. Jackson admits paragraph 110
92. In answer to paragraph 111 Jackson repeats paragraph 90 above in relation to the amounts specified in paragraph 111.
93. Jackson admits paragraph 113 to 117 in relation to the rules relied upon by the Union, Jackson relies upon the whole of the Rules. And their full force and effect.
94. Upon the amalgamation taking effect, Mr Williamson, as General Secretary of the HSU East Branch and HSUeast, gave Jackson lawful instructions to
- (a) continue conducting the financial affairs of the old Vic 3 Branch portion of HSU East Branch/HSUeast on a "business-as-usual" basis until such time as the necessary merging of accounts and accounting functions for the three amalgamating branches had been finalised; and
  - (b) continue using her existing Union credit cards as her ongoing Union credit cards to meet work related expenses incurred by her.
- Williamson had authority to give that direction and Jackson was authorised thereby.
95. That consolidation process was not finished until early December 2010.
96. Jackson admits 118.
97. In answer to paragraph 119 Jackson admits that the 2008 resolution did not authorise payments that predated the 2008 resolution but otherwise denies paragraph 119. In further answer Jackson says that years prior to 2008, and before any of the cash cheques identified as referable to "honorarium and training/conference allowances", the BCOM approved the payment of such amounts to the branch committee of management who, by agreement, in turn, donated all but \$100 of the amount referable to them back to the union for use as discretionary funds, which amounts were retained by Jackson in a metal box and referred to as the "Kitty" for use by her at her discretion, to advance the industrial and political interests of the Branch and the Union.
98. Jackson denies the opening three lines of paragraph 120, admits subparagraphs (b), (d), (i), (j), does not admit the allegation as to source in subparagraphs (a) and (g) and otherwise denies paragraph 120.
99. In answer to paragraph 121 Jackson:
- (a) admits that it was her practice to arrange for a cheque to be cashed to provide the funds authorised by the BCOM in relation to the "honorarium and training/conference allowances" and that BCOM members were paid an amount

of one hundred dollars cash from the proceeds with the balance being donated as pleaded in paragraph 97;

(b) admits sub paragraph (b).

100. In answer to paragraph 122, Jackson admits subparagraphs (a) and (b) but denies subparagraph (c).
101. In answer to paragraph 123, Jackson admits that the effect the practice was to exclude expenditure from the "Kitty" from auditing by the auditor of the Branch but otherwise denies paragraph 123.
102. Jackson admits paragraph 124.
103. In answer to paragraph 125, Jackson admits that cash cheques were drawn on dates and in the amounts specified in the paragraph and that in the period February to May 2008 she had stepped down temporarily as the Branch Secretary of the Victoria No 3 Branch, says that those payments.
104. In answer to subparagraph 126(a), Jackson repeats her answer to paragraphs 11 and 86 and otherwise admits paragraph 126.
105. Jackson denies paragraph 127 to 136.
106. Jackson denies the union is entitled to the relief claimed in paragraph 137.

## **THE CREDIT CARD EXPENDITURE**

107. Jackson admits paragraph 138 but says in further answer to paragraph:
  - (a) each of the three credit cards, although issued in her name, were union credit cards intended for the charging of unions expenses;
  - (b) the three credit cards were the only credit cards of the old Victoria No 3 Branch and the totality of the branches credit card expenditure was charged to those cards;
  - (c) Jackson was not the only person to charge expenditure to the three credit cards – such expenditure was also charged by the bookkeeper Ms Jane Holt, the office manager, Ms Frances Lindsay, and by various staff members; and
  - (d) for a number of years after Jackson commenced in the role of National Secretary, the National Office had no union credit card and Jackson used the Victoria No 3 Branch credit cards to effect purchases for the purposes of the National Office and did so with the knowledge and approval of the Victoria No 3 Branch BCOM.

### *Generally in response to the allegations*

108. In response to each of the payments referred to in subparagraphs 141(a) to (e); paragraphs 145-183, 171-175, 177-178, 179 and 181-183 Jackson:

- (a) admits that to the extent such payment appears on a bank statement, the payment was made to that vendor on the date and in the amount recorded on the bank statement.
- (b) says that, with rare exceptions, on every occasion where Victoria No 3 Branch funds were spent on any of the three credit cards by Jackson, vouchers supporting each expense were provided by Jackson to the bookkeeper, stapled to the credit card statement and submitted to a meeting of the BCOM for approval as part of the relevant financial report and the expenditure of those funds was approved by the BCOM with such approval recorded in the minutes.
- (c) does not have an unassisted memory of every transaction relied upon by the union and is embarrassed because she cannot properly respond in relation to each payment without access to creditor payments records, which records are missing and were destroyed on hidden sometime after they were brought into physical control of Peter Mylan in February and March 2012 by either Mylan, Williamson or Brown, each of whose actions are taken to be actions of the Union; and
- (d) denies that any of the payments were unauthorised or improper.

*Preliminary - Jackson's Entitlements - Relevant Authorisations*

- 109. The entitlement under the Rules of an elected official holding a full time paid office under the Rules to be paid the salary set for that office is not dependent upon performing any particular work on any day, or at all. Where a full time elected official fails to attend to their duties, they do not lose the right to be paid, rather they expose themselves to removal from office as a disciplinary matter.
- 110. Jackson's remuneration while Secretary of the Victoria No 3 Branch was a matter for negotiation between Jackson and the Branch Committee of Management.
- 111. At all material times it was properly within the power of the Victoria No 3 Branch BCOM to fix Jackson's remuneration package in accordance with Rules.
- 112. The Branch Committee of Management of the Victoria No 3 Branch exercised that power to vary Jackson's entitlements from time to time.
- 113. When Jackson became Secretary of the Vic 3 Branch in 1996 she received the same salary and entitlements as her immediate predecessor.
- 114. Throughout the period from 1996 to early 2008, when Jackson received a full time salary as Secretary of the Vic 3 Branch, her salary was linked to the salary of the Chief Radiation Therapist at the Peter MacCallum Cancer Institute. The balance of her entitlements were negotiated between Jackson and the Victoria No 3 Branch BCOM from time to time, approved by the BCOM and recorded in the minutes of meetings of the BCOM
- 115. In 1999 Jackson was appointed to the Board of HESTA and obtained an entitlement to board fees from HESTA by virtue of that appointment and in circumstances where there was no Rule, policy or direction that required her to remit those board fees to the Union.
- 116. Shortly thereafter the BCOM passed a resolution, recorded in the minutes, noting that Jackson would remit her HESTA board fees to the Union and conferring on Jackson an entitlement to expend Victoria No 3 Branch funds up to the amount of HESTA Board

sitting fees earned by Jackson and remitted to the Victoria No 3 Branch, on travel and professional development for herself and Union staff or contractors at her discretion, while ever she continued to remit HESTA board fees to the Victoria No 3 Branch (**the BCOM HESTA Board Fees Approval**).

117. In 2002, ten years after commencing with the Vic 3 Branch, Jackson sought a review of her salary and entitlements. The BCOM considered that request in Jackson's absence and resolved to appoint Bryan Yeates and John Drummond to conduct a review of Jacksons' remuneration and report to the BCOM. Mr Drummond was the first Secretary of the Health Professionals Association and a Life Member.
118. During that review Jackson expressed a wish to receive a substantial travel entitlement rather than an increased salary.
119. Following that review, in late 2002, Jacksons entitlements were varied by resolution of the BCOM, and recorded in the minutes, to include an entitlement to spend up to \$28,000 per annum on travel for conference and sabbatical purposes, which travel counts as time at work for leave entitlement purposes, including authority to expend monies on the costs of travel for accompanying family members (**the Annual Travel Entitlement**).
120. In late 2003 Jacksons entitlements were varied by resolution of the BCOM, and recorded in the minutes, to include an entitlement for Jackson spend an amount of \$4,000 per annum on her personal expenses from the "Peter Mac money" in the NHDA account (**the BCOM Peter Mac Approval**).
121. From January 2008 Jackson received a salary in the full time paid office of National Secretary. Jackson stood aside for a brief period as Branch Secretary of the Victoria No 3 Branch pending a rule change that would authorise her to hold that office while ever she was holding the office of National Secretary, always on the basis that she would not receive two full time salaries.
122. At the time Ms Jackson was appointed as National Secretary she had a discussion with the Victoria No 3 Branch BCOM in relation to her remuneration. In recognition of the significant work that Jackson would do in relation to the Victoria No 3 Branch, in addition to her role as National Secretary, the BCOM authorised and approved Jackson:
  - (a) an honorarium of \$21,000 per annum; and
  - (b) continuing to receive the Annual Travel Entitlement. That approval was recorded in the minutes and was a valid exercise of the BCOM's power.
123. Jackson repeats paragraph 94 above and says that she acted in good faith in reliance on the lawful instructions referred to in that paragraph.
124. Jackson admits paragraphs 139 and 140 save that, repeating paragraph 108 above, Jackson and cannot admit that the reimbursements referred to in those paragraphs were the only reimbursements in the period.
125. Other than as admitted in paragraph 108 above and in the following paragraphs, Jackson denies paragraphs 145-183; 171-175; 177-178; 179; 181-183.
126. Generally in relation to purchases referenced in paragraph 141 (Travel Expenses), 170 (Retail Expenses), 176 (Food and Alcohol Expenses), 179 (Health and Fitness Expenses), 180 (Entertainment Expenses) and 183 (Miscellaneous Expenses), where the purpose of a

purchase is attributed, Jackson repeats paragraph 108 above and does not admit that purpose.

### The Travel Expenses

127. In answer to paragraph 141(a), other than as set out in the table below, Jackson denies that the travel events listed in paragraph 141(i) to (xxiv) was a “holiday”. Those travel events had the character identified in the following table:

Para 141(a)	Travel event as described by Union	True Character
	<b>Salary paid as Vic 3 Branch Secretary</b>	
(i)	July 2003 – the New Zealand holiday	Holiday with work component. Within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement
(ii)	September 2003 – the Gold Coast holiday	Approved Work Related and or within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement
(iii)	December 2003 to March 2004 – Hong Kong and United States holiday	Approved Work Related – Harvard Trade Union training program (professional development). Annual Travel Entitlement.
(iv)	November 2004 – the Second Hong Kong holiday	Within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement
(v)	April 2005 – the Second US holiday	Meetings with US union officials. Within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement.
(vi)	July 2005 – Mount Buller holiday	Approved Work Related and or within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement.
(vii)	August 2005 – Falls Creek holiday	Approved Work Related – Seminar and team building for Vic1 and Vic 3 Branch senior officers and employees
(viii)	September 2005 – the India holiday	Approved Work Related with numerous work related meetings. Within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement.
(ix)	April 2006 – the third US holiday	Approved Work Related – Attendance at meeting of the advisory the board of HESTA’s main investment manager. Ms Jackson met with unions and purchased material for branch. Within Annual Travel Entitlement.
(x)	July 2006 – the Port Douglas holiday	Approved Work Related - staff in-service program.
(xi)	December 2006 – the third Hong Kong holiday	Within BCOM HESTA Board Fees Approval and or Annual Travel Entitlement.
(xii)	March 2007 – the France holiday	Within Annual Travel Entitlement
(xiii)	May to June 2007 – the fourth	Approved Work Related and or within

	US holiday	BCOM HESTA Board Fees Approval and or Annual Travel Entitlement
(xiv)	August 2007 – the second Falls Creek holiday	Approved Work Related – Seminar and team building for Vic 3 Branch senior staff.
(xv)	September 2007 – the second Port Douglas holiday	Approved Work Related re Aboriginal Health Service and radiographers.
	<b>Salary Paid as National Secretary</b>	
(xvi)	March 2008 – the Sydney Labour Day holiday	Approved Work Related – HREA conference – speaking engagement.
(xvii)	June 2008 – the fourth Hong Kong holiday	This trip may have a holiday component. Annual Travel Entitlement
(xviii)	July 2008 – the third Port Douglas holiday	Approved Work Related – staff development workshop for Vic 3 staff
(xix)	November 2008 – the fifth US holiday	Approved Work Related – Work on the Obama campaign (Professional development). BCOM HESTA Board Fees Approval and or Annual Travel Entitlement
(xx)	September 2009 – the Coolangatta holiday	Work related conference
(xxi)	October 2009 – the fifth Hong Kong holiday	Approved Work related - conference attended by Vic 3 staff - BCOM HESTA Board fees approval
(xxii)	March 2010 – the sixth Hong Kong holiday	Annual Travel Entitlement and or BCOM HESTA Board Fees Approval
	<b>Amalgamation – Salary paid as Executive President</b>	
(xxiii)	August 2010 – the first European holiday	Genuine holiday during period of approved annual leave. Expenditure part of Annual Travel Entitlement – expressly continued post Amalgamation.
(xxiv)	August 2011 – the second European holiday	Genuine holiday during period of approved annual leave. Expenditure part of Annual Travel Entitlement – expressly continued post Amalgamation.

128. Referring to the list in paragraph 141 of the Further Amended Statement of Claim, Jacksons says from her recollection, unaided by Victoria No 3 Branch financial records or BCOM minutes:

- (a) In relation to trip (iii), in 2004 Ms Jackson won a US State Department/NSW Trades & Labour Council sponsorship to attend the Harvard Train Union Training Program, the premiere professional development course for union officials in the world. The BCOM approved her attendance at that program and associated expenses not covered by the sponsorship. Time on the Program was properly treated as work time, not leave. Ms Jackson says that she was also entitled to spend money in accordance with the BCOM HESTA Fees Approval the Contractual Travel Entitlement in relation to that travel. Ms Jackson graduated from the Harvard course, delivering the graduation speech on behalf of the class.
- (b) In relation to trips (vii) and (xiv), the expenses were work-related and represent the costs associated with a seminar and team-building exercise for senior officers



and employees of both the Victoria No 1 and Victoria No 3 Branches and subsequently approved as properly work-related.

- (c) In relation to trip (viii), the trip was work-related and involved a series of meetings with US union officials. The trip was expressly authorised by the Victoria No 3 Branch BCOM and expenditure was supported, not only by that approval, but also by the BCOM HESTA Board Fees Approval and or the Annual Travel Entitlement.
- (d) In relation to trip (ix), in 2006 with the approval of the Victoria No 3 Branch BCOM, Ms Jackson travelled to the US as a representative of HESTA to attend an advisory board meeting of one of HESTA's main investment managers. HESTA has a policy that allowed the cost of the business class fare to which the board member was entitled to be applied against two economy tickets to facilitate partner or family member travel. Ms Jackson took her daughter Stephanie with her pursuant to that policy. The flights were charged to one of the three Victoria No 3 Branch credit cards but then reimbursed by HESTA. Other expenditure was supported by the BCOM HESTA Board Fees Approval and or Annual Travel Entitlement
- (e) In relation to trip (x), the expenses were incurred in relation to a staff in-service retreat and work-related and was authorised and approved by the Victoria No 3 Branch BCOM with expenditure also supported by BCOM HESTA Board Fees Approval.
- (f) In relation to trip (xii), the trip was within the Annual Travel Entitlement.
- (g) In relation to trip (xv), the travel was work-related and involved Jackson travelling to provide industrial representation to members working in the aboriginal health service and in relation to industrial issues involving radiographers.
- (h) In relation to trip (xvi), the travel related to Jackson's attendance at a HREA conference at which she delivered an address to health professionals.
- (i) In relation to trip (xvii), expenses associated with the trip were supported by the Annual Travel Entitlement.
- (j) In relation to trip (xviii), the travel was work-related and to a staff development workshop for a number of Victoria No 3 Branch staff, was approved by the BCOM with expenditure covered by that approval and/or covered by the BCOM HESTA Board Fees Approval.
- (k) In relation to trip (xix), in 2008, the approval of the Vic 3 Branch BCOM, Ms Jackson travelled to the US to work on the Obama campaign. Many unions send staff or officials to work on a US presidential campaign to obtain the invaluable experience, directly useful to a union operating in the contemporary labour movement, that can be gained in that fashion. Ms Jackson was not on leave when she was working on the Obama. Pursuant to the BCOM resolution approving her trip to the US for that purpose, the trip counted as work time. Expenditure also supported by BCOM HESTA Board Fees Approval and or the Annual Travel Entitlement.

- (l) In relation to trip (xx), the expenses were incurred in connection with Jackson's attendance at a work-related conference, approved by the Victoria No 3 Branch BCOM.
  - (m) In relation to trip (xxi), the expenditure related to a work-related conference attended by a number of Victoria 3 Branch staff and covered by the BCOM HESTA Board Fees Approval.
  - (n) In relation to trips (xxiii) and (xxiv), the expenditure relied upon by the Union was supported by the Annual Travel Entitlement.
  - (o) Ms Jackson cannot now recollect with any certainty the work related purpose of the trips (i), (ii), (iv), (v), (vi), (xi) and (xiii).
129. Jackson admits paragraph 142 Jackson will rely upon the whole of the rules for their full force and effect at the hearing.
130. Jackson admits paragraph 143.
131. In answer to paragraph 144, Jackson repeats paragraph 10 above and otherwise does not admit paragraph 144.
132. In answer to paragraphs 145 to 183 Jackson says that for each of the travel events, the travel was:
- (a) work related and expressly approved by the BCOM and or the National Executive; or
  - (b) undertaken pursuant to the BCOM HESTA Board Fees Approval and thus with the authority of that approval of BCOM and a matter of Jackson's entitlement; or
  - (c) undertaken pursuant to the Annual Travel Entitlement and thus with the authority of that approval and was a matter of Jackson's entitlement; or
  - (d) undertaken as part of approved annual leave with expenditure during the trip authorised by the BCOM HESTA Board Fees and or the Annual Travel Entitlement
- such that in every instance the expenditure of union funds on air travel, accommodation and other associated expenses was authorised to Jackson's knowledge and belief.

### **The Retail Expenses**

133. In relation to each of the Retail Expenses referenced in paragraph 170, Jackson says that they were work related, properly incurred and properly approved and she denies that any were personal expenses improperly paid for with union funds and repeats paragraph 108 above.

### **The Food and Alcohol Expenses**

134. In relation to each of the Food and Alcohol expenses referenced in paragraphs 176, Jackson says that they were work related, properly incurred and properly approved and

she denies that any were personal expenses improperly paid for with union funds and repeats paragraph 108 above.

### **Health and Fitness Expenses**

135. In relation to each of the Health and Fitness Expenses referred to in paragraph 179, Jackson says that they were work related, properly incurred and properly approved and she denies that any were personal expenses improperly paid for with union funds and repeats paragraph 108 above.
136. Jacksons says from her recollection, unaided by Victoria No 3 Branch financial records or BCOM minutes, that those expenses related to other staff and were expenses incurred pursuant to express BCOM approval in relation to a staff health and well-being programme. The treadmills were purchased for the office as part of that program with the expenditure approved by the BCOM.

### **The Entertainment Expenses**

137. In relation to each of the Entertainment Expenses referenced in paragraph 180, Jackson says that they were work related, properly incurred and properly approved and she denies that any were personal expenses improperly paid for with union funds and repeats paragraph 108 above.

### *Causes of action: misuse of the credit cards*

138. Jackson denies paragraphs 184 to 189.

### *Relief sought against Jackson: the credit card misuse*

139. Jackson denies paragraph 190 and denies that the union is entitled to the relief sought in paragraph 191.

### **DOUBLE PAYMENT RELATING TO LEAVE**

140. Jackson denies paragraph 192 save to the extent that the travel events are identified as holidays in the "True Character" column in the table in paragraph 130 above. In further answer to paragraph 192 Jackson says that, to the extent she took annual leave to go on a holiday, to the best of her knowledge and belief that annual leave was debited from her leave account and will provide a further answer after discovery.
141. In answer to paragraph 193, Jackson admits that between January 2009 and October 2009 she was paid out for accrued and untaken annual leave and does not plead to the particulars.
142. In answer to paragraph 194, Jackson denies that the travel events were "holidays" save to the extent that they are identified as such in the table paragraph 130 above and admits subparagraph's (a) and (b) in relation to those travel events only and otherwise denies paragraph 194
143. Jackson denies paragraphs 195 and 196.

## THE \$63,000 HONORARIUM


144. Jackson admits paragraph 197 but, in further answer, Jackson repeats paragraph 119 above and says:
  - (a) No Branch Secretary is or was an employee of their branch, rather each Branch Secretary was and is an elected official, entitled to full time remuneration under the Rules by virtue of holding office.
  - (b) The matters pleaded in subparagraph's (b) and (c) do not exclude a Branch Committee of Management from lawfully conferring an honorarium upon a Branch Secretary holding that office is a full-time unpaid office but providing significant services to the Branch.
  - (c) There had been a history of honoraria being paid to persons in respect of their unpaid offices under the Rules, both to national officers and senior branch officials, without any challenge to the lawfulness of the resolutions of the National Council in relation to the National Officers and or the relevant BCOM.
  - (d) The honorarium paid to Jackson was not paid in respect of her full time paid office as National Secretary, but rather was paid in respect of her full-time unpaid office of Branch Secretary of the Victoria No 3 Branch.
  - (e) In conferring that honorarium, the Victoria 3 branch BCOM acted reasonably and within its authority.
  - (f) Jackson was sufficiently disinterested in the honorarium that she did not seek to have it paid for three years and was only paid the outstanding amount after that fact was discovered by the auditor during the audit work and drawn to the attention of the BCOM for rectification.
145. Jackson admits paragraphs 198 and 199.
146. Jackson admits paragraph 200 but says in further answer that Rule 75, on its proper construction, is intended to guarantee minimum entitlements to members who provide ad hoc services to or on behalf of the Union and does not render the resolution referred to in paragraph 198 beyond the authority of the BCOM to confer the honorarium.
147. Jackson admits paragraph 201 but in further answer repeats paragraphs 144 and 146 above.
148. Jackson denies paragraph 202.
149. Jackson admits paragraphs 203 and 204.
150. Jackson denies paragraph 205 and says in further answer:
  - (a) The BCOM resolution authorised the writing of a cheque to Jackson in the amount of \$63,000 in relation to the honorarium.
  - (b) That authorisation remained valid and became an authorisation effective the purposes of the operation of the HSU East Branch upon the amalgamation taking legal effect through the approval of the rule change on 24 May 2010.

- (c) Jackson made the payment in question in accordance with the instructions given by the General Secretary referred to in paragraph 123 above, in reliance on the authorisation and direction given in the BCOM resolution.
- (d) Any breach of Rule 65(c) was not causative of any relevant loss because even if that rule had been complied with, the payment would still properly have been made.

151. Jackson denies paragraph 206.

152. Jackson denies that the union is entitled to the relief sought in paragraph 207.

Dated: 23 March 2015



Philip Beazley  
Beazley Singleton  
Solicitors for Katherine Jackson

This pleading was prepared by Philip Beazley, based upon a draft provided by Ms Jackson and settled by Mr Beazley with assistance from a consultant to his firm.