



30 April 2012

PRIVATE & CONFIDENTIAL

Union Council Members of the HSU East Branch
and HSUeast

BY EMAIL ONLY

Level 5
44 Market Street
Sydney NSW 2000

Ph: (02) 8267 0618
Fax: (02) 8267 0650

<http://www.slatergordon.com.au>

Correspondence to:

Lawyer: Phillip Pasfield
Legal Assistant: Connie Graziano

GPO Box 1584
Sydney NSW 2001

DX 1163 SYDNEY

Direct Ph: (02) 8267 0623

Email: cgraziano@slatergordon.com.au

Our Ref: PJP1:CMG1:M262280

Dear Council Member

HSUeast INQUIRY

I act for HSUeast and HSU East Branch.

I refer to the current inquiry being undertaken by Mr Temby QC and Mr Robertson.

I am advised that in accordance with a request of my clients, Messrs Temby and Robertson will shortly be providing to you by email a copy of their interim report.

This is in accordance with resolutions of the Councils passed last year.

Neither my clients nor myself are aware of the contents of the interim report. It is possible that material contained in the interim report may be considered defamatory for the purposes of relevant defamation legislation. It is important therefore that you do not republish the interim report to any third party who is not a member of the Union Councils. To do so may make you liable for that publication.

It is the intention of my clients to call meetings of the Union Councils within 3 days of the determination by the Federal Court of Australia on the issue of voting rights of certain members of the Union Councils. I understand that you are aware of that matter. It is to be heard on an expedited basis by the Court on Thursday 3 May next. At the subsequent meetings, it is proposed that consideration be given to the interim report and to any further publication of the interim report.

Yours faithfully

Phillip Pasfield
Practice Group Leader
Industrial & Employment
SLATER & GORDON

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INTERIM REPORT BY IAN TEMBY QC AND DENNIS ROBERTSON FCA

TO THE UNION COUNCIL OF HSU_{east} AND FOR THEIR EYES ONLY

26 APRIL 2012

I BACKGROUND (Our appointment and our role)

- 1.1 The Council of HSUeast appointed Ian Temby QC and Dennis Robertson, Chartered Accountant, to conduct an investigation.
- 1.2 Set out, hereunder, is an extract from the minutes of a meeting of the Union Council of HSUeast held on 23 September 2011:

“Union Council notes that the General Secretary has been subjected to allegations in the media which have now been referred to the NSW Police.

Union Council determines that the assistance of appropriate independent experts be sought by the Union to ensure that the members’ interests are protected by investigating these matters properly and transparently.

Resolution:

Moved P. Mylan - J. Fitzroy that Union Council resolves to request that the President of the Bar Association of New South Wales select an Independent Panel of Experts to review and investigate the following matters:

- *The adequacy of governance arrangements and business practices of the HSUeast including those associated with tenders, recruitment and expenditure.*
- *Access to financial and business related information for HSUeast members to ensure the appropriate level of transparency and scrutiny.*
- *The policies and procedures and the potential for conflicts of interest for HSUeast Officers, or staff holding Directorships on Boards or shares/ownership in external companies particularly in companies which are also suppliers of goods and services to the HSUeast.*
- *Policies around the use of HSUeast and corporate credit cards.*
- *Other matters as determined appropriate by the Independent Panel.*

The Independent Panel shall consist of not less than 3 persons. At least one shall be a chartered accountant with no less than 10 years experience. At least one shall be a legal practitioner with experience of industrial organisations and with no less than 10 years experience and one shall have experience in matters relating to the governance of organisations.

The reasonable remuneration of the Independent Panel members shall be met by the Union and the Independent Panel shall report to Union Council.

Noting that a police investigation is underway in relation to matters potentially relevant to the Governance Review, Union Council also notes that the work of the Independent Panel should be conducted at all times so as not to prejudice the Police Investigation.

In the interests of the members, the Union and having regard to the establishment of the Independent Panel, the General Secretary has decided to step aside from his duties and take a leave of absence. Council notes the decision of the General Secretary and approves the request for a leave of absence and notes that the General Secretary will utilise his own leave entitlements whilst absent from his position.

That the Deputy General Secretary Peter Mylan is appointed to act as General Secretary.

Divisional Secretary Gerard Hayes is directed to liaise with the Union members and the media in his continued capacity as a member of the Representative Body.

Motion put and carried unanimously.”

- 1.3 On 27 September 2011, the solicitors for HSUeast wrote to Mr. B. Coles QC, President of the NSW Bar Association, to request that he appoint panel members. That was done by letter of 4 October 2011. One of those nominated decided that she could not find the time to do what was likely to be a big job, and declined to participate. Union Council on 4 November 2011 decided that the investigation could and should be conducted by the two of us.
- 1.4 The resolution of Union Council referred to allegations in the media against the General Secretary, Michael Williamson. It is allegations against Williamson, not other people, which form the basis of the inquiry into the corporate governance and controls of HSUeast. The Union Council resolution provided “*Union Council determines that the assistance of appropriate independent experts be sought by the Union to ensure that the members’ interests are protected **by investigating these matters properly and transparently***” (our emphasis)
- 1.5 The following allegations have been and are being investigated by us:

CommuniGraphix

- The amounts charged by CommuniGraphix for producing “*Health Standard*”, a journal which goes out to members, are said to be well in excess of market rates.

- Communigraphix is alleged to have provided Williamson with Amex cards which were used for personal benefit.

Access Focus

- It is alleged that large amounts, including \$100,000 in about November 2009, were paid to Access Focus for no or unknown work.

United Edge

- It is alleged that United Edge, which provides IT services to the Union, charges excessive amounts for doing so.
- It is alleged that United Edge won the IT contract without tenders being called.
- It is alleged that United Edge runs advertisements in the Union magazine, free of charge.
- It is alleged that United Edge works out of the Union's premises in Pitt Street, Sydney, and pays no rent.
- It is alleged a Victorian IT company was being paid \$15,000 per month to maintain a membership management system, while United Edge was submitting bills for the same service.
- All this is said to have been facilitated by Williamson, who is a director of United Edge

Mah-Chut Architects

- It is alleged that the Union's architects were employed at the cost of the Union to carry out work on Williamson's holiday home at Lake Macquarie.

Preference for Family and Friends

Employment of family members and friends

- It is said that the Union employs a number of Williamson's family and friends, the implicit allegation being that he has looked after them at the Union's expense.
- It is alleged that Williamson's son Christopher uses a Union property for his own purposes.
- Williamson's wife is said to be paid by the Union on some covert basis.

Excessive Benefits / conflicts of interest

- It is alleged that Williamson has a number of well-remunerated positions with various organisations, obtained by reason of his long service as General Secretary of the Union.

We stress these are allegations only.

1.6 Some people we wanted to talk to declined our invitation to do so. They include:

- Michael and Julieanne Williamson;
- John and Carron Gilleland of Communigraphix;
- Brad Bird and Greg Daniels of United Edge.

Mr and Mrs Williamson did provide written statements to us, he through solicitors.

1.7 We had hoped to report before now. At one time we proposed to do so at the Union Council meeting scheduled for 11 April, but that was deferred to 30 April. Temby went overseas on 27 April, and will be returning in late May. We consider

it desirable that both of us be present when the final report is presented to Union Council. We are still waiting for some information from Union management. Further, as a matter of fairness, we sent portions of our draft final report to some affected persons, and some replies have been received only recently.

- 1.8 We have however reached views as to the procurement practices of the Union. They are severely deficient in many aspects. The need for remedial action is pressing. We accordingly decided that this interim report should be presented now to avoid delay in the implementation of enhanced controls that Union Council may deem necessary.

II - PROCUREMENT PRACTICES

- 2.1 Internal Control can be described as:

“a process, effected by an entity’s board of directors, management and other personnel designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- *effectiveness and efficiency of operations;*
- *reliability in reporting;*
- *compliance with applicable laws and regulations.*

Internal control can be considered an integral part of an organisation’s governance and risk management system –effected, understood and actively followed by the governing body , management and other personnel – to exploit the opportunities and to manage the risks in achieving the organisation’s objectives... all organisations , no matter their size or structure private or public , should have an appropriate internal control system in place “.

- see the December 2011 report of the Committee of Sponsoring Organisations (“COSO”) of the Treadway Commission.

- 2.2 Our investigations have revealed that the Union system of internal control is inadequate in many areas, and our final report will further address these matters. The inadequate controls in respect of the procurement processes of HSUEast and, in our opinion, the urgent need for their review, were the reasons we felt it necessary to issue an interim report.

2.3 It is usual for an organisation to have formal documentation/authorisation procedures for the ordering of goods and /or services as part of an efficient system of internal control. The lack of the formalised ordering system (as part of a procurement process) exposes an organisation to risks of unauthorised acquisitions, duplicate payments, excess prices and fraud

2.4 It is not Union practice to call tenders or otherwise market test the amounts charged by suppliers of goods or services to the Union. The amounts involved are large and we set out some payments that have been made without tendering or competitive pricing :

- to Communigraphix Pty. Limited of \$3,440,760.19 in total between 2 March 2007 and 26 September 2011 - over \$750,000 per annum - of which \$2,614,912.39 was attributed to the Union journal *Health Standard*;
- to Access Focus of \$5,013,453.60 from 3 October 2007 to 30 September 2011, or \$1.25M per annum;
- to United Edge Pty. Limited of \$4,869,816.52 in the period from 22 April 2008 to 30 *September 2011*, which is over \$1,300,000 per annum;
- to Mah-Chut Architects, of \$3,738,345.15 in the period from 9 March 2007 to 30 September 2011, a lot of which was for design and construct contracts; and
- to Canme Services, of \$384,625 in the period from 9 December 2005 to 26 June 2009.

2.5 These are, or in the last case have been, major suppliers of goods and/or services to the Union. There are of course others. We have not seen or been advised of any tenders, or cost comparisons. Our investigations have identified products acquired by the Union where the price paid exceeds the market prices of these products, sometimes by a large margin.

2.6 Our final report will contain critical comment concerning the present systems of control, such as they are, concerning credit cards and expense reimbursement. There are no guidelines on the use of the Union's credit cards, to explain the type of expenditure that can and cannot be incurred, nor differing levels of authority for approval of different categories of expenditure. Union credit cards currently on issue to officers and employees of the Union incur total expenditure averaging in excess of \$600,000 per annum (over the last 4 years). The auditors' draft management letter of 7 February 2012 confirms the absence of guidelines and the risks related thereto.

The Union credit cards are also used to procure discount shopping/giftcards for sale to members as part of the Union's reward (discount) program. These costs involve in excess of \$1,100,00 per annum being processed via Union credit cards, reinforcing the need for the formulation of control procedures.

2.7 The characteristics of a satisfactory procurement system for an organisation such as the Union, which is not a private concern but a member-based organisation responsible for other people's money, are to:

- obtain at least two prices before ordering goods or services;
- ensure that formal tenders or expressions of interest are called for the supply of goods or services or both where the likely annual expenditure exceeds \$200,000 (or such other amount as Union Council determines to be appropriate);
- in such cases, do this regularly and in any case at least each 3 years;
- place orders in writing, and retain order forms;
- keep a written record of goods actually received, and services actually provided, and any shortcomings;

- check invoices against orders, and the records last mentioned, as part of the payment approval process;
- formalise authorisation/payment processes, and incorporate requirements as to appropriate levels of seniority and segregation of duties/responsibility; and
- require discretionary and semi-discretionary expenditure to have the reason for expenditure noted contemporaneously, in a manner adequate for the approval process to determine appropriateness;

2.8 This last point relates to matters such as entertainment, travel, taxis, accommodation, flowers, sundry purchases and the like. There is no such requirement at present and substantial amounts of the Union's money are currently spent on such matters. The documentation in respect of this type of expenditure does not give any reason how the expenditure incurred related to the Union's operations. Much of this expenditure is incurred via credit cards.

2.9 Such a system - and we stress these are minimal requirements - has two prime purposes. One is to ensure that value for money is received. That cannot be done unless prices proposed by suppliers are checked against the market. Secondly, the possibility of abuses of position by either suppliers or members of procurement staff or both, including merely cosy or frankly illegal practices, are minimised.

2.10 Existing Union practices satisfy none of the requirements in 2.7 above, save that a rudimentary matrix is kept as to items of uniforms ordered and received.

2.11 The Union's lack of controls around procurement practices is most unsatisfactory. In Robertson's 40 years of auditing practice, he has seen few systems with such lack of formalised controls. The external auditors in their draft management letter dated 7 February 2012 also refer to a number of areas where they are of the opinion that controls need to be implemented or improved.

- 2.12 Our role does not extend to developing a detailed system concerning governance, processes and controls. We are willing, however, to provide further comments to management that may assist in determining and implementing necessary changes. That could be done in conjunction with the completion and final presentation of our report.
- 2.13 We have not sought to allocate responsibility for the present unsatisfactory situation. It has prevailed for many years. What matters is to fix it.

III –BUDGETING and CASH FORECASTING

- 3.1 Budgeting and cash forecasting are also important aspects of an entity's system of internal control. These work in tandem with controls over procurement of goods and services.
- 3.2 We have been advised by union management that the Union does not prepare a cash forecast. The auditors' draft management letter of 7 February 2012 confirms there is no cash forecast.
- 3.3 Cash forecasts when compared to actual cash flows assist management in identifying areas of actual expenditure where the forecast cash outlays are exceeded. The cash forecasts can often identify where the level and/or timing of budgeted expenditure may need to be reconsidered.
- 3.4 The lack of a cash forecast can undermine the integrity of any budgets and, combined with deficient procurement controls, represents a risk to the Union's assets (i.e cash).

IV – ACCOUNTING RESOURCES

- 4.1 The role of the Union's financial controller includes the management of the Union's properties.
- 4.2 The Union's auditors also point this out, together with their view that the resources in the accounting function may be insufficient.
- 4.3 The accounting function of an organisation is an integral part its system of internal control. The inclusion of the property management role within accounting/finance areas has the possibility of being a major control weakness

due to the lack of segregation of duties, combined with the substantial amount of cash flow (in and out) linked to the Union's properties.

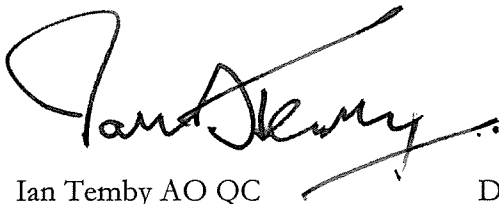
4.4 These observations in respect of the accounting and property areas have a further negative impact on the Union's control system on procurement practices.


V- SUMMARY

5.1 The Union is incurring millions of dollars of expenditure each year for various goods and services. The controls and procedures associated with this expenditure are deficient in the following areas:-

- No procurement policy (formulated or documented)
- No tenders for large supply agreements
- No contracts for large supply agreements
- No pricing comparisons
- No formal purchase order system
- No credit card policy
- No budgetary controls
- Inadequate payment controls
- Lack of segregation of duties

5.2 Our final report will cover other areas relating to governance and other control areas. However we are of the view that the procurement processes require immediate improvement, having regard to the very large amounts of money involved.


Ian Temby AO QC


Dennis Robertson FCA