

UNCLASSIFIED

Dear Colleagues

You have been nominated as your Department's contact officer for matters relating to the Royal Commission into Trade Union Governance and Corruption (the Royal Commission).

I am writing on behalf of the Attorney-General's Department, which is responsible for coordinating the Commonwealth's participation in the Royal Commission. Attached is an information sheet setting out the details of our role and progress to date.

As you may know, the Royal Commission is conducting public hearings into matters covered by its terms of reference, including the conduct of five named trade unions and their officials. So far the Commission has had limited attention on the Commonwealth, but this could change at any time should an allegation be made about the conduct of a Minister, employee, agency or other matter in relation to a trade union, trade union official or member or a separate entity such as a 'slush fund'.

In the event that a credible allegation were made against the Commonwealth, it is important that the Commonwealth is able to respond quickly. Accordingly, we seek your assistance in identifying potential areas of Commonwealth exposure to matters being considered by the Royal Commission. Attached to this email is a scoping questionnaire prepared for this purpose. To assist, the questionnaire contains a copy of the Royal Commission's terms of reference.

I ask you to ensure that your Department (in consultation with relevant portfolio agencies) completes this questionnaire and that your response by 5.00pm on Friday 1 August 2014.

If you are no longer your department's contact officer for the Royal Commission, I would be grateful if you could pass this request to the relevant person and update your Department's contact officer details by email to UnionCommonwealthRep@ag.gov.au.

The contact officer in the Attorney-General's Department is David Warren (david.warren@ag.gov.au; 02 6141 3644).


Thank you in advance.

Regards

Commonwealth Representation (Royal Commission) Branch
Civil Law Division | Attorney-General's Department | 4 National Circuit Barton ACT 2600
unioncommonwealthrep@ag.gov.au

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Attorney-General's Department
Commonwealth Representation
Royal Commission into Trade Union Governance and Corruption

SCOPING EXPOSURE TO TRADE UNION GOVERNANCE AND CORRUPTION MATTERS

The purpose of this document is to identify potential areas of Commonwealth exposure to matters being considered by the Royal Commission into Trade Union Governance and Corruption (the Royal Commission). By identifying potential areas of exposure, the Commonwealth will be in a better position to respond to the Royal Commission in a timely and efficient manner if the Commission requires or requests production of documents, things or other information.

The Royal Commission's terms of reference are set out in the letters patent issued on 13 March 2014 by then Governor-General, Her Excellency the Hon Quentin Bryce AC CVO (Attachment A). Generally, the Royal Commission is examining unlawful payments relating to 'employee associations' (more commonly known as trade unions) and their officials and members, and governance arrangements with respect to 'relevant entities'—that is, entities established by a trade union or their officers. The terms of reference also allow the Royal Commission to inquire into a broader range of misconduct and unlawful activity involving trade unions and others.

As this information is being prepared for possible representation before the Royal Commission and advice about the Commonwealth's legal exposure to matters arising from the inquiry, your response will be kept confidential and legal professional privilege may be claimed over its contents.

TO COMPLETE THIS FORM

Please complete this document by providing brief answers to each question. In preparing your response, consider whether your portfolio agencies should be consulted on any matter raised. If you have any questions, please call Mr David Warren on (02) 6141 3644.

Please send your completed response to the Attorney-General's Department by email to UnionCommonwealthRep@ag.gov.au no later than **COB Friday 1 August 2014**.

For the purposes of this document:

AWU means the Australian Workers' Union

CEPU means the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

CFMEU means the Construction, Forestry, Mining and Energy Union

HSU means the Health Services Union

TWU means the Transport Workers Union of Australia, and

Relevant Entity means an entity established by a trade union or their officers.

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Name of Agency: Click here to enter text.

Agency Contact Officer: *Name/ position/ work unit/ phone number/ e-mail*

1. Relevant legislation

Please identify any legislation administered by your agency relevant to the terms of reference.

Please identify any Acts of Parliament and legislative instruments that regulate the establishment, operation or conduct of trade unions, and their officials or members, or other 'relevant entities' (including bodies corporate, associations or other arrangements)

2. Appointment of trade union officials within the Commonwealth

Please identify any appointments of trade union officials to Commonwealth positions administered by your agency.

Please include information about statutory or non-statutory positions including advisory boards.

3. Consultation with trade unions or their officials

Does your agency routinely consult with any of the following trade unions or their officials?

- | | |
|--------------------------------|--|
| <input type="checkbox"/> AWU | <input type="checkbox"/> TWU |
| <input type="checkbox"/> CFMEU | <input type="checkbox"/> CEPU |
| <input type="checkbox"/> HSU | <input type="checkbox"/> Other, please specify |

Please consider consultation on policies, programs or other matters and include information about their nature and the frequency of consultation.

4. Procurement and Disposal by the Commonwealth

Has your agency made any significant purchases of property (real or personal) or services from, or significant disposals of property to, any of the following trade unions or their officials (or a relevant entity) at any time in the past five to ten years?

- | | |
|--------------------------------|--|
| <input type="checkbox"/> AWU | <input type="checkbox"/> TWU |
| <input type="checkbox"/> CFMEU | <input type="checkbox"/> CEPU |
| <input type="checkbox"/> HSU | <input type="checkbox"/> Other, please specify |

If yes to any of the above, please briefly describe the scope of the procurement and timeframes. Please note that purchase of property may include a lease.

5. Grants to trade unions or their officials	
Has your agency made any grants (including a research grant) to any of the following trade unions or their officials (or a relevant entity) in the past five to ten years?	
<input type="checkbox"/> AWU	<input type="checkbox"/> TWU
<input type="checkbox"/> CFMEU	<input type="checkbox"/> CEPU
<input type="checkbox"/> HSU	<input type="checkbox"/> Other, please specify
<i>If yes to any of the above, please briefly describe the nature and amount of the grant as well as the approximate date on which the grant was made.</i>	

6. Gifts and donations to trade unions or their officials	
Has your agency made or received any significant gifts or donations to or from any of the following trade unions or their officials (or a relevant entity) at any time in the past five to ten years?	
<input type="checkbox"/> AWU	<input type="checkbox"/> TWU
<input type="checkbox"/> CFMEU	<input type="checkbox"/> CEPU
<input type="checkbox"/> HSU	<input type="checkbox"/> Other, please specify
<i>If yes to any of the above, please briefly describe the nature and amount of the gift, the approximate date of the gift and the circumstances in which it was given.</i>	

7. Commonwealth as an employer	
Does your agency discuss or negotiate workplace relations matters relevant to your employees with any of the following trade unions or their officials?	
<input type="checkbox"/> AWU	<input type="checkbox"/> TWU
<input type="checkbox"/> CFMEU	<input type="checkbox"/> CEPU
<input type="checkbox"/> HSU	<input type="checkbox"/> Other, please specify
If yes to any of the above, please provide a brief description of the nature and extent of the relationship.	

8. Documents in the Commonwealth's power or possession	
Please indicate if your agency has or is likely to have power or possession of the following categories of documents.	
Policy development documents concerning trade unions, and their officials or members, or 'relevant entities'.	Yes / No
Documents relating to an investigation into the conduct of trade unions, their officials or members, or 'relevant entities'.	Yes / No
Documents relating to payments or grants to (or from) the Commonwealth from (or to) a trade union, their officials or members, or 'relevant entities'.	Yes / No
Documents relating to gifts or donations to (or from) the Commonwealth from (or to) a trade union, their officials or members, or 'relevant entities'.	Yes / No
Documents that contain credible allegations of wrongdoing by a Commonwealth official (including a Minister, Agency Head, ministerial advisor or APS employee) in relation to a trade union, their officials or members or a relevant entity.	Yes / No

9. Secrecy	
Is your agency subject to any secrecy provisions with respect to collection, use or disclosure of documents set out above?	
<i>If yes, please provide details.</i>	Yes / No

10. Direct Contact with the Royal Commission	
Please indicate if your agency has been approached by the Royal Commission with regard to its law enforcement, investigative or regulatory role?	
<i>Details about the nature of contact are not required.</i>	Yes / No



ENTERED ON RECORD by me in Register of Patents No.

, page , on

Secretary to the Federal Executive Council

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable John Dyson Heydon AC QC

GREETING

WE do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into the following matters:

- (a) the governance arrangements of separate entities established by employee associations or their officers (*relevant entities*), with particular regard to:
 - (i) the financial management of relevant entities; and
 - (ii) the adequacy of existing laws as they relate to relevant entities with respect to:
 - (A) the integrity of financial management; and
 - (B) the accountability of officers of employee associations to their members in respect of the use of funds or other assets in relation to relevant entities; and
 - (iii) whether relevant entities are used, or have been used, for any form of unlawful purpose; and
 - (iv) the use of funds solicited in the name of relevant entities, for the purpose of furthering the interests of:
 - (A) an employee association; or
 - (B) an officer of an employee association; or
 - (C) a member of an employee association; or
 - (D) any other person or organisation;

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- (b) without limiting the matters in paragraph (a), activities relating to the establishment or operation of any relevant entity as it relates to the following employee associations or any of their branches:
 - (i) The Australian Workers Union;
 - (ii) the Construction Forestry Mining and Energy Union;
 - (iii) the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia;
 - (iv) the Health Services Union;
 - (v) the Transport Workers Union of Australia;
- (c) without also limiting the matters in paragraph (a), activities of any other person or organisation in respect of which you consider that there are credible allegations of involvement in activities mentioned in paragraph (b);
- (d) the circumstances in which funds are, or have been, sought from any third parties and paid to relevant entities;
- (e) the extent to which persons represented by employee associations:
 - (i) are protected from any adverse effects or negative consequences arising from matters associated with, or related to, the existence of relevant entities or activities relating to their establishment or operation; or
 - (ii) are informed of those matters; or
 - (iii) are able to influence or exercise control over those matters; or
 - (iv) have the opportunity to hold officers of the association accountable for wrongdoing in relation to those matters;
- (f) any conduct in relation to a relevant entity which may amount to a breach of any law, regulation or professional standard by any officer of an employee association who holds, or held, a position of responsibility in relation to the entity;
- (g) any conduct which may amount to a breach of any law, regulation or professional standard by any officer of an employee association in order to:
 - (i) procure an advantage for the officer or another person or organisation; or
 - (ii) cause a detriment to a person or organisation;
- (h) any bribe, secret commission or other unlawful payment or benefit arising from contracts, arrangements or understandings between an employee association, or an officer of an employee association, and any other party;

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- (i) the participation of any person or organisation (other than an employee association or an officer of an employee association) in a matter mentioned in paragraphs (a) to (h);
- (j) the adequacy and effectiveness of existing systems of regulation and law enforcement in dealing with matters mentioned in paragraphs (a) to (i) and, in particular, the means of redress available to employee associations and their members who suffer a detriment as a result of such a matter;
- (k) any matter reasonably incidental to a matter mentioned in paragraphs (a) to (j).

AND We further declare that you may inquire into any of these matters to the extent that the matter relates to or is connected with the peace, order, and good government of the Commonwealth and any public purpose or any power of the Commonwealth.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are a Royal Commission to which item 5 of the table in subsection 355-70(1) in Schedule 1 to the *Taxation Administration Act 1953* applies.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

employee association means:

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

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- (d) any other association of employees that is, or was at any time, registered or recognised as such an association (however described) under a State or Territory law or instrument that is a State or Territory industrial law as defined in subsection 26(2) of the *Fair Work Act 2009*.

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

office, in relation to an employee association, means:

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

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

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

organisation includes any of the following:

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

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

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

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

AND We:

- (l) require you to begin your inquiry as soon as practicable; and
(m) require you to make your inquiry as expeditiously as possible; and
(n) authorise you to submit to Our Governor-General any interim report that you consider appropriate; and
(o) require you to submit to Our Governor-General a report of the results of your inquiry, and your recommendations, not later than 31 December 2014.