



Fire Brigade Employees' Union Of NSW

Special General Meeting Rule 34 Sub Committee Recommendations to the State Committee of Management

Regarding the motions titled as:

- 1. Possession of credit card in contravention of policy**
- 2. Misuse of credit card and misappropriation of Union funds**
- 3. Failure to carry out a decision of the State Committee of Management**

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Executive Summary

The Sub Committee has considered the allegations as put to it, in depth, including State Committee actions to review and update financial policies and procedures when concerns were first raised in April 2019.

Whilst the Sub Committee recommend that none of the three allegations can be sustained the Sub Committee have found that both previous and current state committees, including the current State Secretary, have acted outside of Union policy.

This occurred through the continued use of a repayment procedure that was endorsed at the February 2018 State Committee meeting and is further explained in detail throughout the report.

The State Committee has unreservedly accepted the concerns raised for this lack of due diligence; however, the Sub Committee was comfortable that all finances were accounted for and that both the State Committee and the State Secretary acted in good faith on all occasions.

The Sub Committee is confident that all members of both the previous and current State Committee, at all times during the period in question, were acting honestly and with integrity and that no illegal or fraudulent activity took place.

We thank the members of the State Committee and the general membership for their patience as we moved through this process which has, for many and various reasons, taken longer than anticipated.

Introduction

After an SGM meeting of the membership, The State Committee of Management (**SCoM**) resolved that a summons be provided to Comrade Leighton Drury (the Secretary), in accordance with Rule 34, to answer to the following allegations (**Attachment 1**):

1. Possession of credit card in contravention of policy;
2. Misuse of credit card and misappropriation of Union funds; and
3. Failure to carry out a decision of the State Committee of Management.

The summons was issued on the 10th January 2020 by the President Comrade Mick Nairn. Comrade Leighton Drury provided his response to the Summons by the deadline provided being 31st January 2020.

The Sub Committee have taken the time to consider all the evidence before it and in accordance with Rule 34, to make recommendations to the State Committee of Management.

In order to avoid any conflict of interest the Secretary excused himself of all committee matters related to these processes and related concerns.

To expedite this process the Sub Committee of the State Committee of Management was set up on the 30th January 2020 consisting of the following members; Mick Nairn (President), Rod Chetwynd (Senior Officers Sub Branch), Mick Stone (Central Coast Sub Branch), Phil Gardner (Retained Sub Branch), Bobby Callow (Sydney Outer West Sub Branch) and James Lavery (Sydney Central Sub Branch).

All SCoM members were offered an opportunity to sit on the Sub Committee.

Both Sub-Branch Secretaries from the Sydney North and Illawarra sub-branches, where the motions of allegations originated, were encouraged to sit on the Sub Committee but declined to participate.

Allegation 1 – Possession of credit card in contravention of policy

Allegation 1 specifically alleges that Comrade Leighton Drury breached Rule 19 of the FBEU's Rules and the SCoM decision of 25th February 2016 (the '**SCoM decision**'). The evidence provided to substantiate the allegation being:

- *"an internal memorandum headed "Misuse of Union credit card and misappropriation of Unions funds"" dated 29 April 2019;*
- *minutes of the SCoM meeting of 25 February 2016; and*
- *"agenda/minutes" of SCoM May 2019 meeting.*

Whilst the sub clauses of Rule 19 that have been breached are not specified nor provided within the allegation, after careful consideration, we conclude the relevant sub clauses to be taken into consideration to be:

"19. POWERS AND DUTIES OF STATE SECRETARY

The State Secretary – ...

- 3. shall comply with all valid directions given by Union meetings, State Committee of Management and State Executive Committee;*
- 4. shall take all reasonable steps to attain the purposes of the Union and to carry out these Rules and the decisions of Union meetings, State Committee of Management and State Executive Committee.*
- 5. shall have the day to day management and control of –
 - i. the Union fund, moneys, properties, effects, records and documents; and ...**
- 12. shall be the general custodian of the Union's funds, moneys, properties, effects, records and documents; ..."*

In the first instance the evidence provided, specifically the minutes from the SCoM February meeting, contradicts the allegation. This is confirmed and supported by subclause 2 and subclause 12 of Rule 19 that reads that the State Secretary:

"shall be the chief administrative officer of the Union to carry out the decisions of the General Meetings, State Committee of Management or State Executive Committee and the policies of the Union" and "shall be the general custodian of the Union's funds, moneys, properties, effects, records and documents; ..."

The Rules very clearly state that the State Secretary is the general custodian and the chief administrative officer of the union. Whilst the SCoM motion states that the credit card is to be kept securely in the Union office, according to Comrade Drury's response

"there was a lack of due diligence (by the motion author) in making sure that the motion was consistent with the terms and conditions of the credit card issuing bank. The bank would not in fact issue a credit card under the organisation's name."

Therefore, it stands to reason that the chief administration officer, Comrade Drury, would not be able to or indeed would not be allowed to leave the credit card in the union office at all times. This also goes to the impracticality of the SCoM motion, which it should be understood, that if the credit card was kept in the union office, would not allow the Secretary to undertake his duties.

It is impractical that Comrade Drury would be expected to not have the union credit card on his person at all times.

Further, the State Committee believes that while the SCoM motion was well intended, technically, it is invalid for the following reasons and therefore does not apply;

- 1) The Credit card provider that issues the credit card to an individual also requires them to keep it secure and not be used by others.
- 2) The FBEU Finance Policy and Procedures (the “**Finance Policy**”) was endorsed by SCOM in May 2016. This policy allows the Secretary to apply for and be issued with a credit card and specifically states at Annexure D that the “*cardholder must:*

be personally responsible for the security of the credit card and ensuring its use is within the policy.”

This policy was implemented post the SCoM motion, therefore allowing the Secretary to be issued with a credit card, rendering the SCoM motion redundant.

For reasons unknown, the mover of the motion the Acting Secretary at the time, never actioned nor approached any staff member to have the credit card placed in their name thereby giving rise and confirming doubts as to the validity or need for the identity of who the “*Senior Administration Officer*” is being referred to in the SCoM motion.

It is important to note that the SCoM motion was rescinded in May 2019, after this incident was brought to the attention of SCoM, due to an inability to meet its expectations in practice.

Therefore, on the balance of probabilities and in line with what a reasonable person would think, which is the test for evidence in these types of matters, we find the allegation cannot be sustained and therefore recommend Comrade Leighton Drury is Not Guilty as alleged.

Allegation 2 – Misuse of credit card and misappropriation of Union funds

Allegation 2 specifically alleges that Comrade Leighton Drury misappropriated Union funds through his repeated misuse of the Union’s credit card over an extended period in breach of Rule 19 and the Finance Policy. The evidence provided to substantiate the allegation being:

- “an internal memorandum headed “Misuse of Union credit card and misappropriation of Unions funds”” dated 29 April 2019;
- “agenda/minutes” of SCoM May 2019 meeting; and
- The Union’s credit card statements and records.

Whilst the particular subclauses of Rule 19 that have been breached are not specified nor provided within the allegation, after careful consideration, we conclude the relevant subclauses to be taken into consideration to be:

“19. POWERS AND DUTIES OF STATE SECRETARY

The State Secretary – ...

3. *shall comply with all valid directions given by Union meetings, State Committee of Management and State Executive Committee;*
4. *shall take all reasonable steps to attain the purposes of the Union and to carry out these Rules and the decisions of Union meetings, State Committee of Management and State Executive Committee.”*

It is important to note that no definition is provided for ‘misappropriation’, either by the authors of the allegation nor the Union Rules, and that the word ‘misappropriation’ has many and broad definitions. Those definitions require that the act of misappropriation include an intentional ‘illegal’ behaviour and/or deliberate intention to defraud.

The Sub Committee relies upon the following two definitions:

The Jowitt’s Dictionary of English Law, which defines misappropriation to be: “the misdemeanour which is committed by a banker, factor, agent, trustee, etc., who fraudulently deals with money, goods, securities, etc., entrusted to him, or by a director or public officer of a corporation or company who fraudulently misapplies any of its property.”

The Cambridge Dictionary defines misappropriation to be: “the act of stealing something that you have been trusted to take care of and using it for yourself.”

It is the Sub Committee’s position that Comrade Drury’s use of the Union credit card was not undertaken with illegal or deliberate intent to deceive and/or defraud or gain benefit by deception from or of the Union. However, the Sub Committee finds that Comrade Drury did use the credit card outside the intended meaning of the policy (**Attachment 2 – Minutes resolving remedial action**).

The Sub Committee provides the following reasoning below:

1. The Sub Committee notes that the previous SCoM first became aware of the practice with the Union credit card in February 2018 (**Attachment 3**) when a SCoM member queried the repayments by Comrade Drury for amounts owed to the Union. The then President and Chair of the FBEU Finance Committee, or any other official, did not make any comment to the SCoM to give it an indication that this practice was against Union policy or procedure.
2. At no time was this matter considered to be a concern, let alone a contradiction or breach of the Union's rules and/or policies. The SCoM at the time¹ took the direction and interpretation of this matter from the response provided to it by the President and chair of the meeting. The SCoM at the time endorsed the Mastercard Expenditure motion (put by Comrade Drury and seconded by Comrade Farmer).
3. The first time that this practise was raised as a possible breach of the Union's rules and policies was when the ex-Senior Industrial Officer wrote to the State Executive on the 1st April 2019 which was then investigated and reviewed by SCoM between April and June 2019.
4. Repeated use of the Union credit card for purposes outside the policy occurred on nine monthly statements over a period of 18 months. Its use, however, was always acknowledged, reported and then approved by the SCoM. It should be noted that both the current and previous SCoM's, failed to recognise that the SCoM were acting outside of its own policy.
5. SCoM accounted for all monies through their monthly State Committee meetings at which the Secretary would identify any payments required to be reimbursed and SCoM would authorise the accounts with the knowledge that the payments identified were to be recouped.

In order to ensure that no inadvertent use occurs again the SCoM have taken numerous steps to both acknowledge and address these concerns moving forward. All the actions relevant to this (including a letter counselling Comrade Drury about this incident) and the two other allegations are attached. (**Attachment 4 and 5**)

The Sub Committee would also like to note that Comrade Drury has stated that a common practice he undertook involved him regularly using his 'personal' non-union credit card to make union purchases:

"...it was conversely the common practice for me to make Union purchases on my personal credit card that would then require reimbursement back from the Union e.g. airfares, accommodation, meals and car parking."

This practice is an unacceptable burden for any Union official or staff member to bear.

It appears from Comrade Drury's statement that this practise added to the confusion around credit cards. While this does not exempt Comrade Drury from responsibility for his role in this matter it does show that the concern is not as simple as having clearly separate cards, and the policies and rules only added to the confusion.

Further, there were inconsistencies within the Finance policy as it did not have all the required forms created to support its proper implementation. Of relevance is the requirement for any Union official or staff member being issued with a union credit card to sign an 'Agreement to Conditions of Use' form. Such form was never created. As a result of discovering the absence of the existence of such a form the current SCoM urgently created said form. This form expressly outlines the requirements of the cardholder in relation to a Union issued credit card and further outlines the consequences of not complying with those requirements.

The SCoM also found that the Finance policy was meant to be reviewed annually and until April 2019 this had not occurred once since its creation in 2016.

¹ Current SCoM members in attendance at the February 2018 meeting were Comrades Drury, Morgan, Farmer, Stone, Dixon, Nairn, Ross, Haas, Anderson and Gardner.

The Finance policy states that '*disciplinary procedures may apply*' for any breaches to it.

The SCoM considered this matter between April and June 2019 and acknowledged that the Secretary and both the current and previous SCoM had failed to act in line with this policy. It also acknowledged that in failing to do so they continued to make sure that all financial accounts were scrutinised monthly, as required, and that all funds were accounted for.

Once this concern was raised with the State Committee it was dealt with quickly and efficiently to ensure that they both identified the failings and then rectified them moving forward.

Therefore, on the balance of probabilities and in line with what a reasonable person would think, which is the test for evidence in these types of matters, we find the allegation cannot be sustained and therefore recommend Comrade Leighton Drury is Not Guilty as alleged.

Allegation 3 – Failure to carry out a decision of the State Committee of Management

Allegation 3 specifically alleges that Comrade Leighton Drury failed to carry out a decision of the SCoM in breach of Rule 19 causing the Union to suffer significant financial loss. The evidence provided to substantiate the allegation being:

- “an internal memorandum headed “Failure to implement State Committee direction on the investment of Union funds” dated 17 April 2019;
- The Union’s financial statements and records; and
- The investment information available on vanguardinvestments.com.au

Whilst the particular subclauses of Rule 19 that have been breached are not specified nor provided within the Allegation, after careful consideration, we conclude the relevant sub clauses to be taken into consideration to be:

“19. POWERS AND DUTIES OF STATE SECRETARY

The State Secretary – ...

3. *shall comply with all valid directions given by Union meetings, State Committee of Management and State Executive Committee;*
4. *shall take all reasonable steps to attain the purposes of the Union and to carry out these Rules and the decisions of Union meetings, State Committee of Management and State Executive Committee.*
5. *shall have the day to day management and control of –*
 - i. *the Union fund, moneys, properties, effects, records and documents; and ...*

12. *shall be the general custodian of the Union’s funds, moneys, properties, effects, records and documents; ...”*

The motion relied upon as the basis for the breach in this allegation had no time frame attached to it (**Attachment 6**) other than ‘as soon as practicable’.

Therefore, it cannot logically or reasonably be deemed to have not been acted upon by the Secretary, as the required investments as per the policy were sent to Vanguard Investments in May 2019.

The Secretary reported to SCOM in December 2018 that before these funds were to be transferred into new funds, he had an obligation to seek external financial advice around this investment.

This allegation further alleges that the Secretary caused the Union to suffer ‘*significant financial loss*’. This is nonsensical as the Union funds remained, always, invested in accounts or stocks that continue to provide a positive return. The Sub Committee is alarmed that such an allegation about theoretical, retrospective and/or unsubstantiated investment returns would be quoted in such a way in order to make a possibly vexatious allegation claim.

Further, the State Committee have identified that the Union has at no point received or engaged official financial planning advice and as a result have appointed a Financial Planner to provide advice to the Union in relation to its financial investments.

Therefore, on the balance of probabilities and in line with what a reasonable person would think, which is the test for evidence in these types of matters, we find the allegation cannot be sustained and therefore recommend Comrade Leighton Drury is Not Guilty as alleged.

Supplemental 1 – Timeline of finance concerns

- Union Credit Card policy in question (Allegation 1) ascended by vote of the State Committee of Management February 2016
- Union Finance policy in question (Allegation 2) ascended by vote of the State Committee of Management May 2016
- Union Investment Strategy (Allegation 3) policy originally ascended by vote of the State Committee of Management December 2016
- State Committee of Management triennial elections occur, a new committee with a mix of old and new members is installed by end of May 2018
- Union Investment Strategy policy reviewed and amended by the State Committee of Management October 2018
- Concerns were first reported to the State Executive about Credit Card and Investment concerns on the 1st April 2019.
- The president, who was on his honeymoon at the time, called a meeting of the Audit and Finance committee for the 8th April 2019.
- Audit and Finance Committee again met to audit Credit Card statements on the 2nd May 2019
- State Committee met on the 3rd May 2019 to review and amend some finance policies
- State Committee again meet on 30th May 2019 to review, amend and rescind some finance policies
- President verbally counselled the State Secretary on or around 31st May 2019
- Illawarra Sub Branch and Sydney North Sub Branch meetings held with motions of allegations and calling an SGM for Rule 34 investigation 11th June 2019
- State Secretary signs Terms and Conditions of use of Credit Card 27th June 2019
- Sub Branch Executives from above consulted and communicated with regarding SGM motion and clarifications between June and September 2019
- Letter of Counsel issued 25th July 2019
- SGM's called between 28th October 2019 to 1st November 2019 in conjunction with AGM meetings
- Letter of Summons issued to Comrade Leighton Drury 10th January 2020
- Reply to Summons received from Comrade Leighton Drury 30th January 2020
- Rule 34 Sub Committee set up 30th January 2020

Supplemental 2 – Remedial actions and observations resulting from reviews

As a result of finance and investment policy reviews conducted by the Audit and Finance Sub Committee and the State Committee of Management the following actions have taken place:

- Both the Secretary and the Senior Administration officer have undertaken a two-day training course (September 2019), Governance Foundations for Not-for-Profit Directors program by the Australia Institute of Company Directors. This is the first time that our Administration staff have undergone such training and we are unsure if previous Secretaries have had such training but strongly believe this and more training need to become compulsory in the future.
- Adaption to SCoM meetings to allow finances to be dealt with as the first order of business. Previously they were done at the end of the day, changing this practice means that members are fresher and that more members will be there to endorse and interrogate them on most occasions.
- The State Committee identified that our Remuneration Policy was incompatible and inconsistent with the roles of committee officials and as a result had been inadvertently breached since its inception. The most critical concern being that committee officials (except the Secretary) are unable to be provided training unless paying out of their own pocket.
- That all source financial documents are presented to SCoM not just MYOB spread sheets. Previously this has not occurred but will now help strengthen our financial processes into the future.
- It was identified that the Audit and Finance policy (2016) had never been reviewed even though it was meant to be done annually. An urgent review was carried out identifying other serious concerns and oversights.
- A review of the policy revealed that critical forms such as the 'Terms and Conditions' form were never created, even though they are integral to the successful operation of the policy. This has now been rectified.
- The Audit & Finance committee conducted an urgent review of the credit card statements, as did our senior administration officer, and an external auditor. All of which show that at no time were any union funds unaccounted for.
- The Sub Committee has acknowledged that both the Secretary and the State Committee have not acted within the intent of Union policy. Given that it was the State Committee that set up this process of recouping the credit card on a monthly basis, it does not warrant further action to be taken under the Rules. The Secretary has been counselled about this and moving forward, the State Committee will be complying with the current policy. Any failure to comply with the policy could constitute a breach of the rules. This remediation was first done verbally by the President and followed up later in writing.

Conclusions and Recommendations

The sub-committee recommends that Comrade Leighton Drury be found not guilty of the three allegations as put.

However, as mentioned above, we do find that he did use the union credit card in a manner that was inconsistent with the policy as intended.

We also note, as a matter of submitted fact, that Comrade Leighton Drury was not previously advised by either the preceding or current SCoM, that such use was not permitted, and in those circumstances, the repeated use cannot be considered "*misappropriation*" of Union funds as there was no intention to defraud or gain monetary benefit by deception.

These matters have, however, been addressed and dealt with prior by the SCoM and we consider that the counselling and correspondence issued to Comrade Leighton Drury, qualifies as a reprimand.

Therefore, it is the recommendation of this Sub Committee, that no further action be taken regarding this matter due to the remediation taken by the State Committee of Management. (**Attachments 4 & 5**)

This report and its recommendations will be submitted to the State Committee of Management as per Rule 34 requirements.

Attachment 1 – Illawarra and North Sydney Sub-branch motions of allegations

Allegations as drafted by Illawarra and North subbranch executive, then put to SGM's.

Allegation 1. Possession of credit card in contravention of policy

That this meeting:

a) alleges that State Secretary Leighton Drury kept the Union's credit card in his possession for extended periods of time in breach of Rule 19 and a State Committee decision of 25 February 2016 that "the Union's Senior Administrative Officer shall remain the custodian of the card and keep it securely in the Union office".

b) relies upon:

I. the internal memorandum headed "Misuse of Union credit card and misappropriation of Union funds" dated 29 April 2019;

II. the minutes of the State Committee of Management meeting held on 25 February 2016; and

III. the agenda/minutes of the May 2019 State Committee of Management meeting;

as the evidence on which the allegation is based.

c) directs the President to sign and issue a summons for this allegation in accordance with the procedure laid out in Rule 34.

Allegation 2. Misuse of credit card and misappropriation of Union funds

That this meeting:

a) alleges that State Secretary Leighton Drury misappropriated Union funds through his repeated misuse of the Union's credit card over an extended period of time in breach of Rule 19 and the Union's Finance Policy which expressly prohibited the use of the Union's credit card for personal use, even if the cardholder intended to reimburse the Union.

b) relies upon:

i) the internal memorandum headed "Misuse of Union credit card and misappropriation of Union funds" dated 29 April 2019;

ii) the agenda/minutes of the May 2019 State Committee of Management meeting; and

iii) the Union's credit card statements and records;

as the evidence on which the allegation is based.

c) directs the President to sign and issue a summons for this allegation in accordance with the procedure laid out in Rule 34.

Allegation 3. Failure to carry out a decision of the State Committee of Management

That this meeting:

- a) alleges that State Secretary Leighton Drury failed to carry out an October 2018 decision of the State Committee of Management in breach of Rule 19, causing the Union to suffer significant financial losses.
- b) relies upon:
 - i) the internal memorandum headed “Failure to implement State Committee direction on the investment of Union funds” dated 17 April 2019;
 - ii) the Union’s financial statements and records; and
 - iii) the investment information available on vanguardinvestments.com.au as the evidence on which the allegation is based;
- c) directs the President to sign and issue a summons for this allegation in accordance with the procedure laid out in Rule 34.



STATE COMMITTEE OF MANAGEMENT MINUTES

**1000 hours Thursday 30 May 2019
Union Office Conference Room
1-7 Belmore Street, Surry Hills**

The President, Comrade Nairn occupied the Chair and declared the meeting open at 1000 hours.

State Committee of Management officials present

Comrades M. Nairn, L. Drury, T. Ross, S. Linton, J. Morgan, B. Farmer (Dept 1435), B. Callow, M. Dixon, S. Wassell, J. Lavery, H. Fisher, A. Haas, T. Anderson, R. Chetwynd and P. Gardner.

Apologies

It was then

Moved: Com. Ross

Seconded: Com. Dixon

“That the apologies from Comrades Stone and Sciannimanica be received and accepted.”

Carried

Union Credit reimbursement

It was then

Moved: Com Nairn

Seconded: Com. Gardner

“That the State Committee notes and endorses the following points from the President’s report regarding the Union’s Credit Card:

- *That the State Secretary and the State Committee has inadvertently breached the Audit and Finance Policy relating to the Credit Card procedure, the State Secretary by charging non-authorized purchases on the credit card and the State Committee by allowing an informal non-approved reimbursement to take place; and*
- *The State Committee considers the use of the card and Union’s finances monthly, this has included amounts to be repaid by the State Secretary marked as LD to reimburse on the monthly MYOB statements that State Committee view; and*
- *The State Committee notes that the amounts were always acknowledged by LD as a non-union expense and have been reimbursed; and*
- *The State Committee is not of the view there has been any conduct that warrants action under the Rules but the State Committee will also caution the Secretary that the repeated use of the card for non-union spending is not acceptable and more diligence is required on his behalf in future use of the credit card; and*
- *In the process of dealing with this matter it has come to the attention of both the Audit and Finance Committee and the State Committee that we have not met a number of requirements of the credit card procedure; and*
- *The policy has not been reviewed once since its inception (though required annually); parts of it may not have been adhered to for some time and as such a review and changes including creating forms that were never created but required for the policy to work need to happen urgently;*

and as such the State Committee of Management therefore resolves;

1. *The State Secretary be counselled by the President against using the FBEU credit card in the manner which has occurred, and*
2. *The State Committee was informed by the State Secretary that he was never provided with a “conditions of use” form as referenced in the policy as it was never created and as such a form will be created urgently for him to sign, and*
3. *The State Committee must review the policy, as required by the policy at 7.3 annually, as a review has not occurred until this month, and*
4. *The State Committee will consider the effectiveness and relevance of the current policy and any changes to or replacement of the policy or parts of the policy, and*
5. *The State Committee recommend, support and approve the State Secretary undertaking training to better address all the financial requirements of the rules and policies of the union that are bestowed upon the role.”*
6. *That the State Committee recommends a report be obtained from an independent auditor regarding credit card expenditure in relation to the current policy then to be communicated to the membership at the next AGM/SGM whichever occurs first.*

Carried

Note Com. Haas voted against.

Attachment 3 – Minutes accepting credit card expenditure

Note that this is the process the SCoM followed until it was raised as a concern, at which point the SCoM took immediate action to review and correct the processes. (See Attachment 4 and 5)



STATE COMMITTEE OF MANAGEMENT MINUTES

Meeting held Thursday 1 February 2018 in the Union Office Conference Room at 1-7 Belmore Street, Surry Hills

The President, Comrade Sullivan occupied the Chair and declared the meeting open at 1018 hours.

State Committee of Management

Comrades D. Sullivan, L. Drury, J. Henry, J. Casey (departed 1405 hours), J. Morgan, M. Stone, B. Farmer, W. Smith (departed 1515 hours), M. Dixon, B. Rea, T. Ross, J. Cassel, M. Nairn, A. Haas, T. Anderson, M. Morris and P. Gardner.

Financial Report

It was then

Moved: Com. Drury

Seconded: Com. Farmer

“That the documents headed ‘Mastercard Expenditure 15 November 2017 to 14 December 2017’ detailing total expenditure on the Union’s Mastercard facility of \$1,357.37 be received and endorsed.”

Carried

Attachment 4 – Letter of Counsel

Letter of counsel to Comrade secretary

25 July 2019

Comrade Secretary
Leighton Drury,

I am writing to you as the President and on behalf of the State Committee to address the issues and concerns around the non-union purchases you have put on the union credit card dating back to November 2017. As discussed over numerous State Committee meetings, we have determined that you have acted outside the union's Credit Card Procedure and that the State Committee have also acted outside the Procedure by approving the process of 'unofficial recoup' to occur.

Moving forward this behaviour and pattern of spending on the union's credit card, though acknowledged and repaid, will cease.

In June 2019 you signed a Terms of Use form, recently created for the Credit Card Procedure, and as such the State Committee have an expectation that you will use the union credit card in accordance with both those terms and the broader finance policies of the FBEU.

The State Committee has determined that you are to be counselled by me and that no further action under the rules are required.

However, I take this opportunity to remind you that any further or ongoing breaches of the Terms of Use of the Union credit card may result in disciplinary action under rule 34 of the FBEU rules.

Regards
Mick Nairn
President

Attachment 5 – Remedial Motions

May 3, 2019 State Committee of Management meeting related motions

Breaches of SCOM Remuneration policy

It was then

Moved: Com. Nairn

Seconded: Com. Linton

“That SCOM acknowledge that the remuneration policy is incompatible and inconsistent with the roles and duties of state committee officials which has resulted in unintentional breaches of the policy and as such this committee resolves to report same to the next AGM/SGM along with a revised policy.”

It was then moved by Comrade Farmer that ‘the motion be not now put’.

LOST

A Division was then called by Com. Farmer and Com. Haas.

FOR: Haas and Farmer

AGAINST: Ross, Nairn, Linton, Anderson, Stone, Callow, Morgan, Sciannimanica, Chetwynd and Dixon.

The original motion was then put and declared

Carried

Financials stand alone SCOM item

It was then

Moved: Com. Nairn

Seconded: Com. Dixon

“That the state committee acknowledge the importance of their financial responsibilities and as such SCOM Standing Orders Clause 5 is to be adjusted to include Finances in the order of business and is to be inserted after Question Time.”

Carried

Moved: Com. Drury

Seconded: Com. Anderson

“That the State Committee notes and endorses the below motion from the Audit and Finance committee meeting of 8th April 2019 and that it is to provide an update at the May SCOM meeting prior to the June report back with the intent of ensuring that the members funds are used in the most effective way.

*“That the Audit and Finance Committee has reviewed the State Committee of Management Remuneration Policy (**SCOM Remuneration Policy**), and in its current form, the Policy prevents or severely restricts FBEU officials from accessing basic resources to carry out their roles, for example, training, campaigning and face to face member engagement;
and notes*

That the State Committee (and at least two previous State Committees) have been operating in breach of this policy from its inception and therefore recommends that;

1. *The State Committee of Management considers the SCOM Remuneration Policy unworkable and/or inconsistent with the roles and duties of the officials;*
2. *The Audit and Finance Committee shall provide the State Committee with a proposed amended SCOM Remuneration Policy which will be drafted consistent with the following principles:*
 - 1 *The purpose of the SCOM Remuneration Policy is to:*
 - a. *provide governance structures that comply with the Union’s legislative duties;*
 - b. *provide transparency to members in relation to the operation of the Union; and*
 - c. *direct the Union’s resources to building power for the Union;*
 - 2 *The role of the State Committee is to function as the organising, political and industrial leadership of the Union;*
 - 3 *The State Committee is committed to building member power and building the Union;*
 - 4 *The Union’s policies should therefore be facilitative of member power and organising, not inhibitors of them;*

The proposed amended SCOM Remuneration Policy is to be prepared on an urgent basis and reported on for consideration at the June SCOM meeting.”

It was then moved by Comrade Farmer that ‘the motion be not now put’.

LOST

A Division was then called by Com. Farmer and Com. Haas.

FOR: Haas and Farmer.

AGAINST: Ross, Nairn, Linton, Anderson, Stone, Sciannimanica, Chetwynd and Dixon.

The original motion was then put and declared

Carried

Audit and Finance Policy Review

It was then

Moved: Com. Nairn

Seconded: Com. Chetwynd

“That the State Committee notes the below motion from the Audit and Finance Committee meeting of 8th of April 2019 which is to provide an update at the 30 May SCOM meeting prior to the June report back, and endorses action items 1 & 2, with the intent that any such reports are to be done so immediately.

“The Audit and Finance Committee considers the SCOM Audit and Finance Policy needs to be urgently reviewed so that it is consistent with the needs of the Union and therefore recommends that the State Committee of Management directs that the Audit and Finance Committee conduct an immediate review of the SCOM Audit and Finance Policy to address the following identified concerns:

- a. To confirm the legitimacy of the Policy, in light of the fact that there is no record of it attached to the Minutes of the SCOM meeting during which it was purportedly ratified;*
- b. That the provisions in relation to use of Union credit card fails to provide for basic governance and oversight, for example, the Policy lacks any provision or procedure by which the Union can recoup payment in respect of inadvertent, unauthorised or incorrect use of credit cards;*
- c. There is a lack of reporting lines in the Policy, if officials or staff have questions or concerns about the interpretation or operation of the Policy;*

And therefore, with a view to reviewing the assisting in the review of the current SCOM Audit and Finance Policy and in the drafting of an amended policy as soon as possible:

- 1. all officials are to report any questions or concerns regarding the Union’s finances to the Audit and Finance Committee;*
- 2. all staff, consistent with their employment duties, are to report any questions or concerns regarding the Union’s finances to the State Secretary, who shall in turn report those matters to the Audit and Finance Committee;*

and therefore, the Audit and Finance Committee shall provide the State Committee with a proposed amended SCOM Audit and Finance Policy for consideration at the June SCOM meeting.”

Carried

Review of Financial Records

It was then

Moved: Com. Anderson

Seconded: Com. Nairn

“That the State Committee notes the below motion from the Audit and Finance meeting of 8th April 2019, and report back from the Audit and Finance Committee into the audit that was conducted on the 2nd of May 2019.”

“That the Audit and Finance Committee shall review the Union’s financial records including its expenditure dating from July 2015 to date, as soon as practicable upon the return of the Senior Administration Officer, in light of the issues identified with both the SCOM Audit and Finance Policy and the SCOM Remuneration Policy and the Audit and Finance Committee shall provide the State Committee with a report of that review at the next SCOM meeting.”

Carried

Bank statements for review

It was then

Moved: Com. Anderson

Seconded: Com. Morgs

“That the State Committee notes the Country Sub Branch Secretary’s report and endorses the below motion from the Audit and Finance Committee.”

“That any committee of the Union that meets to endorse financial records of the Union will be provided a copy (one per committee member) of all original bank statements that the State Committee is being asked to scrutinise.”

Carried

Union credit card

It was then

Moved: Com. Ross

Seconded: Com. Stone

That the state committee note and endorse the below motion from the audit and finance committee and that the committee is to provide an update at the May SCOM meeting prior to the June report back.

“That the Audit and Finance Committee acknowledges the report of the Senior Vice President in relation to a series of payments on the Union credit card which are inconsistent with the current Policy, however, the Audit and Finance Committee notes that:

- a) the current policy fails to facilitate the organising and campaign work that the State Committee of Management is committed to;*
- b) most, if not all, of the current “unauthorised” payments occurred whilst undertaking this work;*
- c) the Policy fails to make any provision for the manner in which unauthorised payments are to be resolved;*

And therefore, the audit and finance committee recommend that the State Committee of Management directs that:

- 1 Until a review of the Policy is conducted, the Union credit card is not to be used unless prior approval is sought by the Administrative Staff or the State Secretary and given by at least two members of the Audit and Finance Committee in writing, and this includes payments of ‘ordinary union business’ such as recurring bills;*
- 2 The Audit and Finance Committee review and examine the purpose for which regular payments are made on the Union credit card, compare the policies and procedures of other Unions, and make recommendation to the State Committee on how the Union’s finances in this respect are managed into the future (for example, limited to no credit card use, multiple credit cards, debit arrangements, automated or digitised reconciliation systems, and any required policies);*
- 3 Having conduct its review, the Audit and Finance Committee shall provide the State Committee with recommendations about a new Union Credit Card or other payment method Policy; and*
- 4 Once SCOM has ratified a new Union Credit Card or other payment Policy, the Audit and Finance Committee shall investigate where, if at all, the training and skills of the Union’s officials may be deficient, and make recommendations of further development or training required to meet the standards set by relevant legislation and the revised Union policies;*

The audit and finance committee note the that the current Audit and Finance Policy provides an option of taking disciplinary action in relation to unauthorised use of the credit card, however, this Committee makes no such recommendation at this time and indeed could not do so in good faith given the manifest inadequacies of the policies identified and recommend that SCOM do the same.”

An amendment was then
Moved: Com. Haas

Seconded: Com. Dixon

That the state committee note the below motion from the audit and finance committee and that the committee is to provide an update at the may SCOM meeting prior to the June report back.

“That the Audit and Finance Committee acknowledges the report of the Senior Vice President in relation to a series of payments on the Union credit card which are inconsistent with the current Policy, however, the Audit and Finance Committee notes that:

- d) the current policy fails to facilitate the organising and campaign work that the State Committee of Management is committed to;*
- e) most, if not all, of the current “unauthorised” payments occurred whilst undertaking this work;*
- f) the Policy fails to make any provision for the manner in which unauthorised payments are to be resolved;*

And therefore, the audit and finance committee recommend that the State Committee of Management directs that:

- 1 Until a review of the Policy is conducted, the Union credit card is not to be used unless prior approval is sought by the Administrative Staff or the State Secretary and given by at least two members of the Audit and Finance Committee in writing, and this includes payments of ‘ordinary union business’ such as recurring bills;*
- 2 The Audit and Finance Committee review and examine the purpose for which regular payments are made on the Union credit card, compare the policies and procedures of other Unions, and make recommendation to the State Committee on how the Union’s finances in this respect are managed into the future (for example, limited to no credit card use, multiple credit cards, debit arrangements, automated or digitised reconciliation systems, and any required policies);*
- 3 Having conduct its review, the Audit and Finance Committee shall provide the State Committee with recommendations about a new Union Credit Card or other payment method Policy; and*
- 4 Once SCOM has ratified a new Union Credit Card or other payment Policy, the Audit and Finance Committee shall investigate where, if at all, the training and skills of the Union’s officials may be deficient, and make recommendations of further development or training required to meet the standards set by relevant legislation and the revised Union policies;*

The audit and finance committee note the that the current Audit and Finance Policy provides an option of taking disciplinary action in relation to unauthorised use of the credit card, however, this Committee makes no such recommendation at this time and indeed could not do so in good faith given the manifest inadequacies of the policies identified and recommend that SCOM do the same.”

Carried

“NOTE: The State Secretary declared a possible conflict of interest and vacated the meeting till the motion concluded.”

The amended motion was then put and declared.

May 30, 2019 State Committee of Management meeting related motions

Union Credit reimbursement

Moved: Com Nairn

Seconded: Com. Gardner

“That the State Committee notes and endorses the following points from the President’s report regarding the Union’s Credit Card:

- *That the State Secretary and the State Committee has inadvertently breached the Audit and Finance Policy relating to the Credit Card procedure, the State Secretary by charging non-authorized purchases on the credit card and the State Committee by allowing an informal non-approved reimbursement to take place; and*
- *The State Committee considers the use of the card and Union’s finances monthly, this has included amounts to be repaid by the State Secretary marked as LD to reimburse on the monthly MYOB statements that State Committee view; and*
- *The State Committee notes that the amounts were always acknowledged by LD as a non-union expense and have been reimbursed; and*
- *The State Committee is not of the view there has been any conduct that warrants action under the Rules but the State Committee will also caution the Secretary that the repeated use of the card for non-union spending is not acceptable and more diligence is required on his behalf in future use of the credit card; and*
- *In the process of dealing with this matter it has come to the attention of both the Audit and Finance Committee and the State Committee that we have not met a number of requirements of the credit card procedure; and*
- *The policy has not been reviewed once since its inception (though required annually); parts of it may not have been adhered to for some time and as such a review and changes including creating forms that were never created but required for the policy to work need to happen urgently;*

and as such the State Committee of Management therefore resolves;

1. *The State Secretary be counselled by the President against using the FBEU credit card in the manner which has occurred, and*
2. *The State Committee was informed by the State Secretary that he was never provided with a “conditions of use” form as referenced in the policy as it was never created and as such a form will be created urgently for him to sign, and*
3. *The State Committee must review the policy, as required by the policy at 7.3 annually, as a review has not occurred until this month, and*
4. *The State Committee will consider the effectiveness and relevance of the current policy and any changes to or replacement of the policy or parts of the policy, and*
5. *The State Committee recommend, support and approve the State Secretary undertaking training to better address all the financial requirements of the rules and policies of the union that are bestowed upon the role.”*
6. *That the State Committee recommends a report be obtained from an independent auditor regarding credit card expenditure in relation to the current policy then to be communicated to the membership at the next AGM/SGM whichever occurs first.*

Carried

“NOTE: The State Secretary declared a possible conflict of interest and vacated the meeting till the motion concluded.”

Note Com. Haas voted against.

Credit Card Procedure Appendix D

Moved: Com. Nairn

Seconded: Com. Lavery

“That the State Committee notes and endorses the Credit Card Procedure previously circulated and tabled at this meeting by the President and resolves to amend the Finance Policy and Procedures at Appendix D.”

It was then moved that the motion be ‘not now put’

Moved: Com. Haas

Seconded: Com. Morgan

Lost

The original motion was then moved and declared.

Carried

Recession motion Re Union credit card from SCOM FEB 2016

Moved: Com Nairn

Seconded: Com. Lavery

“That notice is hereby given to rescind the following motion ‘Union credit card’ as it conflicts with the ability of the union to organise and campaign on behalf of members, further the senior administration officer has made it clear that she does not want a union credit card and was never consulted about this motion after it was passed and lastly a credit card in an organisations name and not an individuals is a greater risk to accountability and not allowed from our current banking establishment.”

“That given:

- 1. the credit card traditionally provided to the State Secretary has in recent years been used by the Union generally to pay for accommodation expenses, flights and miscellaneous other purchases (for example, the Union's internet and fax services) which are impractical, and in many cases impossible to pay by any means other than credit card; and*
- 2. that credit card signatures are no longer required or accepted, although credit cards must still be issued to individuals rather than organisations; and*
- 3. that credit card expenses are limited to \$3000 per calendar month and subject to regular review by the State Committee pursuant to Rule 30(4)(b); and c) the Union's administrative staff have in practice been the sole users of the Union's card, with the accommodation and incidental expenses that would previously have been paid by the State Secretary using the Union's credit card now being paid instead by the Union's administrative staff remotely; and*
- 4. that whilst there has been no experience of fraud or abuse of the FBEU's credit card by any State Secretary, past or present, the need for stronger governance around the provision of credit cards has featured prominently in reports and recommendations arising from the recent Trade Union Royal Commission; State Committee recognises that while the Union continues to need a credit card facility, the State Secretary no longer needs to do so and consequently resolves that it is in the interest of all concerned, including the State Secretary, for the Union's credit card to no longer be issued to the State Secretary and to instead have the card issued in the Union's name or, if an individual's name is also required, in the name of the Union and the Union's Senior Administrative Officer, who shall remain the custodian of the card and keep it securely in the Union office.”*

Carried

Attachment 6 – Review and revision of Union’s investment strategy

October 2018

Review and revision of the Union’s investment strategy

It was then

Moved: Comrade Drury

Seconded: Comrade Wassell

That the draft minutes of the Audit and Finance Committee meeting held Monday 15 October as circulated prior to this meeting be received and that the State Committee accept the Audit and Finance Committee’s recommendations for:

- a) the withdrawal and reinvestment of the Industry Fund Services investment as soon as practicable; and*
- b) the immediate amendment of the Union’s investment strategy policy which presently reads:*

That further to the decision of the State Committee of 13 December 2016 regarding the investment of the Union’s funds, that the State Secretary’s report on the Audit and Finance Committee’s latest deliberations and recommendations be received and that consistent with the State Committee’s previously stated low to moderate risk tolerance with the Union’s investments and until resolved otherwise, State Committee determines:

1. that the (low interest) Commonwealth Bank working account balance should generally be maintained at an amount equivalent to between two and four weeks’ membership dues nett of GST, and that surpluses the equivalent of two or more weeks’ membership dues nett of GST are to be withdrawn and reinvested in managed funds in accordance with point 4; and
2. that the low risk Members Equity business term deposit should be limited to an amount equivalent to twenty weeks’ membership dues nett of GST, rounded to the nearest ten thousand dollars, which is considered sufficient to cover up to 35 weeks of the Union’s ordinary operating costs; and
3. that upon the maturity of each business term deposit, the amount surplus to the limit set at point 2 shall be withdrawn and reinvested in managed funds in accordance with point 4 and the remaining amount (ie the amount equivalent to twenty weeks’ membership dues nett) shall be reinvested in another Members Equity business term deposit at the highest interest rate offered at that time and in the event that the highest rate is offered over two or more different term periods, then at the shortest term available; and
4. that the Union’s moderate risk investment strategy shall continue to be given effect to by investing the surplus funds from points 1 and 3 in managed funds on the following ratios, rounded to the nearest one hundred dollars:
 - a) 37.5% in Australian Ethical’s ‘Balanced Fund’ (australianethical.com.au);
 - b) 37.5% in Industry Fund Portfolio Service’s ‘Income Plus Investment Model’ (ifpsinvest.com.au); and
 - c) 25% in Third Link Growth Fund (thirdlink.com.au);

and in resolving this way State Committee reaffirms that the strategy listed at Point 4 has been entered into by the Union with an intended investment timeframe of not less than five years.

so that it instead reads:

That further to the decision of the State Committee of 29 June 2017 regarding the investment of the Union’s funds, that the State Secretary’s report on the Audit and Finance Committee’s latest deliberations and recommendations be received and that consistent with the State Committee’s previously stated low to moderate risk tolerance with the Union’s investments and until resolved otherwise, State Committee determines:

1. that the Union shall henceforth maintain two bank accounts to receive membership dues and other revenue:
 - a) a Commonwealth Bank transactional account (current interest rate of 0.01%) from which all payments shall be made; and
 - b) a ME Bank business savings account (current interest rate of 1.75%) into which most revenue shall be deposited;

which together shall be known as the Union’s working account, with the amounts held in each to be as determined from time to time by the State Secretary provided that the working account shall be drawn down between the 15th and 30th day of each month to an amount equivalent to two weeks’ membership dues nett of GST and the amount withdrawn then reinvested in accordance with point 4; and

2. that the low risk Members Equity business term deposit (current interest rate of 2.95%) should be limited to an amount equivalent to twenty weeks' membership dues nett of GST, rounded to the nearest ten thousand dollars, which is considered sufficient to cover up to 35 weeks of the Union's ordinary operating costs; and
3. that upon the maturity of each business term deposit, the amount surplus to the limit set at point 2 shall be withdrawn and reinvested in accordance with point 4 and the remaining amount (ie the amount equivalent to twenty weeks' membership dues nett) shall be reinvested in another Members Equity business term deposit at the highest interest rate offered at that time and in the event that the highest rate is offered over two or more different term periods, then at the shortest term available; and
4. that the Union's moderate risk investment strategy shall continue to be given effect to by:
 - a) maintaining the Union's current Australian Ethical (australianethical.com.au) portfolio, but investing no further amounts in this particular investment until determined otherwise; and
 - b) maintaining the Union's current Third Link Growth Fund (thirdlink.com.au) and investing an additional \$500,000 per annum in this investment as soon as it is possible each year to do so; and
 - c) investing the surplus funds from points 1, 3 and 4(b) in the following Vanguard Australia funds (vanguardinvestments.com.au) on the following ratios, rounded to the nearest one hundred dollars:
 - i) 33.3% in Vanguard Australian Government Bond Index Fund (VAN0025AU);
 - ii) 33.3% in Vanguard Ethically Conscious International Shares Index Fund (VAN4013AU); and
 - iii) 33.3% in Vanguard Global Minimum Volatility Fund (VAN0068AU);

and in resolving this way State Committee confirms that the strategy listed at Point 4 has been entered into by the Union with an intended investment timeframe of not less than three years.

Carried