

Our Ref: MD/ 5171008
Direct Tel: 02 8267 0926
Direct Fax: 02 9261 3318
Email: Mdoherly@mauriceblackburn.com.au

Maurice Blackburn Pty Limited
ABN 21 105 657 949

Level 32
201 Elizabeth Street
Sydney NSW 2000

PO Box A266
Sydney South NSW 1235

DX 13002 Sydney Market Street

T (02) 9261 1488
F (02) 9261 3318

2 July 2015

Mr Steve Turner
Trustee
Prison Officers Vocational Branch Legal Fund
160 Clarence St
Sydney NSW 2001

By Email: sturner@psa.asn.au

Dear Steve,

Advice on Prison Officers Vocational Branch Legal Fund Constitution and Payment of Legal Fees

We refer to your letter dated 30 June 2015 in which you seek advice as to the following:

- a. Whether Clause G of the Prison Officers Legal Fund Constitution (the **Constitution**) permits you, as a Trustee of the Prison Officers Legal Fund (the **Fund**), to implement the following motion:

“That Darren King and Nicole Jess are making representation to you and the other trustees of the legal fund to pay the legal fund expenses of Legal Fund member Robert Shaw”.

...

It is felt that under section 3 subsection G that the bill can be paid....”

- b. Whether anything else in the Constitution limits you taking this action or the Prison Officers Vocational Branch of the Public Service Association (the **POVB**) requesting this action.

Executive Summary

- a. In our view, clause G of the Constitution does not permit you to implement the motion and the trustees should not, at this time, make any payment to Mr Shaw's solicitors or to the POVB in order for the POVB to make such a payment.
- b. Further, given the terms of Clause G of the Constitution, if such a retainer exists, then it may establish exclusive contractual arrangements for the provision of legal services between the Fund and W G McNally Jones Staff which the trustees should be most cautious not to breach. Paying the legal fees of Mr Shaw to another legal practitioner or practitioners may constitute such a breach. Without the opportunity to consider any retainer agreement we can take this matter no further.

We confirm that your instructions are as follows:

1. As trustee of the Fund you have been requested by two members of the POVB Executive Ms Jess and Mr King to authorise payment of the legal fees of Mr Shaw either directly from the Fund or via a payment to the Prison Officers Vocational Branch pursuant to Clause G of the Constitution.
2. The POVB is not a separate legal entity to the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (the **PSA**) and does not have separate financial accounts.
3. We have assumed for the purposes of this advice that the legal assistance provided to Mr Shaw fulfils the requirements of the Constitution, namely that Mr Shaw has been charged with a criminal offence arising out of or in the course of his employment with the Department of Corrective Services.
4. Mr Shaw has incurred legal fees in relation to legal assistance provided by a legal practitioner/s who is not Jones Staff & Co.
5. Mr Shaw was referred to W G McNally Jones Staff but sought alternative legal representation purportedly as a result of dissatisfaction with advice or representation provided by W G McNally Jones Staff.
6. The Fund has a retainer agreement with W G McNally Jones Staff. This retainer agreement has not been able to be provided to the writer at the time of providing this advice given the extremely urgent nature of the advice sought.
7. The POVB Executive has established a committee to urgently consider whether an alternative legal practitioner or practitioners should be engaged to provide legal services to the members of the Fund.

Consideration

8. The Rules of the PSA provide at Rule 156 for the establishment of the Fund.
9. Pursuant to Rule 156 (a) the Fund was established and the rules to apply to the Fund were codified in the Constitution. We are not instructed as to whether the Fund is a trust or an unincorporated association or some other legal entity.
10. Rule 156 (b) stipulates that the Legal Fund is to provide financial assistance for the payment of legal expenses for members belonging to the POVB who are criminally charged with respect to any matter which occurs whilst on duty as a prison officer.
11. The Constitution provides for grants of legal assistance for members of the Fund charged with criminal offences (Clause A (2)). Members pay a fee to be members of the Fund as set by the trustees (Clause B (1)).

12. The maximum grant of financial assistance available to a Fund member is determined by the trustees at an annual meeting held in the first week of July and recorded in the Minute book of the Fund (Clauses C (1) (c) and C (3)(a)).
13. Applications for assistance are considered by the Trustees within seven days of an application for assistance (Clause 3(C) (b)).
14. The Constitution also stipulates at Clause F(2) that the Fund will enter into an agreement with Jones Staff & Co which shall be the sole legal firm with which the Fund shall deal.
15. We note that the firm Jones Staff & Co is not a company registered with ASIC and may no longer exist. The relationship between Jones Staff & Co and W G McNally Jones Staff is not known to the writer. Irrespective, we are instructed that a retainer (the terms of which are not known to the writer) has been entered into between the Fund and W G McNally Jones Staff.
16. Given the terms of Clause G of the Constitution, if such a retainer exists, then it may establish exclusive contractual arrangements for the provision of legal services between the Fund and W G McNally Jones Staff which the trustees should be most cautious not to breach. Paying the legal fees of Mr Shaw to another legal practitioner or practitioners may constitute such a breach. Without the opportunity to consider any retainer agreement we can take this matter no further.
17. We now turn to consider Clause G of the Constitution which is as follows:

The Legal Fund may make contributions to the POVB from time-to-time to assist that body to fulfil its obligations. Such contributions shall be determined by the Trustees upon receipt of a written application signed by at least two (2) members of the Prison Officers Vocational Branch.
18. The POVB is a vocational branch of the PSA established pursuant to the PSA Rules and not a separate legal entity. The PSA is an industrial organisation registered pursuant to the *Industrial Relations Act 1996* (NSW).
19. The Constitution itself states that the PSA does not provide financial assistance to members who have been charged with a criminal offence which is associated with employment in the Corrections industry.
20. In our view, in circumstances where the PSA does not provide financial assistance in such cases, the objectives of the POVB are unlikely to include the payment of legal fees incurred by members on criminal charges. Indeed it is evident that it was for this very reason that the Fund was established.
21. As such, the grant of moneys from the Fund to the POVB for the purposes of the POVB paying the legal fees of Mr Shaw is unlikely to be a payment to the POVB for the purpose of furthering its objectives.
22. In our view, clause G of the Constitution does not permit you to implement the motion and the trustees should not, at this time, make any payment to Mr

Shaw's solicitors or to the POVB in order for the POVB (if it can, in and of itself, make any payment pursuant to the Rules which is highly doubtful) to make such a payment.

Please advise the writer should you require further assistance.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'M. Doherty', is written over a faint, illegible typed name.

Michael Doherty (Enquiries: Tennille Baird or Ilijana Radonic - 02 8267 0926)
Special Counsel
MAURICE BLACKBURN