



Senate Standing Committee on Education and Employment

Opening Statement

Registered Organisations Commissioner Mr Mark Bielecki

4 March 2020

Introduction

- 1.0 The Registered Organisations Commission (ROC) is pleased to appear before the Committee today.
- 2.0 Appearing with me is ROC Executive Director, Mr Chris Enright.
- 3.0 Registered organisations have a special position in the IR framework. They exist to serve their members. Each is responsible for its own conduct. Each is funded by other people's money - members' money.
- 4.0 I will take the opportunity to share with the Committee a few important aspects of our work that don't often get mentioned at these hearings:
 - 4.1 First, the support we provide to registered organisations;
 - 4.2 Secondly, the results we achieve in collaboration with organisations;
 - 4.3 Some emerging compliance issues; and
 - 4.4 Court decisions since we were last here.

Support

- 5.0 The ROC is heavily invested in practically supporting registered organisations' compliance efforts. We have good relationships with the vast majority of them. For example, in the 2018/19 year

we sent out over 1500 tailored compliance reminders to individual organisations.

6.0 We have run education workshops in every capital city. The next one is later this month in Parramatta. That will take the tally to 11 workshops.

7.0 The workshops are well supported with:

- Almost 600 attendances;
- The involvement of almost 80% of all registered organisations;
- 97% of respondents rating the workshops as informative or very informative; and
- 94% of respondents rating their experience with the ROC as positive or very positive.

8.0 Since last appearing we have:

- Continued to implement our 2019/20 National Education Strategy;
- Published four new podcasts, the most recent of which was last week; and
- In consultation with stakeholders, streamlined our website.

Results

9.0 Contributing to the results we achieve together with registered organisations, is that we largely interact with them in a collaborative way. This is consistent with my statutory mandate to provide education, assistance and advice to organisations.

10.0 The support we provide to, and our collaboration with, organisations and the conscientious efforts of my staff have

resulted in very positive compliance outcomes such that in 2018/19:

- 92% of the new officer and related party disclosure statements were lodged on time;
- 99% of financial returns were lodged on time; and
- 100% of annual returns were lodged on time.

11.0 My assessment is that the majority of organisations and officers want to do the right thing when it comes to compliance. At the ROC we want to support them in that endeavour and I thank them for their efforts.

12.0 In the overwhelming majority of breaches we come across, whether through self-notification, whistleblower disclosures or detection by us, we informally work with organisations to remedy these without any escalated compliance action by us.

Compliance Issues

13.0 On emerging compliance issues, we've recently alerted organisations to the requirement under the Fair Work (Registered Organisations) Act 2009 (Registered Organisations Act) for certain offices to undergo financial training. We have also alerted them to an emerging issue around the below value disposal of motor vehicles to their officials and employees who have then gone on to make windfall gains.

14.0 Since 2017 we have managed an expanded whistleblower regime. These disclosures which number around 180 to date, have in some cases acted as an 'early warning system' revealing problems that might need better compliance approaches. There are well in excess of 2 million eligible disclosers.

Court Decisions

15.0 On the Court proceedings front, on the last occasion we were here I very briefly mentioned our successful proceedings against the AHA QLD branch. You'll recall this was an employer organisation which failed to hold elections for a period in excess of 10 years, and that failed on 17 occasions to keep accurate records as to who its officers were and which again failed on 17 occasions to lodge timely notifications of changes to its officers. This undermined the democratic control of the organisation. The AHA admitted the breaches and the Court imposed a penalty in excess of \$157,000.

16.0 Since last appearing, the Federal Court has handed down two more decisions in cases we've brought.

17.0 The cases represent deep dives into subsets of compliance risk around the democratic functioning of organisations, including:

17.1 Inaccurate or manipulated membership registers; and

17.2 The failure to properly maintain records and notify changes of officers.

18.0 We were successful in both these cases.

ROC v AWU & Melhem

19.0 The first involved the imposition of civil penalties against the former Victorian Branch Secretary of the Australian Workers' Union (AWU). This related to multiple, serious, admitted contraventions of the Registered Organisations Act.

20.0 This case related to the Union's addition of non-members to its register - without their knowledge - and its failure to keep an accurate register of members for five years (from 2008 to 2013)

which covered most of the period Mr Melhem was the Victorian Branch Secretary.

21.0 The conduct involved the addition of 730 people to the Union's membership register in substantial non-compliance with its rules, and involved the AWU receiving almost half a million dollars (\$488,007.50) from employers or associations which it was not properly entitled to, and which the AWU in a number of instances improperly accounted for in false invoices.

22.0 In the Federal Court, the Honourable Justice Mortimer entered declarations of contraventions by Mr Melhem and ordered Mr Melhem to pay civil penalties totalling \$20,590.¹

23.0 We are waiting for the judgment in that part of the proceedings which is against the AWU itself.

ROC v CEPU

24.0 Another Federal Court compliance decision which was handed down three weeks ago arose from our proceedings against the CEPU.

25.0 The Court found that the CEPU contravened the Registered Organisations Act on 86 occasions between March 2015 and May 2017:

25.1 On four occasions by failing to keep accurate lists of its offices and office holders; and

¹ Her Honour stated: [192] The penalty imposed on Mr Melhem should send a strong message to office holders in other registered organisations who might be inclined to see the organisation's rules as optional, and to see membership recruitment as an "ends justifies the means" kind of process, that the law will view such conduct as serious and with significant penalties likely to be imposed.

25.2 On 82 occasions by failing to lodge notifications of changes about offices and office holders within the prescribed time, including on nine occasions in not notifying the changes at all prior to the commencement of the court proceedings.

26.0 The Court found that the contraventions were widespread across all three of the CEPU's divisions, across six states and one territory and extended over a considerable period of time. This all happened despite ongoing reminders and warnings being provided by the regulator about the CEPU's obligations, including specific advice that conscious decisions to contravene provisions of the Registered Organisations Act would be met with an appropriate regulatory response.²

27.0 The Court imposed a penalty of \$445,000, which is 25% of the agreed maximum penalty.

28.0 This case is important because proper record-keeping enables, among other things, members of an organisation, the public and the regulator to identify the officers in an organisation who have, or are exercising the powers, and fulfilling the duties, of those offices.

29.0 Once again it is noteworthy that these legislative requirements underpin the democratic functioning and control of organisations, a key objective of the Registered Organisations Act. Compliance with these requirements is important to ensure high standards of accountability of organisations and their office holders to their members.

² The Honourable Justice Flick said that "On any view, the analysis exposes widespread contraventions over a considerable period of time."

ROC v AWU

30.0 Finally, I will mention an appeal that we have lodged.

31.0 The ROC has appealed the Federal Court decision to quash its investigation into payments made by the AWU to GetUP! and the making of a number of political donations that may not have been properly authorised.

32.0 The trial judge found in favour of the AWU on a ground which relied upon a first time broad statutory interpretation of section 320 of the Registered Organisations Act.

33.0 The grounds of appeal challenge the findings made by the trial judge as to the scope of our investigation, the way in which section 320 operates, and the statutory threshold necessary for us to commence an investigation.

34.0 Thank-you Chair, that concludes my opening statement. Mr Enright and I would be happy to take your questions.