



Senate Standing Committee on Education and Employment

Opening Statement

Registered Organisations Commissioner Mr Mark Bielecki

27 October 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 I will take the opportunity to share with the Committee two matters that have arisen since we last appeared.
 - 3.1 First, the support we provide and have provided to registered organisations – during the pandemic;
 - 3.2 Secondly, a Court decision since we were last here.

Support

- 4.0 The pandemic has presented challenges for registered organisations, their branches and their members. Nonetheless, during this time, the ROC has worked pragmatically and proactively with the organisations we regulate, mindful they may encounter difficulties in complying with their regulatory obligations as a result of the impact of COVID-19.
- 5.0 During the pandemic we have continued to reach out to our stakeholders to identify issues affecting them. In response to their feedback we have developed, and will continue to

develop, a further range of resources to assist organisations with compliance.

6.0 Resources developed to date include:

- a dedicated COVID-19 page on our website
- provision of information on newly approved online financial training courses for officers with financial responsibilities who may have been unable to attend face-to-face training
- a guidance note on conducting elections during COVID-19
- a guidance note on holding meetings using appropriate technology during the pandemic
- a new e-learning module on conducting elections that are due during COVID-19
- an online panel discussion answering questions from organisations about COVID-19 related issues
- a newsletter dedicated to providing guidance around COVID-19 issues; and
- a podcast episode dedicated to helping organisations during the pandemic.

7.0 These resources were among the most accessed items on our website from the end of March to the end of June.

8.0 The COVID-19 resources are in addition to the ongoing education activities that we routinely carry out. We are heavily invested in practically supporting registered organisations' compliance efforts.

9.0 The:

- e-learning module
- online panel discussions; and
- podcasts

were new education initiatives introduced in 2019-20 – and are not just for COVID-19 education, they are also being used for a range of other topics.

10.0 Another new initiative in the 2019-20 year was to publish plain English summaries of relevant court cases so that organisations can learn from them. Again these have proved to be very popular.

11.0 Our education activities are informed by stakeholder feedback, including from our annual education survey. We publish a National Education Strategy for every financial year so organisations can plan ahead.

12.0 We continue to receive positive feedback from stakeholders about our education resources.

Court Decision

ROC v AWU & MELHEM

13.0 On the Court proceedings front, on the last occasion we were here I very briefly mentioned our successful proceedings against the Victorian Branch of the Australian Workers' Union and its former Victorian Branch Secretary, Mr Cesar Melhem.

14.0 You'll recall this related to multiple, serious, admitted contraventions of the RO Act.

- 15.0 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.
- 16.0 Two separate penalty hearings were heard in relation to these matters, and as I reported last time, in November last year Mr Melhem was ordered to pay civil penalties totaling \$20,590.
- 17.0 Since last appearing here, the Federal Court has handed down its penalty decision against the Victorian Branch of the AWU itself. In August it was ordered to pay \$148,100 in civil penalties.
- 18.0 The Court found the conduct constituted a serious departure from the important record-keeping standards with which the RO Act requires that all organisations comply.
- 19.0 The contraventions arose out of arrangements in which each of six entities agreed to provide lists of their employees or members and make payments to the AWU which the AWU accounted for internally as membership revenue. Details of those employee or members were then entered into the AWU's membership records, often without their knowledge.
- 20.0 The judgment records that the AWU received 20 payments from these six entities totaling more than \$500,000.
- 21.0 The Court said: *"It appears in some (and perhaps many) cases that the AWU engaged internal protocols to ensure that those*

who were unwittingly added to its membership register in consequence of those apparently fraudulent endeavours were not, thereafter, alerted to the fact.”

22.0 The Court also said: *“Contraventions that are committed through, or with the knowledge or approval of, a corporation’s management are more serious than those effected by agents lower in the chain of command because they tend to reflect managerial complacency, or, in the worst cases (as this one is undoubtedly an example), complicity.”*

23.0 The conduct identified by the Court had the real potential to disadvantage the very members that the AWU was supposed to protect.

ROC v AWU

24.0 Finally, I will provide an update on an appeal that we have lodged.

25.0 As I mentioned last time we appeared, 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.

26.0 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.

27.0 Our appeal was heard by the Full Bench of the Federal Court in June 2020. 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.

28.0 We are now awaiting the outcome of that appeal.

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