

Conclusion of investigation into the Australian Workers' Union donations

24 February 2022

The Registered Organisations Commissioner, Mark Bielecki, has accepted the findings of an investigation into the Australian Workers' Union (AWU) National Office and Victorian Branch. The investigation was commenced by the Registered Organisations Commission (ROC) on 20 October 2017 and concluded on 21 December 2021.

Commencement of the investigation

The investigation was triggered by media reports in August 2017 that senior sources from within the AWU were claiming that the former National Secretary of the AWU, Mr Bill Shorten, was a founding director of the political activist group GetUp and that the AWU's rules concerning donations were not followed when \$100,000 was donated to GetUp by the AWU. Further media reports raised doubts about whether the former National Secretary had gained proper authorisation for a \$25,000 donation made by the AWU to the Australian Labor Party in the seat of Maribyrnong in the lead up to the 2007 federal election.

Before considering a formal investigation into these concerns, the ROC had assessed they were capable of clarification and timely resolution with the co-operation of the AWU. To achieve this, the ROC engaged with the AWU National Secretary seeking voluntary co-operation. The National Secretary initially agreed to co-operate and voluntarily provide documents and materials to the ROC. This may have quickly clarified and resolved the concerns. However, that co-operation was subsequently withdrawn and no further co-operation was forthcoming.

The withdrawal of the AWU's co-operation led the ROC to seek independent, expert legal advice. The ROC then commenced an investigation, which has now been completed. It is the ROC's assessment that had the AWU co-operated in August 2017 in the ways the ROC had sought, and the National Secretary had agreed, it is likely the entire matter could have been resolved within about two to four weeks with a similar outcome.

The investigation

The investigation was conducted under the Fair Work (Registered Organisations) Act 2009 (RO Act) and related to whether officers of the AWU may have breached their duties in making donations of \$100,000 to GetUp Limited in its 2006 financial year and of \$163,500 in political donations ahead of the 2007 federal election.

The investigation also considered whether the AWU complied with obligations in its rules requiring that donations exceeding \$1000 must not be made unless they are approved by its National Executive. The investigation also considered whether twenty donations were properly reported in accordance with the RO Act (or its predecessor legislation).

The investigation was suspended on 25 October 2017 after the AWU issued Federal Court proceedings against the ROC to prevent the investigation being conducted. After a hearing at first instance resulted in the investigation being quashed, the ROC successfully appealed to the Full Court of the Federal Court led by the Chief Justice, which rejected every argument raised by the AWU. Copies of previous media releases relating to these proceedings are available [here](#) and [here](#). The failed court challenges by the AWU delayed the investigation by more than three years.

The Full Court judgment found the ROC had reasonable grounds to conduct its investigation which was lawful and as a result, the investigation was recommenced on 19 January 2021. That investigation involved an extensive review of the documents which were able to be produced by the AWU, including documents obtained under search warrants granted by an independent Magistrate executed on 24 October 2017. The Commissioner sought the search warrants after information was provided to the ROC by a whistleblower that documents in the possession of the AWU may have been in the process of being tampered with or destroyed.

Conclusion, findings and recommendations

The ROC's investigation concluded that:

The AWU contravened section 237(1) of the RO Act (or its predecessor legislation) on nine occasions by lodging annual Loans, Grants and Donations (LGD) statements between 2006 and 2013 either outside of the statutory timeframe requirements or by not lodging a required statement at all. These contraventions were finally admitted by the AWU in December 2021.

In some cases, LGD statements were not lodged until years after the statutory time periods had elapsed.

The AWU has admitted it failed to lodge a LGD statement at all in 2007 and has never met that obligation in circumstances in which its internal records showed that it made about \$42,000 of donations that have never been disclosed to its members. This included at least three political donations totalling \$33,000.

The AWU did not follow the processes set out in its own rules, in particular Rule 57, on 20 occasions between 2006 and 2008. That is because its National Executive failed to consider or satisfy itself of the matters set out in Rule 57 of the AWU's rules in respect of each of the 20 donations. While some records and the relevant Minutes of the National Executive have been produced and examined, the AWU has failed to, and admitted that it cannot, produce any

evidence of express resolutions by the National Executive authorising any of the 20 relevant donations.

Attribution of legislative and rule contraventions

The investigation determined that the AWU National Executive did not approve any of the 20 donations the subject of the investigation and contravened the RO Act (or its predecessor legislation) on at least 9 occasions. However, because of the deficient record keeping practices of the AWU, the effluxion of time, and its inability to produce relevant documents, the investigation was unable to attribute any of the specific failures by the National Executive or the AWU to any one or more individuals or office holders.

As recently as December 2021, the AWU made a range of admissions concerning its contraventions and submitted, among other things, that because it had improved its compliance with section 237(1) since 2014 the Commissioner should exercise his discretion not to issue proceedings.

The investigation concluded that there was insufficient documentary evidence of specific conduct that contravened officer's duties to recommend any further regulatory action against any individuals. With specific reliance on the ROC's Compliance and Enforcement Policy and the broad range of relevant matters to be taken into account, including the duration and age of the contraventions and the state of the available evidence, recommendations were made and accepted that it is not in the public interest, absent further information coming to light, to take further regulatory action against the AWU or any individual in relation to these matters at this time.

The ROC has written to the AWU in relation to its failings and admitted contraventions as identified in the investigation.

Background

The investigation was conducted pursuant to sections 331(1)(d), 331(2) and/or 331(4) of the RO Act and considered conduct spanning the period 2006 to 2013. During that time there had been several legislative changes.

At all relevant times, section 237(1) of the RO Act and its predecessor legislation required registered organisations and their branches to lodge with the regulator, in each financial year, a statement showing the loans, grants and donations (**LGD's**) exceeding \$1,000 made by the organisation or branch. LGD statements are required to be lodged by each branch and organisation within 90 days of the end of each of their financial years.

The statutory timeframes required by section 237(1) enable members of organisations to receive timely information about how their money is being donated so they can assess the financial administration and performance of their branches and organisations at important events i.e. Annual General Meetings. The RO Act provides that the LGDs which have been lodged may be inspected by the members of the organisation or branch, which promotes transparency in terms of how organisations use their discretionary funds.

The relevant 'predecessor legislation' of the RO Act was Schedule 1B of the Workplace Relations Act 1996, effective between 12 May 2003 and 27 March 2006, and Schedule 1 of the Workplace Relations Act 1996, effective between 27 March 2006 and 30 June 2009.

Rule 57 of the AWU's Rules provides:

RULE 57 – LOANS, GRANTS AND DONATIONS

- (1) A loan, grant or donation, must not be made by the Union or any Branch as the case may be, unless the National Executive of the Union has:
 - (a) Satisfied itself:
 - (i) that the making of the loan, grant or donation, would be in accordance with the Rules of the Union; and
 - (ii) in relation to a loan, that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory and;
 - (b) Approved the making of the loan, grant or donation.
- (2) Nothing in sub-clause (1) is to affect a Branch's power to make donations, less than \$1,000. However, National Executive may from time to time set a maximum donation figure lower than \$1,000.

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*Updated 25 February 2022: Initial publication incorrectly recorded the period from 2006 to 2016