

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Additional Estimates 2015 - 2016

Agency - Fair Work Commission

Department of Employment Question No. EMSQ16-000229

Senator McKenzie provided in writing.

Question

FWC - Royal Commission Referrals – Australian Workers Union

The Royal Commission into Trade Union Governance and Corruption included findings relating to the false membership lists kept by the Australian Workers Union.

At various times, certain officials of the AWU had publicly claimed that they had signed up professional netball players and jockeys as members. The Commission found that no netballers or jockeys were ever members of the union, yet the union's membership lists included their names.

These names included various 'household name' jockeys such as Damian Oliver, Kieran McEvoy and Michelle Payne.

- a. What measures does the Commission have in place to ensure that union membership lists are accurate?
- b. Does the Commission undertake any work to check whether their membership lists are accurate?
- c. What statutory obligations apply to unions and their officers to require them to keep accurate records?
- d. What sanctions potentially apply if they do not keep accurate records?
- e. Given the findings of the Royal Commission in relation to the membership fraud engaged in by the AWU, what action has the Commission taken in order to address this issue of the integrity of union membership lists?

Answer

Section 141 of the RO Act sets out mandatory requirements for the rules of an organisation which includes that the rules must "... specify the conditions of eligibility for membership" and must provide for "... the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members".

There is neither a definition in the RO Act of "member" nor consistent treatment of persons across organisations as to various membership classes or processes as to how a person becomes or ceases to be a member. For example, some organisations provide for persons to be associate members or honorary members, or require a signed application form to be approved by a committee of management before being admitted as a member.

Part 2 of Chapter 8 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) sets out most of the requirements in relation to the records that must be kept by a registered organisation, including a register of its members (as provided by its rules) and ancillary matters. For example an organisation must:

- keep a register of the name and postal address of each member (s 230(1)(a));
- keep a record of the number of members as at 31 December in the prior year (s 230(1)(d), reg 147(f));
- enter into the register the name and postal address of each new member within 28 days (s 230(2)(a));
- remove from the register the name and postal address of each person who ceases to be a member within 28 days (s 230(2)(b));
- enter into the register any changes 'in the particulars shown on the register' within 28 days after the change 'become[s] known to the organisation' (s 230(2)(c));
- keep a copy of the register as at 31 December for the prior seven years (s 231(1));
- lodge by 31 March each calendar year a declaration signed by the Secretary (or other prescribed officer) certifying that the register has 'been kept and maintained as required by paragraph 230(1)(a) and subsection 230(2)' during the prior calendar year (s233(1)(a));
- lodge with the above declaration a copy of various records including the number of members as at 31 December of the prior year (kept under s230(1)(d) and reg 147(f)) 'certified by declaration by the secretary or other prescribed officer ... to be a correct statement of the information contained in those records' (s 233(1)(b)).

In addition, an organisation must, in some circumstances, remove from the register persons who have been unfinancial for more than 24 months and it must take such action within the next 12 months (s 172(1)).

If the various obligations such as those contained in Part 2 are not complied with, the sanctions that may be applied are the imposition of a penalty up to 300 penalty units for a body corporate or 60 penalty units in any other case in respect of a contravention of a civil penalty provision, or the imposition of a penalty of up to 20 penalty units in respect of obligations that constitute an offence. The value of a penalty unit is currently \$180.00.

There are also obligations in the *Criminal Code Act* 1995 which may apply. For example, in some circumstances it is an offence for a person to knowingly give false or misleading information to a Commonwealth entity if the information is given in compliance or purported compliance with a law of the Commonwealth, which the person knows to be false or misleading; and which is false or misleading in a material particular: s.137.1.

The FWC has jurisdiction to commence proceedings in relation to civil penalty provisions. It has no jurisdiction in relation to potential offences in Part 2 of Chapter 8. Investigations and prosecutions in relation to these offences would be within the remit of the Australian Federal Police.

However, the RO Act does not provide power to the FWC to inquire or investigate the conduct of registered organisations unless it is in possession of credible information that organisations are not or might not be complying with the relevant civil penalty provisions. Formal inquiries and/or investigations have been undertaken on a number of occasions, in relation to membership records.

The FWC takes steps to ensure that registered organisations are aware of their obligations under the RO Act with respect to the keeping of accurate membership records by a range of methods including; providing educative information and fact sheets on the FWC website; maintaining an electronic subscriber list of all relevant stakeholders, including registered organisations and their advisors, consultants and auditors to enable the provision of timely and relevant updates; writing annually to every registered organisation reminding them of their statutory obligations under the RO Act to provide annual returns containing membership data; conducting site visits and interviews with officers of unions involved in administering membership registers; delivering webinars focused on the keeping and lodging of information, including the requirement to keep a register of members; providing templates to

assist organisations to lodge required information including membership data; and conducting surveys of unions focused on membership issues.

In 2015 and 2016 the FWC has continued to build on its proactive approach to ensuring registered organisations achieve high levels of compliance with their statutory reporting obligations in general and membership data in particular, by engaging in detailed comparative analysis of the membership data lodged in both annual returns and financial reports of all federally registered unions as well as surveying unions about the nature and collection methodologies of their membership systems. Ongoing analysis of this data assists the FWC to identify trends and patterns in relation to membership registers, which is an aid to ensuring compliance through better information about the integrity of union membership registers and data.

The FWC applies a risk based, proportionate approach to the compliance obligations of registered organisations, including the risks associated with potential contraventions of membership related provisions of the regulatory scheme.