



Australian Government
Registered Organisations Commission

Registered Organisations Commission (ROC) Sydney Information Session

Compliance and Litigation Workshop

March 2019



Compliance and Litigation Workshop

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- Inquires and Investigations
- Litigation
- Recent decisions
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ROC approach to compliance

- Focus on improving accountability and transparency for members
- Encourage voluntary cooperation and self-reporting
- Recognise genuine attempts to comply and remediate
- Escalate matters where appropriate



Inquiries and Investigations

- Legislation sets out the circumstances in which an Inquiry or Investigation can be commenced.
- Importance of acting impartially and evidence-based decision-making.



Litigation

- In some circumstances litigation will be appropriate
- ROC can seek civil penalties and, where relevant, restitution.
- The action that the organisation has taken will be relevant – both as to whether litigation is appropriate, and to the penalty (if litigation is pursued).



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Recent decisions



ROC v ANMF (No.2) [2018] FCA 2004; ROC v ANMF [2018] FCA 1735

Civil penalty proceedings against the ANMF and its WA Branch Secretary, Mark Olson, for:

- contraventions by the WA Branch in failing to lodge financial returns over three consecutive financial years within the statutory time frames.
- contraventions by the Branch Secretary for lack of care and diligence associated with this.



ROC v ANMF

Cooperation, contrition and steps taken by the National Office of the ANMF to improve governance and oversight of the financial obligations by its branches.

The Court acknowledged that the ANMF:

- “*made full admissions as to liability at the earliest opportunity*” and
- “*the penalties proposed against the ANMF should properly reflect this consideration.*”



ROC v ANMF

The Court noted (at paragraph 76) that the total penalty for the ANMF, of \$29,500:

- *“is not an insignificant sum and should have an appropriate specific deterrent quality and also send a message more generally to persons in like positions ... that there is a price to be paid for allowing contravention of the RO Act reporting requirements”*



ROC v ANMF

In relation to the conduct of the Branch Secretary, Mr Olson, the Court said:

- *“failure to comply with the reporting obligations under the Act are ... of considerable significance to the effective operation of the RO Act. **Persons who exercise effective control of organisations** in the manner that Mr Olson did, at material times, **should not be encouraged to think that the reporting obligations can be treated lightly**, such that they can easily expect to be excused for the contravention of their obligations.”*



ROC v ANMF - significance

The decision in this matter highlights the high standards of accountability of registered organisations and its office-bearers to provide timely and accurate disclosure of financial information to members.



ROC v TWU [2018] FCA 32 and appeal TWU v ROC [No 2] [2018] FCAFC 203

This matter concerned:

- failures to keep copies of registers of members as required by the RO Act; and
- failures to remove nearly 21,000 names of non-financial members from its register.



What the Court said

In the judgment at first instance Justice Perram noted (at paragraph 79) that:

- record keeping under this legislation is a “*significant matter*” and that it
- “*needs to be understood by organisations that this is a serious piece of legislation that organisations need to comply with.*”



What the Full Court said on appeal:

The Full Court said (at paragraph 130 of its judgment) that the benefits of registration under the RO Act:

“come with serious obligations, including obligations to keep accurate records about their membership. It is important that registered organisations should understand that those obligations must be complied with and that non-compliance will attract substantial penalties”



Seriousness of the conduct

The Full Court stated that:

- *“Registered organisations should have it made clear to them the importance of record-keeping of members”*. [131]

and found that:

- *“there certainly existed the potential for members and other persons to be misled as to the number of members that the TWUA had during the relevant periods”*

The amount of the penalty reflected the Full Court’s view:

“as to the course of conduct and the seriousness and duration of the contraventions”. [140]



Significance of the decision

Highlights the importance of maintaining accurate membership records and meeting record keeping obligations,

This in turn assists with high standards of financial accountability and transparency in the interests of their members.



ROC v Mijatov [2018] FCA 939

This matter involved contraventions in relation to:

- arranging the payment of salary back-pay (to which he was not actually entitled); and
- failing to prepare budgets over a period exceeding six years, contrary to a financial requirement of the organisations rules.



In relation to the back-pay

Mijatov conceded to the Court that:

“he should have checked that he was entitled to the back pay and perhaps that he went about it the wrong way, but not that he, in fact, was not entitled to the payment.” [30]

The Court found that:

“Mijatov tried to “characterise it as, in effect, a trivial contravention. That argument is difficult to sustain if he simply was not entitled ... especially having regard to the way in which the top-up payment was secured.”[30]

and that he:

“asserted that he had a right to be paid ... but was unable to demonstrate why that was so”. [42]



Failure to prepare budgets

Mijatov argued that there should be no penalty because there was no actual financial loss from the failure.

In considering this, the Court observed that:

*“The Commissioner accepts that **there was no evidence of financial mismanagement or loss arising out of the failure to submit budgets, but submits that this is beside the point ... The Commissioner submits that the gravamen of the contravention is Mr Mijatov’s failure to read, understand and act in accordance with his obligations**” [45]*

*The Commissioner’s submissions should be accepted ... **Financial management obligations and contraventions must be taken seriously and be seen to be taken seriously.**” [46]*



Penalty

In relation to penalty, the Court noted that:

*“Without the mitigation of a genuine belief as to entitlement, the admission as to the bare contravention and the absence of prior contraventions, **it would have been open to categorise the contravention as being in the worst category** and one that warranted no departure from the maximum penalty.*

*... the maximum penalties have since increased, such that **the same conduct, even with the same mitigation, would today result in a higher penalty.**” [53]*



Significance of decision

- A failure to comply with rules concerning financial management is evidence of not exercising due care and diligence.
- It does not matter if a financial loss was actually suffered.
- Receiving a payment that you are not entitled to (and not making any enquiries beyond your view that you are) can place the conduct at the more serious end of the scale of penalties.



Future compliance focus

- Working constructively with organisations
- Financial governance training – an obligation since 2013 – but which may not have been occurring.
- It is now a civil penalty provision for organisations. An audit of compliance with this obligation will be occurring.
- Every officer has an obligation to act with due care and diligence.
- Elections and any improper use of funds to assist particular candidates
- Record keeping obligations – keeping and maintaining an accurate list of officers and notifying the ROC promptly of changes.



For more information or to contact us



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