



Australian Government

Registered Organisations Commission

Federal Court imposes civil penalties on former AWU branch secretary, Cesar Melhem

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Today the Federal Court made declarations and handed down civil penalties against the former Branch Secretary of the Australian Workers' Union (AWU), Mr Cesar Melhem, relating to multiple serious contraventions of the Fair Work (Registered Organisations) Act 2009 (Cth) (**RO Act**).

The contraventions related to the AWU's failure to keep an accurate register of members during the period from 2008 to 2013, which covered most of the period Mr Melhem was the Victorian Branch Secretary.

The Honourable Justice Mortimer entered declarations of contraventions by Mr Melhem and ordered Mr Melhem to pay civil penalties totalling \$20,590 in respect of his dealings with five employers or associations.

The declarations and penalties related to three contraventions of the RO Act by Mr Melhem for failing to exercise his powers and discharge his duties in good faith in what he believed to be in the best interests of the organisation, and five contraventions of the RO Act by Mr Melhem for failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were in Mr Melhem's position.

Mr Melhem admitted the contraventions at a penalty hearing in September.

In the judgment, Justice Mortimer noted that the conduct involved the addition of 730 people added to the AWU's register in substantial non-compliance with the AWU's rules, and involved the AWU receiving \$488,007.50 from employers or associations which the AWU improperly accounted for as membership fees.

Her Honour said:

[167] Mr Melhem engaged in contravening conduct while he held the most senior office within the AWU Vic. He should have been setting an exemplary standard of behaviour in terms of his observance of the law, and of the AWU Rules. Why he did not do so remains a matter on which the evidence is silent. However, the fact is that as the most senior office holder in the Victorian Branch of the AWU he did not even attempt to ensure the rules of the union he was charged with administering in Victoria were observed, on a matter as fundamental to the running of the union as the way that workers become members.

In relation to deterrence, Her Honour stated:

[191] This is a situation which calls for significant weight to be given to general deterrence. As the evidence establishing the contraventions in this case demonstrates, it is possible for the carefully and purposefully drafted rules of an organisation such as a union to be completely circumvented for a period of years, and for significant funds to be paid to that organisation on a basis apparently known to be incorrect (excluding Cleanevent), and for those funds to be applied for a different purpose within the union, despite receipt of such funds requiring a detailed and prescriptive process to have been followed, which was not. The facts of these contraventions demonstrate it is possible for all this to occur in respect of one of the most fundamental aspects of a union – how its members are recruited and admitted.

[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.

Registered Organisations Commissioner, Mark Bielecki, said this ruling is a reminder that the duties placed on officers under the RO Act are central to good corporate governance and effective operation of registered organisations.

“Officers of unions and employer associations are entrusted with guiding their organisations, and are responsible for ensuring that organisations and their branches comply with obligations under the RO Act,” Mr Bielecki said.

“Officers have personal obligations and the risk of civil or criminal penalties for not

complying with laws that apply to their role as an officer,” he said.

Since the time of the conduct engaged in by Mr Melhem the maximum penalty available in respect of the same conduct has increased, such that the same conduct today would likely result in a significantly higher penalty.

A separate penalty hearing date against the Australian Workers’ Union is set for Thursday 12 December 2019 in the Federal Court in Melbourne. The Commissioner and the AWU reached a formal agreement in August under which the AWU admitted contraventions of the RO Act alleged by the Commissioner relating to the addition of 851 non-members to its Register, and the failure to remove more than 1000 unfinancial members from the Register.

Background:

As part of its final report, the Trade Union Royal Commission (**TURC**) made a number of referrals to the General Manager of the Fair Work Commission (**FWC**) relating to potentially serious contraventions of the RO Act by the AWU and its former Victorian Branch Secretary Mr Cesar Melhem (**the AWU referrals**).

The AWU referrals were based on a series of case studies involving a scheme of conduct in which large sums of money were paid by employers to the Victorian Branch of the AWU between 2007 and 2013 and where the AWU registered workers as members who did not know they had been registered.

On 2 November 2016, the FWC commenced an independent investigation in relation to the AWU referrals. The investigation was transferred to the Registered Organisations Commissioner upon its establishment on 1 May 2017.

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