



Australian Government

Registered Organisations Commission

Summaries of court cases

What can registered organisations and their officers learn from cases that have been brought before the Federal and other courts?

There have been important decisions made by the courts relating to the duties of officers, financial governance, accountability and the necessity of conducting elections to ensure democratic control of organisations by their members.



[Branch dishonestly inflated its membership by adding hundreds of non-members to its register](#)

Registered Organisations Commissioner v Australian Workers' Union (No 2) [2020] FCA 1148

The Victorian Branch of the Australian Workers' Union (AWU) artificially inflated its membership numbers by adding 851 non-members to its register. It did this for over five years by dishonestly using 'company paid' memberships.

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['Dysfunctional' structure leads to 86 breaches of the RO Act](#)

Registered Organisations Commissioner v Communications, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia [2020] FCA 96 (first instance)

Communications, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

v Registered Organisations Commissioner [2020] FCAFC 232 (on appeal)

An organisation was found to have had a dysfunctional organisational structure which contributed to breaches of the Fair Work (Registered Organisations) Act 2009 (the RO Act) relating to the failure to keep accurate records of offices and office holders, and failures to notify the regulator about changes to this information.

On appeal by the CEPU, the Full Court identified an error in the trial Judge's approach to the assessment of penalty and reduced the penalty amount to \$200,000.

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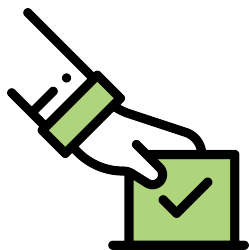
Branch secretary should set an exemplary standard of behaviour

Registered Organisations Commissioner v Australian Workers' Union & Mr Melhem [2019] FCA 1852

A branch of an organisation received money from employers, which it improperly accounted for as membership fees, and entered into the register of members the names of people who had not applied to join the organisation.

The former Branch Secretary was found to have failed to act in good faith in the best interests of the organisation and failed to have exercised his powers and duties with the care and diligence that a reasonable person would.

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Organisations must hold elections and maintain up-to-date lists of office holders

Registered Organisations Commission v Australian Hotels Association [2019] FCA 1516

A branch of an organisation failed to arrange for elections over an extended period of time. It also failed to update its list of office holders and notify the regulator of changes to this list. The length of time when the contraventions occurred and the seriousness of the election contraventions were important considerations when determining the penalty imposed on the organisation.

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Both organisation and Branch Secretary responsible for branch's financial reports

Registered Organisations Commissioner v Australian Nursing Midwifery Federation [2018] FCA 1735

and

Registered Organisations Commissioner v Australian Nursing Midwifery Federation (No 2) [2018] FCA 2004

An organisation was found to have breached the Fair Work (Registered Organisations) Act 2009 (the RO Act) when one of its branches failed to prepare, circulate and present its financial reports.

The branch's Secretary was also found to have breached his duties of care and diligence as an officer because of his failures to ensure the branch prepared financial reports in a timely way.

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[Divisional Secretary wasn't entitled to pay himself unauthorised back-pay](#)

Registered Organisations Commissioner v Mijatov [2018] FCA 939

The Divisional Secretary of a branch of an organisation was found to have breached the Fair Work (Registered Organisations) Act 2009 (the RO Act) when he personally arranged for and received back-pay from the union's funds that he was not entitled to.

The Divisional Secretary also breached his duties of care and diligence as an officer for seven years by failing to prepare a budget as required by the union's rules.

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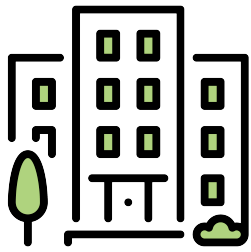


[Organisations and their branches must keep accurate registers of members](#)

Registered Organisations Commissioner v Transport Workers' Union of Australia [2018] FCA 32 (at first instance); Transport Workers' Union of Australia v Registered Organisations Commission [2018] FCAFC 203 (on appeal).

Two branches of a registered organisation failed to keep accurate records of their members, as required under the Fair Work (Registered Organisations) Act 2009 (RO Act). One of the branches also failed to remove non-financial members from its register within the required time.

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Officer's actions must be transparent and avoid conflicts of interest

General Manager of the Fair Work Commission v McGiveron and Burton [2017] FCA 405

The retiring WA Branch Secretary of the Transport Workers' Union of Australia (TWU), James McGiveron, and McGiveron's successor as Branch Secretary, Richard Burton, did not act for a proper purpose and in the best interests of the WA Branch.

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Organisations must prepare financial reports regardless of their size

General Manager of the Fair Work Commission v Musicians' Union of Australia [2016] FCA 302

The Federal Office, Melbourne Branch and Sydney Branch of the MUA were required to prepare financial reports as soon as reasonably practicable after the end of each financial year and by no later than 10 December in any year.

Every year between 2007 and 2012 each reporting unit failed to prepare a financial report and provide it to its members within time (with the exception of the Melbourne Branch in 2007).

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Officers who misuse organisation funds may face significant penalties

General Manager of the Fair Work Commission v Thomson (No 3) [2015] FCA 1001 (liability); and (No 4) [2015] FCA 1433 (penalty)

Craig Thomson, the National Secretary of the Health Services Union (HSU), breached officer duties by improperly using the organisation's funds for personal benefit.

Thompson was found liable for 60 breaches of sections 285, 286 or 287 of the Fair Work (Registered Organisations) Act relating to 22 separate sets of circumstances.

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Office holders must follow financial controls about expenditure and not act for their own benefit

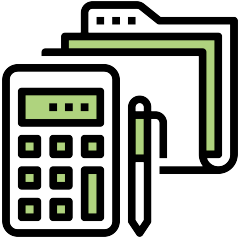
General Manager of Fair Work Australia v Health Services Union and Others [2014] FCA 970

A branch of the Health Services Union failed to prepare accurate financial reports, disclose related party transactions, and keep proper financial records.

Three officers also breached officers duties owed to the branch to ensure important financial controls around branch expenses were followed.

Two of the officers also breached their duties when they improperly used the branch's funds for their own benefit or the benefit of others.

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Financial reporting is essential for transparency to members of registered organisations

General Manager of Fair Work Australia v Health Services Union [2013] FCA 1306

The National Office of the Health Services Union (HSU) admitted failing to prepare an operating and financial report relating to its financial year ending in June 2007.

The General Manager of Fair Work Australia and the HSU made a joint submission on penalty and the Court accepted that a civil penalty of \$22,500 should be imposed.

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