

ENFORCEABLE UNDERTAKING

Undertaking to the General Manager of the Fair Work Commission

Given under section 316C the *Fair Work (Registered Organisations) Act 2009*
by the Transport Workers' Union regarding the
Victorian/Tasmanian Branch

Date: September 2024

PARTIES

1. This enforceable undertaking (EU) is given by the Transport Workers' Union (TWU) to the General Manager of the Fair Work Commission (General Manager) pursuant to section 316C of the *Fair Work (Registered Organisations) Act 2009* (RO Act) and Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).

BACKGROUND

The structure of the TWU

2. The TWU is a federally registered organisation of members employed in the private transport industry. The TWU has four branches, being the New South Wales/Queensland (Interim Governance) Branch (NSW Branch), the South Australian/Northern Territory Branch, the Western Australian Branch, and the Victorian/Tasmanian Branch (VIC/TAS Branch).
3. The focus of the conduct leading to this EU occurred within the VIC/TAS Branch in relation to its record-keeping obligations.

THE CONDUCT

4. A protected disclosure investigation was conducted by the Fair Work Commission (the Commission) into allegations concerning the accuracy of statutory membership reporting by the VIC/TAS Branch of the TWU as at 31 December 2022.
5. During the investigation, the TWU was proactive in admitting to the Commission that an administrative error had led to resigned members being treated the same as unfinancial members. This resulted in former members being removed from the register up to 35 months later than the 28 days required by subsection 230(2)(b) of the RO Act.
6. The TWU advised the Commission that as a result of the investigation, it had conducted a review into the VIC/TAS component of the TWU register and had identified 5,765 resigned members listed on the member register, as it stood on 31 December 2022.

7. Prior to the lodgment of its 2023 Annual Return to the Commission, the TWU took remedial action to remove those resigned members from the register. As part of the lodgment of its Annual Return on 31 March 2023, the TWU lodged a declaration confirming the accuracy of membership numbers of the TWU for the year ending 31 December 2022.
8. The TWU's conduct is likely to have amounted to a contravention of subsection 230(2)(b) of the RO Act for each of the 5,765 former members that it failed to remove within 28 days of the date on which they ceased to be members. This conduct is subject to civil penalty provisions under the RO Act.
9. The TWU's conduct is also likely to have given rise to additional contraventions of section 230 of the RO Act, as the VIC/TAS Branch failed to keep an accurate member register for the year ending 31 December 2022 by not removing resigned members from the register within 28 days.
10. The TWU acknowledges that inaccurate membership figures amount to a breach of its RO Act obligations and that such inaccuracies may result in distorted outcomes such as entitlements to voting delegates and other representation, as well as possible financial implications in relation to the payment of various fees, which are based on membership numbers.
11. The TWU also advised the Commission that a systems error caused the permanent deletion of former members of the VIC/TAS Branch's details, including their date of resignation, from the Branch's internal membership records when resigned members were removed from the register. This meant the TWU could no longer identify the precise date when certain former members of the VIC/TAS Branch resigned, which has associated accuracy implications for membership registers before 31 December 2022.

PREVIOUS CONDUCT

12. The TWU acknowledges that on 21 November 2018 a Full Court of the Federal Court¹ upheld a first instance decision² that the NSW Branch of the TWU had contravened:
 - section 172 of the RO Act by failing to remove 20,907 non-financial members from its register between 2012 and 2015; and
 - section 231 of the RO Act by failing to keep a branch register as at 31 December 2009 to 2013.
13. In this matter, the total penalty of \$271,362.36 imposed by the judge at first instance was reduced to about \$163,000 by the Full Court on appeal.

¹ *Transport Workers' Union of Australia v Registered Organisations Commission* [2018] FCAFC 203

² *Registered Organisations Commission v Transport Workers' Union of Australia* [2018] FCA 32

Admissions by the TWU

14. The TWU has made submissions to the Commission in respect of the conduct relating to this EU. In particular, it has admitted that:
 - i. The VIC/TAS Branch contravened subsection 230(2)(b) of the RO Act by not removing 5,765 persons who resigned as members from the register within 28 days of their resignation.
 - ii. Until it proactively took remedial steps to correct it, the VIC/TAS Branch failed to keep an accurate member register, as required by section 230 of the RO Act, for the year ending 31 December 2022 by not removing resigned members from the VIC/TAS Branch register within 28 days.
15. The TWU acknowledges that it can no longer identify the number of or the precise date when certain former members of the VIC/TAS Branch resigned and therefore the precise date on which they should have been removed from the register in order to comply with its rules and the relevant legislation.
16. The TWU acknowledges the seriousness of the record-keeping issues associated with the VIC/TAS Branch.

Acknowledgement by the General Manager of the Fair Work Commission

17. The General Manager acknowledges the TWU's co-operation, admissions and its stated commitment to elevate and continue to strengthen its record-keeping procedures across the TWU and its branches.
18. The TWU submissions indicated that it has implemented the following steps to improve, and then maintain, high levels of ongoing compliance with its record keeping obligations under the RO Act:
 - i. Completion of a thorough review of the 31 December 2022 VIC/TAS Branch member register to ensure all resigned members were removed from the register as of 31 December 2022;
 - ii. Adjustment of the content of the member register to reflect the correct number of members as of 31 December 2022, and reflected this in the number of members declared in the TWU's 2023 Annual Return submitted to the Commission on 31 March;
 - iii. Implementation of a new digital system for processing member resignations, which includes the internal administrative team emailing the VIC/TAS Branch Secretary and Office Manager (who is responsible for maintaining the register) noting the member who has resigned and the date the resignation takes effect, after which the Office Manager creates a reminder to remove the member 14 days after that date;
 - iv. Engagement of an IT consultant to investigate features/errors in the VIC/TAS Branch's membership database that led to the details of resigned members (including their resignation date) being removed from the database entirely;

- v. Undertaken a review of the systems employed by all TWU Branches to keep and maintain the registers to assist in developing a new membership database that will adhere to record-keeping requirements of the RO Act; and
- vi. Commenced development of a new internal membership database, which is currently being trialed in three Branches.

ENFORCEABLE UNDERTAKINGS

19. The TWU undertakes for the purposes of section 316C of the RO Act and Part 6 of the Regulatory Powers Act that it will:
- i. adopt and implement a new internal membership database, which includes the record-keeping requirements of the RO Act, across the TWU and all of its Branches;
 - ii. ensure the new membership database is administered such that it removes a resigned person from a Branch member register within 28 days of the resignation, but retains their details (including joining date and resignation date) on a historical basis for at least seven years;
 - iii. within 6 weeks after execution of this EU, ensure each Branch has dedicated staff and elected officers responsible for ensuring compliance with the record-keeping requirements of the RO Act, including updating the Register when new members are admitted, removing persons who are ineligible to remain members, removing persons who resign, and ensuring copies of the register as it stood on particular dates are retained and kept for seven years;
 - iv. confirm completion of the above step with the Commission, noting that the TWU's first point of contact for register-related questions is the relevant Branch Secretary;
 - v. within 14 weeks after execution of this EU, ensure that internal training for TWU staff and officers is developed and conducted for those whose duties and responsibilities including ensuring compliance with the record-keeping requirements of the RO Act, which outlines requirements for keeping and maintaining the member register;
 - vi. confirm completion of the above step with the Commission;
 - vii. monitor and review each Branch's systems and processes regularly to ensure compliance with the RO Act's record-keeping requirements;
 - viii. within 12 months from the execution of this EU, commission a further independent audit of the VIC/TAS Branch membership figures to ensure accuracy of the register, and, upon completion, provide a copy of the auditors' report to the Commission;

- ix. provide advice to the Registered Organisations Services Branch of the Commission at intervals of at least once every 6 weeks for the purpose of providing regular updates to the General Manager on the development of the new membership database; and
 - x. arrange for a copy of this EU to be posted on the website of the TWU, and for a link to it to be available on any social media platforms on which the TWU operates, within 7 days of execution.
20. The TWU acknowledges the Commission's expectation that the new internal membership database will be operating by the end of the 2024 calendar year. Any emerging circumstances which might impact upon that expectation will be transparently communicated to the members of the TWU, the Commission and by an addendum to this published EU.

No Inconsistent Statements

21. The TWU must not make, and must use its best endeavours to ensure that its officers, employees or agents do not make, any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this EU.

COMMENCEMENT

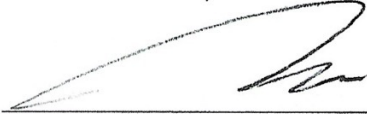
22. This EU comes into effect when:
- i. It is executed by the TWU; and
 - ii. the General Manager accepts the EU (the Commencement Date).

Acknowledgments

23. The TWU acknowledges that:
- i. The General Manager will make this EU publicly available, including by publishing it on the Commission's website.
 - ii. The TWU may withdraw or vary the EU at any time, but only with the written consent of the General Manager or an authorised person appointed by the General Manager. The General Manager, or an authorised person appointed by the General Manager, may cancel the EU by giving written notice to the TWU.
 - iii. If the TWU contravenes any of the terms of this EU, the General Manager may apply to any of the Courts set out in section 316C(4) of the RO Act, for orders under section 115 of the Regulatory Powers Act.

Executed as an Enforceable Undertaking

24. Executed by the TWU pursuant to section 316C of the RO Act and Part 6 of the Regulatory Powers Act by, and on its behalf by Michael Kaine, National Secretary, Transport Workers Union of Australia



Signature

Michael Kaine
National Secretary
Transport Workers Union of Australia

Accepted by the General Manager, Fair Work Commission pursuant to section 316C of the RO Act and Part 6 of the Regulatory Powers Act on:

13 September 2024

Date



Murray Furlong
General Manager
Fair Work Commission