

APPLICATION TO CANCEL THE REGISTRATION OF SEAMEN'S UNION OF
AUSTRALIA, WEST AUSTRALIA BRANCH
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2021 WAIRC 00012

CORAM : CHIEF COMMISSIONER P E SCOTT
COMMISSIONER D J MATTHEWS
COMMISSIONER T B WALKINGTON

HEARD : MONDAY, 18 JANUARY 2021

DELIVERED : TUESDAY, 19 JANUARY 2021

FILE NO. : APPL 60 OF 2020

BETWEEN : THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION
Applicant

AND

SEAMEN'S UNION OF AUSTRALIA, WEST AUSTRALIA
BRANCH
Respondent

CatchWords : Industrial law (WA) – Application by the Registrar to cancel the registration of an organisation on grounds the organisation is defunct

Legislation : *Industrial Relations Act 1979* (WA), s 27(1)(d), s 63, s 71, s 71(5), s 73(12)
Industrial Relations Commission Regulations 2005 (WA), reg 37, reg 76(3)

Result : Order made

Representation:

Applicant : Mr J Carroll, of counsel on behalf of the applicant

Respondent : No appearance

Case(s) referred to in reasons:

The Registrar v Master Hairdressers' Association of WA, Industrial Union of Employers [2004] WAIRC 11936; (2004) 84 WAIG 2190

Reasons for Decision

- 1 This is an application by the Registrar of the Western Australian Industrial Relations Commission (Commission) for the cancellation of the registration of the Seamen's Union of Australia, West Australia Branch (SUA) on the ground that the organisation is defunct.
- 2 The matter has been brought to the Commission in Court Session in accordance with s 73(12) of the *Industrial Relations Act 1979* (WA) (the Act). That section requires that:

The Commission in Court Session must cancel the registration of an organisation if it is satisfied on the application of the Registrar that –

 - (a) the number of members of the organisation or, the number of employees of the members of the organisation would not entitle it to registration under section 53 or section 54, as the case may be; or
 - (b) the organisation is defunct; or
 - (c) the organisation has, in the manner prescribed, requested that its registration be cancelled.
- 3 Regulation 76 (3) of the *Industrial Relations Commission Regulations 2005* (WA) requires that '[t]he application is to be served on the organisation or association the registration of which is sought to be cancelled'. In this case, for the reasons set out below, there appears to be no person or organisation, and difficulty in identifying the address of the organisation, for the purpose of service. An organisation formerly associated with the SUA has not responded to a request to act on its behalf. Therefore, the requirement for service is waived in accordance with reg 37 and provisions for public notices have been made in lieu of service.
- 4 Notice of the application and of the hearing of this matter were published on the Commission's website on 8 December 2020 and in the Western Australian Industrial Gazette of 23 December 2020. The notices invited anyone wishing to object to the application to appear before the Commission in Court Session at the hearing. No one has sought to appear nor has any objection been filed or notified to the Registrar.
- 5 The circumstances also make it appropriate that the Commission proceeds to deal with the matter in the absence of the SUA, in accordance with s 27(1)(d) of the Act.
- 6 In support of the application, Susan Ivey Bastian, the Registrar, made a statutory declaration and a supplementary statutory declaration in which she recorded that officers of the Commission including herself have had contact with the SUA and with associated organisations over a number of years regarding:
 - (1) The SUA's amalgamation at a national level;
 - (2) The status of the SUA and the officer, membership and financial returns required by the Act for the purpose of maintaining its registration; and
 - (3) The validity of the certificate issued pursuant to s 71 of the Act in 1987.
- 7 The documents attached to Ms Bastian's statutory declarations indicate that the SUA was registered pursuant to the Act in 1986. In 1987, a certificate pursuant to s 71(5) of the Act was issued, identifying the counterpart federal body as the 'Seamen's Union of Australia'.
- 8 According to a statutory declaration made by Will Tracey, Assistant State Secretary of the Maritime Union of Australia, Western Australian Branch on 25 October 2011, in 1993, the Seamen's Union of Australia amalgamated with the Waterside Workers' Federation (WWF) at

a national level. However, the s 71 certificate referred to above appears to have lapsed because no equivalent change has been made to the rules of the SUA, there now being no counterpart federal body to the new, amalgamated organisation.

- 9 The SUA submitted its last financial return in 1999, and an amount of \$450,047.22 was recorded in that return as being ‘contributions received’, and the same amount was recorded as a payment to ‘National office remittances’. The return identified no other assets held by the SUA.
- 10 In his statutory declaration, referred to above, Mr Tracey stated that the ‘SUA amalgamated with the WWF in 1993 therefore all membership returns for 2010 and 2011 will be registered under the banner of the Maritime Union of Australia’. No membership or officer returns have been filed with the Registrar, as required by s 63 of the Act, since then.
- 11 Over subsequent years, the Registrar and officers of the Commission continued to attempt to communicate with a number of people from organisations associated with the SUA with the view to resolving the lack of returns. This included correspondence indicating that in the absence of resolution of the issues, there was the prospect that the Registrar would be obliged to apply for the SUA’s deregistration.
- 12 By letter dated 14 April 2014, the WA Branch Secretary of The Maritime Union of Australia Western Australian Branch, Mr Christy Cain, wrote to the Registrar confirming that neither the SUA nor the MUA had the intention of maintaining the SUA’s registration in Western Australia and that it would not seek to appear in any proceedings before the Commission to maintain the SUA’s registration.
- 13 On 11 April 2019, an officer of the Commission emailed the Secretary of The Maritime Union of Australia Western Australian Branch and advised of the Registrar’s intention to file this application, and requested support, including asking if the MUA would act as the respondent on behalf of the SUA. No response has been received.

Consideration

- 14 Where the Commission in Court Session is satisfied that an organisation is defunct, in accordance with s 73(12) of the Act, it is required to cancel the registration of the organisation. The provision is not discretionary but is mandatory where the circumstances set out in that section are met (*The Registrar v Master Hairdressers’ Association of WA, Industrial Union of Employers* [2004] WAIRC 11936; (2004) 84 WAIG 2190). An organisation is ‘defunct’ within the meaning of s 73(12)(b) if it is ‘no longer operative’ (see the Macquarie Dictionary, 3rd Edition).
- 15 In this case, the SUA has no funds or assets, and it appears to have no members as they were seemingly part of the membership to be ‘registered under the banner of the Maritime Union of Australia’ (MUA) from 2010.
- 16 We have taken account of the correspondence from the MUA referred to in paragraph [12] in particular along with the lack of any opposition to the application and in view of the background provided by the Registrar and contained within the correspondence, we conclude that the SUA has not been operational for some years and is defunct.
- 17 In those circumstances, the Commission in Court Session is required to cancel the SUA’s registration. An order will issue accordingly.