

APPLICATION TO CANCEL THE REGISTRATION OF THE PRINTING AND ALLIED
TRADES EMPLOYERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF
EMPLOYERS)
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2021 WAIRC 00014

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 61 OF 2020

BETWEEN : THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION
Applicant

AND

THE PRINTING AND ALLIED TRADES EMPLOYERS'
ASSOCIATION OF WESTERN AUSTRALIA (UNION OF
EMPLOYERS)
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 Printing and Allied Trades Employers' Association of Western Australia (Union of Employers) (PATEA) 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 PATEA 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 In the circumstances, it is appropriate that the Commission proceeds to deal with the matter in the absence of the PATEA, in accordance with s 27(1)(d) of the Act. In support of the application, Susan Ivey Bastian, the Registrar, made a statutory declaration on 30 November 2020 in which she recorded that the PATEA:
 - (1) Has not submitted financial returns or officers and membership returns for at least 10 years;
 - (2) May have been subsumed by or merged with its national affiliated organisation, the Printing Industries Association of Australia (PIAA) some years ago;
 - (3) Has not conducted elections for membership of its Executive Committee for around 10 years; and
 - (4) Has no funds.
- 6 In the absence of being able to identify and contact any person directly involved with the PATEA, officers of the Commission, including the Registrar, have contacted the PIAA a number of times over the last 10 years to attempt to clarify and resolve issues associated with the registration of the PATEA.

- 7 Most recently, in 2019, the PIAA advised that it was not prepared to act as a respondent or accept service on behalf of the PATEA in relation to any application that the Registrar might make to deregister the PATEA. However, the PIAA indicated, in an email dated 15 May 2019, its support for the cancellation of the registration.

Consideration

- 8 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).
- 9 Taking account of all the information provided by the Registrar including that the PATEA has not lodged returns required for its registration pursuant to the Act, has not conducted elections for membership of its Executive Committee for many years and has no funds, it is clear that the PATEA has not been operational for some years and is defunct.
- 10 In those circumstances, the Commission in Court Session is required to cancel the PATEA's registration. An order will issue accordingly.