

APPLICATION TO CANCEL THE REGISTRATION OF THE WESTERN AUSTRALIAN
BRANCH OF THE COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION,
INDUSTRIAL UNION OF EMPLOYERS (FREMANTLE)
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

CITATION : 2021 WAIRC 00016

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 62 OF 2020

BETWEEN : THE REGISTRAR, WESTERN AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION
Applicant

AND

THE WESTERN AUSTRALIAN BRANCH OF THE
COMMONWEALTH STEAMSHIP OWNERS' ASSOCIATION,
INDUSTRIAL UNION OF EMPLOYERS (FREMANTLE)
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 Western Australian Branch of the Commonwealth Steamship Owners' Association, Industrial Union of Employers (Fremantle) (CSOA) 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. 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 person has sought to appear at the hearing nor has the Registrar or the Commission been advised of any objections.
- 5 In support of the application, Susan Ivey Bastian, the Registrar, made a statutory declaration on 4 December 2020 in which she recorded information regarding contact between the Registrar and officers of the Commission with the CSOA and associated organisations.
- 6 That information indicates that the CSOA has not lodged annual officer and membership returns and financial returns required by the Act for a number of years.
- 7 As a consequence of the returns not being lodged, the Registrar and officers of the Commission have regularly sought information about the CSOA with a view to ascertaining if it is still operating. The last financial return indicated that the CSOA had total assets valued at less than \$20.00. The information indicates that the CSOA no longer operates from the premises at the address in the Commission's records.
- 8 Information provided by the Australian Shipowners Industrial Association Limited indicates that the related national body of the CSOA was voluntarily deregistered by the Australian Industrial Relations Commission in 1994.

Consideration

- 9 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).

- 10 Having considered the information provided by Ms Bastian in her statutory declaration and the attached documents, it is clear that the CSOA ceased operating some years ago and is defunct. In those circumstances, the Commission in Court Session is required to cancel the CSOA's registration. An order will issue accordingly.