

CHECK AGAINST DELIVERY

ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND CORRUPTION

AUSTRALIAN WORKERS' UNION – MEMBERSHIP NUMBERS

BMD CONSTRUCTIONS PTY LTD – HEARING 29 MAY 2015

COUNSEL ASSISTING OPENING STATEMENT

Yesterday the Commission commenced hearings into the payment of what are described as membership fees by various employers or organisations to the Australian Workers' Union (AWU) or the Victorian branch of the AWU (AWU (Vic)).

Today's hearing will examine two payments made in 2007 and 2010 respectively by BMD Constructions Pty Ltd (BMD) to AWU (Vic).

BMD is a civil construction company. It carries out work in Victoria and elsewhere.

The Commission has obtained a number of witness statements, which will be put into evidence today.

No affected party has sought to examine the witnesses who have provided today's witness statements. In the absence of oral evidence a short opening may assist in understanding this evidence.

To some extent what follows relies on inferences from those documents the Commission has been able to obtain to date.

Further witnesses relevant to BMD have been summonsed for next week.

2007 payment

In 2007 BMD and the AWU entered into an agreement described as the BMD Constructions Pty Ltd General Collective Agreement 2007, which applied to BMD employees in the performance of all construction and maintenance works in all states and territories of Australia except Victoria. This agreement came into force on 2 November 2007 according to records maintained by the Fair Work Commission.

In addition, at what appears to be about the same time, BMD and the AWU entered into an agreement described as the BMD Constructions Pty Ltd Victoria Collective Agreement 2007, which applied to BMD employees in the performance of all construction and maintenance works in Victoria (2007 EBA) (**Tab 1/1-16E¹**). This agreement came into force on 2 May 2008 according to records maintained by the Fair Work Commission.

On 28 November 2007 the AWU (Vic) issued tax invoice 020328 to BMD seeking payment in the amount of \$14,300 inclusive of GST (the 2007 invoice) (**Tab 3/54**).

The 2007 invoice does not on its face relate to union membership. The description of the services apparently provided by the AWU to BMD on the 2007 invoice is: 'OH&S inspection at various work sites in Victoria'. The item code on the invoice is: 'OHS COURSE'.

The invoice was marked to the attention of Andy Marcos. Mr Marcos is and was a director of BMD. Mr Marcos has been summonsed to give evidence in the Commission on Tuesday 2 June 2015.

On 18 December 2007 BMD paid the 2007 invoice by cheque (**Tab 4/55, Tab 5/56**).

On 2 January 2008 the AWU (Vic) received and recorded payment of the 2007 tax invoice (**Tab 6/57**).

As noted above the 2007 invoice is said to be for services provided by the AWU to BMD in relation to OH&S inspections at various worksites in Victoria.

On 1 or 2 January 2008 44 BMD employees became members of the AWU, according to the AWU membership register.

¹ In this opening, references to numbered tabs followed by the symbol “/” and a number is a reference to a numbered tab and page number are to tabs and pages in the folder marked AWU Membership Hearing – BMD Bundle.

Amongst the 44 BMD employees who purportedly became members of AWU on 1 or 2 January 2008 was Mr David Brick.

Mr Brick has given a statement of evidence to the Commission dated 26 May 2015.

Mr Brick's evidence indicates that so far as he is aware he is not a member of the AWU and has never been a member of the AWU.² Mr Brick also deposes that he is not aware of any arrangement under which BMD paid monies to the AWU on his behalf for union membership fees.³

2010 payment

The next relevant sequence of events occurred in 2010.

The 2007 EBA had a nominal expiry date of 30 September 2010 (**Tab 1/2**).

In or by June 2010 negotiations were underway between BMD and the AWU in relation to a replacement EBA.

On 8 June 2010 Matthew Smith sent an email to Cesar Melhem, then State Secretary of the AWU (Vic), and Kahu Tapara an organiser with the AWU (Vic) noting that a meeting room had been booked for an EBA meeting with the BMD labour force on Friday 11 June 2010 (**Tab 8/59**).

During the course of these negotiations Mr Melhem requested that Mr Smith provide him with a list of all BMD's Victorian employees for the purposes of organising the voting for the 2010 EBA and Mr Smith complied with this request.

The evidence for this is as follows: -

- Mr Smith's evidence is that at a meeting to negotiate the 2010 EBA Mr Melhem said that he needed a 'list of **all** of our [*ie BMD's*] employees so that he could organise the voting for the 2010 EBA'⁴ (emphasis added). Neither Mr Melhem nor the AWU have sought to examine Mr Smith nor to challenge this evidence.

² David Brick, witness statement, 26/5/15, paragraph 5.

³ David Brick, witness statement, 26/5/15, paragraph 12.

⁴ Matthew Smith, witness statement, 27/5/15, paragraph 10

- On 10 June 2010 at 12.38pm Mr Smith sent to Mr Melhem and Mr Tapara a list of 41 employees of BMD. In his covering email Mr Smith described this as ‘a list of our current labour force here in Vic’ (**Tab 9/60**).

At 4.23 pm on the same day that Mr Smith sent the list of BMD’s employees to Mr Melhem, 10 June 2010, an employee of the AWU (Vic), Rebecca Eagles, sent an invoice to Andy Marcos of BMD attaching invoice 022302 (the 2010 invoice) (**Tab 11/65**).

The 2010 invoice included under the heading ‘Description’ the following words: ‘Providing OHS training and carrying Safety Audit for various work sites in Victoria’. The item code in the 2010 invoice was: ‘MEMBERSHIP’.

The said email which Ms Eagles sent to Andy Marcos on 10 June 2010 was in the following terms (**Tab 11/64**):

As per your recent discussion with Cesar Melhem please find attached an invoice for OHS training.

The breakdown is as follows: 40 members x \$450.00 + GST = \$19,800.00.

Please do not hesitate to contact Cesar or myself should you have any questions.

The amount of \$19,800.00 referred to in Ms Eagles’ email exactly reflects the amount sought in the 2010 invoice. \$450 was the rate for an adult member of the AWU as at June 2010, as appears from information supplied to the Commission from the AWU (**Tab 36/360**).

The foregoing suggests strongly that that the amount of \$19,800.00 sought by the AWU (Vic) in the 2010 invoice in truth reflected the cost of 40 purported members of the AWU and not (despite the express wording of the 2010 invoice) the cost of providing OHS training and the provision of safety audits.

This is supported by the fact that the Commission has issued notice to produce 1108 to BMD seeking among other things documents recording training carried out as a result of the 2010 invoice (**Tab 29/326, 331C**) and to date no such documents have been produced (**Tab 29/331A**).

As noted above the list supplied by Mr Smith on 10 June 2010 comprised 41 names.

Some of the persons on that list appear to have completed membership applications (**Tab 34**).

However Mr Brick was again recorded on the list supplied on 10 June 2010 (**Tab 9/60**). Mr Brick’s evidence is set out above.

Another name on the list supplied by Mr Smith was Mr Panagiotis Maroudas (**Tab 9/60**).

Mr Maroudas deposes that so far as he was aware he is not a member of the AWU and never has been.⁵ Mr Maroudas also deposes that he is not aware of any arrangement under which BMD paid monies to the AWU on his behalf for union membership fees.⁶

A further person on the list submitted by Mr Smith on 10 June 2010 was Mr Leo Sargent (**Tab 9/60**).

Mr Sargent's evidence is that he was a member of the AWU (Vic), but that he paid his union dues by payroll deduction.⁷

Mr Sargent's evidence is that he was not aware of any arrangement under which BMD paid monies to the AWU on his behalf for union membership fees.⁸

The Commission will investigate over the coming days whether some employees of BMD were entered upon the AWU's membership roll when they were not truly members.

It will also investigate whether persons at the AWU created or caused to be created false accounting records to conceal this fact.

There is also the following issue. Did the AWU's efforts to get additional members on its register come at the expense of its existing members whom it was supposed to be representing in negotiations with BMD?

For example, take the 2010 invoice. Instead of securing BMD's agreement to pay \$18,000 plus GST to the union as part of the EBA negotiations in 2010, why could the AWU (Vic) not have secured BMD's agreement to increase by that amount the wages or entitlements of the 41 employees the AWU (Vic) was supposed to be representing?

A similar issue may arise in the context of the Cleanevent case study.

⁵ Panagiotis Maroudas, witness statement, 28/5/15, paragraph 5.

⁶ Panagiotis Maroudas, witness statement, 28/5/15, paragraph 8.

⁷ Leo Sargent, witness statement, 26/5/15, paragraph 7.

⁸ Leo Sargent, witness statement, 26/5/15, paragraph 8.

As with the Cleanevent case study, this may be a situation where officials at the AWU were putting their own interests in obtaining the appearance of increased membership ahead of the interests of the AWU's members.