

**ROYAL COMMISSION INTO TRADE UNION GOVERNANCE AND  
CORRUPTION**

**SUBMISSIONS OF COUNSEL ASSISTING**

**AWU: CHAPTER 9**

**MISCELLANEOUS MEMBERSHIP ISSUES**

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## **A INTRODUCTION**

1. The arrangement between the AWU and Winslow Constructors discussed in the previous chapter was one of a number of such arrangements pursuant to which the employer or another entity paid membership dues, rather than the member him or herself. This chapter considers similar arrangements entered into by the AWU with BMD Constructions, the Australian Netball Players Association, the Australian Jockeys' Association, Geotechnical Engineering Pty Ltd and A J Lucas Pty Ltd. It is likely that there were further arrangements of this kind not deal with in the evidence before the Commission: Mr Smoljko, for example, gave evidence of the existence of similar arrangements in respect of Warwick Constructions and Ciccone Constructions.<sup>1</sup>

## **B BMD CONSTRUCTIONS**

2. BMD Constructions Pty Ltd ('**BMD**') is a company carrying on business in the civil construction sector. BMD commenced business in 1979 as an urban developer doing subdivisional work: that is, clearing land to be subdivided, building roads and installing services before handing the land back to a developer. BMD continues to do that work but its business has since expanded to involve major urban development, and in particular building roads for state governments.<sup>2</sup>

<sup>1</sup> Peter Smoljko, 4/6/15, T:568.18-39.

<sup>2</sup> Andrew Marcos, 2/6/15, T:408.33-409.18; Jeff Gallus, witness statement, 2/6/15, para 4.

## 2007 Invoice

3. On about 28 November 2007, the AWU issued BMD with tax invoice no. 020328 for “*OH&S inspection at various work sites in Victoria*” for the amount of \$14,300.<sup>3</sup> The invoice was coded OHS COURSE.
4. The invoice was made out to Andy Marcos, a director of BMD. Mr Marcos said that he could he could not recall seeing the invoice and did not recall authorising its payment.<sup>4</sup> Mr Jeff Gallus at this time was the Construction Manager for BMD in Victoria, and in that capacity had overall responsibility for BMD’s Victorian sites.<sup>5</sup> He said that he was not aware of any OHS inspections or OHS courses conducted the AWU for any BMD sites in Victoria between 2007 and 2010. He said that BMD conducted its own OHS inspections and that OHS inspections are also conducted by the Officer of Federal Safety Commissioner.<sup>6</sup> Mr Melhem said that he did not have personal knowledge of whether and OHS inspection was done.<sup>7</sup> That no inspection was in fact conducted is apparent from the spreadsheet prepared in April 2014 by Mei Lin: the entry in that spreadsheet in relation to this invoice says ‘no training’.<sup>8</sup>
5. The invoice was issued shortly after the conclusion of negotiations between BMD and the AWU for a collective agreement in relation to BMD’s Victorian operations (**2007 EBA**).<sup>9</sup> The 2007 EBA commenced on 2 May 2008.<sup>10</sup> The 2007 EBA does not indicate on its face on what day the parties agreed to it.
6. Date stamps on copies of tax invoice no. 020328 indicate that it was paid by cheque by BMD on 18 December 2007 and that that payment was processed by the AWU on 2

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<sup>3</sup> BMD Bundle, 29/5/15, p 57.

<sup>4</sup> Andy Marcos, 2/6/15, T:406.46-47.

<sup>5</sup> Jeff Gallus, 2/6/15, T:413.21-25; T:414.12-15.

<sup>6</sup> Jeff Gallus, witness statement, 2/6/15, paras 18-19.

<sup>7</sup> Cesar Melhem, 1/6/15, T:282.20-24.

<sup>8</sup> Mei Lin MFI-1, 4/6/15, p 27.

<sup>9</sup> BMD bundle, 29/5/15, pp 1-16E.

<sup>10</sup> <https://www.fwc.gov.au/awards-and-agreements/agreements/find-agreement> **Agreements 1994-2014** accessed 29 October 2015; 29/5/15, T:178.12.

January 2007.<sup>11</sup> On 1 and 2 January 2008, 44 employees of BMD were added to the AWU's membership roll.<sup>12</sup> Of the 44 employees, 13 submitted membership applications on dates well after they were entered onto the membership register. This is discussed further below.

7. One of those employees added to the AWU membership roll on 2 January 2008 was David Brick. Mr Brick's membership status, as at 31 December 2014, is recorded as 'suspended'. He is recorded as having joined on 2 January 2008 and as having 'last paid' on 30 September 2009.<sup>13</sup> Mr Brick provided a statement for the Commission. He commenced employment at BMD at the end of 2007. He said that so far as he is aware, he has never been a member of the AWU.<sup>14</sup> Nor was he aware of any arrangement under which BMD paid monies to the AWU on his behalf for union membership.<sup>15</sup>

## **2010 Invoice**

8. The 2007 EBA had a nominal expiry date of 30 September 2010. A further EBA was executed by the AWU and BMD on 8 October 2010.<sup>16</sup> Negotiations regarding that EBA were on foot by at least June 2010 because on 8 June 2010 Mr Matthew Smith sent an email to Mr Melhem, Mr Kahu Tapara (an AWU organiser) copied to Mr Gallus in which he referred commented that a meeting room had been booked to discuss the proposed EBA.<sup>17</sup> Matthew Smith was then Area Manager (later Senior Superintendent) for BMD in Victoria.
9. Mr Smith provided a statement to the Commission in which he said that he was heavily involved in the 2010 EBA negotiations. Mr Smith said that he recalled during the negotiations that Mr Melhem was very eager to increase the AWU's membership. Mr Gallus said that Mr Melhem and Mr Tapara during negotiations said that they wanted the entire BMD workforce to be AWU members, and that BMD facilitated meetings

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<sup>11</sup> BMD bundle 29/5/15, p55, 57.

<sup>12</sup> BMD bundle, 29/5/15, p 355.

<sup>13</sup> BMD bundle, 29/5/15, p 355, 2<sup>nd</sup> last entry.

<sup>14</sup> David Brick, witness statement, 29/5/15, para 5.

<sup>15</sup> David Brick, witness statement, 29/5/15, para 12.

<sup>16</sup> BMD bundle, 29/5/15, p 43.

<sup>17</sup> BMD bundle, 29/5/15, p 59.

between the AWU and BMD employees on two or three occasions during EBA negotiations.<sup>18</sup> At that time, to Mr Smith's knowledge, less than half of BMD's workforce were AWU members.<sup>19</sup>

10. On 8 June 2010 a meeting was organised to take place on 11 June 2010 between Mr Gallus and Mr Smith on behalf of BMD and Mr Melhem and Mr Tapara on behalf of the AWU to discuss the EBA.<sup>20</sup> On 9 June 2010 an invoice was created internally within the AWU, addressed to BMD, for an amount of \$13,500 plus GST.<sup>21</sup> The item code in the invoice was 'Membership' and the description 'Providing OHS Training and carrying Safety Audit for various work sites in Victoria'. The AWU produced a handwritten note that is evidently a written instruction for the preparation of this invoice.<sup>22</sup> The note states 'providing OH&S Training and carry safety audit for various work sites' and indicates that the amount of \$13,500 is the result of multiplying \$450 by 30. \$450 was the AWU adult annual membership fee at that time.<sup>23</sup> Mr Melham accepted that the note was written by him, and that he provided it to either Ms Lin or Mr Duc Vu in the accounts department.<sup>24</sup>
11. During the course of these negotiations Mr Melhem asked Mr Smith for a list of all its Victorian employees ostensibly so Mr Melhem could organise for those employees to vote on the 2010 EBA.<sup>25</sup> On 10 June 2010, Mr Smith sent by email a list of 41 employees to Mr Melhem and Mr Tapara.<sup>26</sup> The list was said to be 'of our current labour force here in Vic'.<sup>27</sup>
12. It is apparent that Mr Melhem, shortly after receiving the list of employees, caused the invoice dated 9 June 2010 for \$13,500 to be reversed by a credit note<sup>28</sup> and replaced

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<sup>18</sup> Jeff Gallus, witness statement, 2/6/15, para 16.

<sup>19</sup> Matthew Smith, witness statement, 29/5/15, para 9.

<sup>20</sup> BMD bundle, 29/5/15, p 59.

<sup>21</sup> Melhem MFI-4, 1/6/15, p 2.

<sup>22</sup> Melhem MFI-4, 1/6/15, p 3.

<sup>23</sup> BMD bundle, 29/5/15, p 360.

<sup>24</sup> Cesar Melhem, 1/6/15, T:287.35-288.46.

<sup>25</sup> Matthew Smith, witness statement, 29/5/15, para 10; Cesar Melhem, 1/6/15, T:290.19-40.

<sup>26</sup> BMD bundle, 29/5/15, pp 60-61.

<sup>27</sup> BMD bundle, 29/5/15, p 60.

<sup>28</sup> Melhem MFI-4, 1/6/15, p 1.

with an invoice for the amount of \$18,000 plus GST. On 10 June 2010 (after Mr Smith's email had been sent) an invoice for the latter amount was sent by Ms Eagles to Mr Marcos (copied to Mr Melhem). Ms Eagles' email stated:

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

13. In referring to 40, and not 41, members, Ms Eagles perhaps miscounted the number of names on Mr Smith's list. Ms Eagles attached to her email tax invoice no. 022302 for "*Providing OHS Training and carrying Safety Audit for various work sites in Victoria*" for the sum of \$19,800 (**2010 invoice**). As with the 2007 invoice the 2010 invoice was made out to Mr Marcos and it is quite clear from the spreadsheet prepared by Mei Lin in 2014 that no training was provided.<sup>29</sup>
14. On 31 August 2010, BMD paid the 2010 invoice by electronic funds transfer.<sup>30</sup> This income was accounted for as 'Membership Income' in AWU's 2010-2011 general ledger of accounts.
15. The Commission has analysed information contained on the AWU membership register concerning the 41 names on the list provided on 10 June 2010. A number of matters are apparent from this analysis.
16. *First*, some of the 41 names on the list had completed membership application forms and were making membership payments to the AWU by payroll deduction. One such BMD employee was Leo Sargent. Mr Sargent has provided a statement to the Royal Commission. He joined the AWU on around 16 June 2010 by submitting a membership application and paid his membership fees by payroll deduction.<sup>31</sup> To demonstrate this, Mr Sargent attached a pay advice to his statement which notes a deduction for 'AWU Union Fees – Victoria' (sic).<sup>32</sup> Mr Sargent further states that he is not aware of any

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<sup>29</sup> Mei Lin MFI-1, 4/6/15, p 27.

<sup>30</sup> BMD bundle, 29/5/15, pp 71-72.

<sup>31</sup> Leo Sargent, witness statement, 29/5/15, paras 5-7.

<sup>32</sup> Leo Sargent, witness statement, 29/5/15, LS-1.

arrangement under which BMD paid monies to the AWU on his behalf for membership fees.<sup>33</sup>

17. Mr Sargent was not the only person in this category. It is apparent from the Commission's review of the AWU membership applications and employee payslips that 22 of the 41 persons on the list provided payroll deduction authorisations.<sup>34</sup>
18. BMD produced payslips for employees included on the 41 name list who submitted membership applications before or during 2010. These payslips demonstrate that BMD was making payroll deductions for membership to the Victorian Branch of the AWU for 24 of those 41 employees before or soon after it was provided to AWU.<sup>35</sup>
19. *Secondly*, some of the 41 persons on the list, so far as they were aware, were not members at all. Mr Brick was in that category. So also was Mr Panagiotis Maroudas, who also provided a statement to the Commission. Mr Maroudas commenced as a BMD employee in November 2008. He said that during 2010 he attended a meeting of BMD employees working on a site in Victoria with Mr Kahu Tapara. He said, in substance, that Mr Tapara discussed becoming an AWU member with him, that he told Mr Tapara that he did not want to be a member and that Mr Tapara accepted his explanation.<sup>36</sup>
20. Mr Maroudas said that so far as he was aware, he has never been a member of the AWU.<sup>37</sup> The AWU membership roll, as at 31 December 2014, recorded Mr Maroudas as having joined the union on 8 September 2010, as having 'last paid' on 30 September 2010 and as having a membership status of 'suspended'.<sup>38</sup>

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<sup>33</sup> Leo Sargent, witness statement, 29/5/15, para 8.

<sup>34</sup> BMD bundle, 29/5/15, pp 353-54.

<sup>35</sup> AWU MFI-7, 6/11/15.

<sup>36</sup> Panagiotis Maroudas, witness statement, 29/5/15, para 7.

<sup>37</sup> Panagiotis Maroudas, witness statement, 29/5/15, para 5.

<sup>38</sup> BMD bundle, 29/5/15, p 354.

21. There appear to have been others in the same category. The AWU has been able to produce membership forms for only 24 of the 41 employees.<sup>39</sup>
22. *Thirdly*, it would seem that a number of the persons were added to the membership roll a significant time prior to providing membership application forms to the AWU. For example, of the 41 names provided, 18 are recorded on the AWU membership roll as having become members of the AWU on 1 or 2 January 2008. Of these 18, the AWU produced:
- (a) 2 membership applications dated May 2008;
  - (b) 9 membership applications dated 11 June 2010;
  - (c) 1 membership application dated 29 September 2010; and
  - (d) 1 membership application dated 20 July 2011.<sup>40</sup>
23. It is clear that these 13 employees were not genuine AWU members for the period between January 2008 and the date they submitted their membership applications.
24. Ms Leo's evidence was that she could recall nothing about BMD.<sup>41</sup>

## **Conclusions**

25. It follows from the above analysis of membership numbers that the result of the payment on 31 August 2010 AWU membership numbers were falsely inflated. As a consequence, it is submitted that the AWU may have contravened s 230 of the *Fair Work (Registered Organisations) Act 2009* (Cth).
26. It is necessary to consider whether offences may have been committed under s 83 of the *Crimes Act 1958* (Vic) (false accounting records). It is sufficient to focus on the 2010

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<sup>39</sup> BMD bundle, 29/5/15, pp 353-54.

<sup>40</sup> BMD bundle, 29/5/15, p 353.

<sup>41</sup> Angela Leo, witness statement, 21/10/15, para 12.

invoice. Mr Melhem denied that the invoice was not in fact about training and safety audits.<sup>42</sup> However it is submitted that that denial should not be accepted. The circumstances inexorably point to the conclusion that at the time he issued the instruction to issue the invoice, Mr Melhem must have known that it was not for the purpose stated on it. The sequence of events pursuant to which the invoice was issued is telling. First, a handwritten note is prepared by Mr Melhem for the issue of the invoice on the basis that MBD had 30 employees and \$450 each should be charged for them. The amount of \$450 per person corresponds exactly to the amount of membership dues payable at this time.<sup>43</sup> Secondly, an invoice is created on the basis directed by Mr Melhem. Thirdly, the next day Mr Melhem receives from Mr Smith a list of 41 BMD employees. Fourthly, shortly thereafter, on the same day, Mr Melhem causes the invoice to be reversed by a credit note and replaced by a further invoice which changes the number of employees to 40. If the invoice had in fact been concerned with training, Mr Melhem would not have caused it to be altered merely because he received a list of BMD's employees from Mr Smith. As stated above, no training in fact was ever provided.

27. It is submitted that Mr Melhem acted dishonestly within the meaning of section 83(1) because, knowing that no training had been provided to BMD, he caused the 2010 invoice to be issued claiming payment for such training. He did so with a view to producing a gain for the AWU in the sense that the purpose of the invoices was to procure payments of money to the AWU. Accordingly, it is submitted, he may have committed an offence under that section.
28. It is submitted that, for the same reasons as set out above in connection with s 83(1) of the *Crimes Act* 1958 (Vic), Mr Melhem's conduct may have amounted to a contravention of his obligations under sections 285, 286 and 287 of the *Fair Work (Registered Organisations) Act* 2009 (Cth).
29. Further, the analysis of membership numbers indicates, as with Winslow, that the AWU may have contravened 230(2) of the *Fair Work (Registered Organisations) Act* 2009 (Cth).

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<sup>42</sup> Cesar Melhem, 1/6/15, T:292.37–293.18.

<sup>43</sup> BMD bundle, 27/5/15, pp 356-360.

30. The above analysis does not deal with the question of what, if fact, the 2010 invoice was for, and why it was paid by BMD. None of the BMD witnesses said they were able to shed any light on the question.<sup>44</sup> It is not necessary to make a definite finding, but it is convenient to note briefly one possibility. There was a close relationship between the invoice and EBA negotiations. The 2010 invoice was paid on 31 August 2010. Negotiations for the 2010 EBA were finalised in September 2010.<sup>45</sup> As indicated above, the 2010 invoice was created the day prior to a meeting between BMD and the AWU to discuss the EBA. This sequence of events suggests the possibility that the invoice was in truth a payment made by BMD to facilitate EBA negotiations and utilised by the AWU for the purposes of increasing membership revenue. There is, however, insufficient evidence of this to form the basis of findings for offences under s 176 of the *Crimes Act 1958* (Cth).

**C AUSTRALIAN JOCKEYS' ASSOCIATION/VICTORIAN JOCKEYS' ASSOCIATION**

31. The Australian Jockeys' Association (**AJA**) is the national peak body representing the interests of all jockeys in Australia. Its primary function is to:

- (a) Promote educational, industrial health and safety interests for jockeys; and
- (b) Negotiate for and develop Australia wide protection, including insurance (particularly Public Liability), superannuation and a pension fund, on behalf of all jockeys.

32. The AJA was incorporated in 2005 and has board which consist of Chairman Ross Inglis, Chief Executive Officer Paul Innes OAM and General Manager Des O'Keeffe. Mr O'Keeffe is also the Executive Officer of the Victorian Jockeys' Association. Two representatives from each state form the remainder of the Committee.

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<sup>44</sup> Andy Marcos, witness statement, 2/6/15, paras 15–19; Andy Marcos, 2/6/15, T:407.18–408.13; Jeff Gallus, 2/6/15, T:415.13-41; Matthew Smith, witness statement, 29/5/15, paras 11-13.

<sup>45</sup> BMD Bundle 29/5/15, p 311; Jeff Gallus, witness statement, 2/6/15, para 14.

## Invoices issued by the AWU

33. During the period 2011 – 2014 the AWU issued the following invoices:<sup>46</sup>

	Description	Tax Invoice No.	Amount	Payment date
16/06/10	Victorian Jockeys' Association Consultancy on Riding Fee Negotiations	022318	\$7,500	22/06/10
30/05/11	Services provided to Victorian Jockeys throughout racing season 2011/12	022981	\$7,500	08/06/11
16/04/12	Services provided to Victorian Jockeys	023574	\$8,250	01/05/12
27/06/13	Services provided to Victorian Jockeys	024441	\$8,250	20/06/13
14/03/14	Services provided to Victorian Jockeys	024961	\$8,250	18/03/14

34. The entries in the above table in the 'Description' column are the respective descriptions that appeared on the invoices. All of the above invoices were coded 'MEMBERSHIP'. All were recorded in the AWU ledgers under the 'Membership Contributions' ledger.<sup>47</sup>

35. Tax invoice 022318 dated 16 June 2010 was issued by the AWU to Victorian Jockeys' Association. The other invoices were issued to the AJA. All invoices were paid by the AJA.

<sup>46</sup> The invoices appear, respectively at Melhem MFI-3, 1/6/15, pp 14, 23, 33, 40, 41. The invoice of 27 June 2013 was preceded by the issue of an invoice for \$16,500 which was reversed pursuant to a credit note: see Melhem MFI-3, 1/6/15, pp 38, 39.

<sup>47</sup> Melhem MFI-3, 1/6/15, pp 43B-43G.

36. The circumstances in which the invoices came to be issued were described by Mr Innes in his witness statement in the following terms:<sup>48</sup>

‘At the 2009 Annual General Meeting of the AJA there was discussion about the AJA making a contribution to the AWU to recognise the continued support provided by the AWU to some State jockey associations particularly in Victoria and Tasmania. As a result of those discussions, it was agreed that the AJA would make payments to the AWU in recognition of that continuing support. Payments were made by the AJA to the AWU Victorian Branch on behalf of the Victorian Jockey’s Association (“VJA”) in 2010 and every year since then up to and including 2014’.

37. Mr Innes was not required for cross-examination. His account is borne out by the email communications between AJA board members received into evidence by the Commission.<sup>49</sup> It is apparent from those email communications that the support and assistance Mr Innes describes as having been provided to the AJA was provided largely by Mr Blandthorn. For example, those communications include an email from Mr Ross Inglis to Mr Innes (copied to Mr O’Keefe and Mr Whyburn) on 11 June 2010 stating:

I think we should put in \$7500 to the AWU this year for the following reasons:

1. John-Paul Blandthorn gives up his time to assist Des/VJA with riding fee negotiations
2. He is an active member of the VJA Executive
3. He is well regarded by Michael Duffy and Rob Hulls;
4. JP’s sister is the Chief of Staff for the Victorian Minister for Sport
5. JP has a good rapport with the Federal Minister for Sport
6. The AWU are very supportive of the jockeys in this state
7. \$7500 equates roughly to \$50 per rider in this state. JP’s contribution to the riding fee and other negotiations gets the riders a few grand each year so \$50 approx. per member seems appropriate.

Whilst I appreciate that much of the above is personalised JP is himself highly regarded and quite influential in the AWU nationally.

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<sup>48</sup> Paul Innes, witness statement, 2/6/15, para 6.

<sup>49</sup> Melhem MFI-3, 1/6/2015, pp 6-11.

38. Mr Innes' description of the arrangement is consistent also with Mr Blandthorn's evidence in his witness statement.<sup>50</sup> Mr Blandthorn has been a director of the VJA since January 2007.<sup>51</sup> Mr Blandthorn described the payment of fee as having its genesis in the fact that the AJA offers a director's fee to non-riding directors of about \$7,500 per annum. Mr Blandthorn declined to accept that fee. At some point, according to Mr Blandthorn, Mr Melhem found out about this and suggested that the fee should be paid to the AWU in recognition of the time Mr Blandthorn spent on working for jockeys' conditions. Mr Blandthorn agreed.<sup>52</sup>
39. It is plain that, from the point of view of the AJA, the payments had nothing to do with membership. Mr Innes in his witness statement said that in the time that he has been Chief Executive Officer of the AJA (since 2005) he is not aware of any jockey in Victoria or elsewhere in Australia becoming a member of the AWU and that there have been no discussions between the AWU and the AJA regarding membership of jockeys in the AWU that he is aware of.<sup>53</sup>
40. Mr O'Keefe in his witness statement said:<sup>54</sup>

I am not aware of any Victorian jockey joining the AWU in the time that I have been the Executive Officer of the VJA. There were no formal discussions with the AWU regarding jockeys becoming members of the AWU but I believe I do recall having an informal discussion with Mr Melhem from the AWU about the possibility of jockeys in Victorian becoming members of the AWU. The position that I took was that I was not supportive of jockeys applying to belong to the AWU as jockeys in Victoria pay a membership contribution to the VJA and have access to the services of the AJA. To my recollection, there was never any discussion about the possibility of jockeys becoming members of the Victorian Branch of the AWU at any meeting of the VJA that I attended'.

41. Mr O'Keefe also was not required for cross-examination. His evidence should be accepted. It is consistent with Mr Blandthorn's account in his witness statement, where he said:<sup>55</sup>

To the best of my recollection, there were a small number of jockeys who were also members of the AWU, but I certainly did not encourage jockeys to become members of the AWU as I

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<sup>50</sup> John-Paul Blandthorn, witness statement, 3/6/15, para 25.

<sup>51</sup> John-Paul Blandthorn, witness statement, 3/6/15, para 24.

<sup>52</sup> John-Paul Blandthorn, witness statement, 3/6/15, paras 26-27.

<sup>53</sup> Paul Innes, witness statement, 2/6/15, para 10.

<sup>54</sup> Des O'Keefe, witness statement, 2/6/15, para 8.

<sup>55</sup> John-Paul Blandthorn, witness statement, 3/6/15, para 29.

did not consider that the AWU properly covered jockeys in Victoria and the Victoria Jockey's Association more than adequately protected the interests of its members.

### **Inflated Membership numbers**

42. The AWU has produced to the Commission 'Batch reports' from their membership software system. A Batch report appears to be a report of how money paid to the AWU on a particular day in respect of membership is allocated as between members. There were no Batch reports produced in respect of the invoice dated 16 June 2010. The Batch report in respect of the invoice dated 30 May 2011 indicates that, on the date of payment of that invoice, the sum of \$7,500 was allocated as membership fees amongst a list of names of a number<sup>56</sup> of jockeys, at an amount of \$61 per jockey.<sup>57</sup> For reasons that are not apparent, for many of the jockeys the amount of \$61 is allocated in two separate sums. So, for example, the first two entries in the report record that a sum of \$61.00 was allocated to Mr Peter Mertens and a sum of \$52.33 allocated to Mr Neville Wilson. That is the only allocation to Mr Mertens but a further sum of \$8.67 is allocated to Mr Wilson later in the report, making the total allocated to him \$61.00.<sup>58</sup>
43. There is a similar Batch Report in respect of the invoice dated 16 April 2012. That invoice was paid on 1 May 2012, and the Batch Report indicates that the amount of \$8,250 (\$7,500 plus GST) was allocated as amongst numerous jockeys on that day. In most cases, the amount allocated per jockey is \$67.00.<sup>59</sup>
44. There is a question as to how the names of the jockeys in question came to be recorded on the AWU membership roll. The Commission has sought production from the AWU of membership applications in respect of the names on the list. Only one membership application was produced: an undated application to the Tasmanian Branch of the Australian Workers' Union. The Commission's analysis of the membership roll as at 31 December 2014 indicates that 164 members of the AJA were listed as having been members. All but one of those are recorded as "archived" on 18 June 2014. The roll indicates that 159 of the 164 were added as members on 23 December 2008.

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<sup>56</sup> Melhem MFI-3 1/6/15, pp 24-30. The number of names on the list is 241, but numerous names appear more than once. For the reasons set out in this paragraph, there appear to have been about 123 individuals on the list.

<sup>57</sup> Melhem MFI-3, 1/6/15, pp 24-30.

<sup>58</sup> See Melhem MFI-3, 1/6/15, pp 24, 27.

<sup>59</sup> Melhem MFI-3, 1/5/15, pp 34-37.

45. The addition of the names of various jockeys to the AWU membership ledgers appears to have come about by the provision of a list of members of the VJA to Mr Melhem by Mr Blandthorn. Mr Blandthorn said that he recalls Mr Melhem asking him for a list of such names, but could not recall one way or the other whether he provided such a list.<sup>60</sup> Mr Melhem said that at some point Mr Blandthorn advised him that jockeys wished to join the AWU and that an agreement had been reached for the jockeys' membership to be paid either by the VJA or AJA. According to Mr Melhem it was in this context that Mr Melhem asked for, and Mr Blandthorn provided, a list of jockeys' names<sup>61</sup>.
46. In oral evidence, Mr Blandthorn described the fees that were paid to the AWU by the AJA pursuant to the above invoices as fees for the service he provided.<sup>62</sup> When it was put to him by counsel for Mr Melhem that, in addition, the invoices were fees AWU membership for jockeys, Mr Blandthorn said 'I can't be sure of that'.<sup>63</sup> He said that he did not recall either way whether he told Mr Melhem that the jockeys wanted to become members of the AWU. He said that he had never encouraged jockeys to become members, although he knew of at least one jockey that wanted to be a member of the AWU and was certain there were others.<sup>64</sup>
47. An extract for the AWU Branch Report for 2007-2009 was tendered during the examination of Mr Blandthorn. The extract has a picture of a jockey flanked by Mr Blandthorn and Mr O'Keefe. Above the picture is a heading 'AWU Welcomes 168 Jockey members into the Branch'. The extract states:<sup>65</sup>

After the successful completion of WorkSafe's safety taskforce into the horse racing industry, the AWU is pleased that 168 Jockeys have come on board as AWU members.

AWU Victorian Organiser John-Paul Blandthorn established the WorkSafe Safety Taskforce in 2005 with the purpose of researching and eliminating potential safety hazards within the racing industry. With the increased AWU membership within the racing industry, John-Paul looks forward to further improving health and safety issues and ensuring better conditions for employees working within the racing industry.

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<sup>60</sup> John-Paul Blandthorn, witness statement, 3/6/15, para 29; John-Paul Blandthorn, 3/6/15, T:482.44-483.1.

<sup>61</sup> Cesar Melhem, witness statement, 1/6/15, para 8; Cesar Melhem, 1/6/15, T:244.4-13; 250.1-251.34.

<sup>62</sup> John-Paul Blandthorn, 3/6/15, T:526.2-15.

<sup>63</sup> John-Paul Blandthorn, 3/6/15, T:526.17-19.

<sup>64</sup> John-Paul Blandthorn, 3/6/15, T:526.28-41.

<sup>65</sup> Blandthorn MFI-2, 3/6/15, p 2.

48. The front page of the Report has a picture of Mr Melhem and states that the Report is authorised by him. Mr Blandthorn said that he recalled having his picture taken, but did not recall the publication. He did not deny being unaware of it at the time. He said that it did surprise him 'a little bit' to see that the AWU had announced to the world that there were 168 members who were jockeys.<sup>66</sup>

## **Conclusions**

49. In truth, none of the jockeys became members of the AWU. As indicated above, membership application forms have been produced for almost none of the jockeys in question. That is consistent with the evidence of Mr Innes and Mr O'Keefe that they had no knowledge of any jockeys becoming members. It is a sufficient basis to conclude that they did not become members.
50. The same conclusion can be reached by a different method. The amount of the membership contribution allocated to each of the jockeys in the 'Batch Reports' was well beneath the amount required to be paid under rules 9 and 10 of the AWU rules (see the discussion above in connection with Winslow). It is apparent that the AWU National Executive at some point resolved that the amount payable for members of the AJA would be \$125 from 1 July 2011.<sup>67</sup> Prior to that time, there does not appear to have been any specific rate for AJA members, and thus the ordinary rate for adults would apply. The payments actually made on behalf of AJA members were all less than \$125 in any event. The result of that is that, on any view, none of the jockeys became members of the AWU.
51. As a result, it is submitted that the AWU may have contravened sections 230(2) of the *Fair Work (Registered Organisations) Act 2009* (Cth).

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<sup>66</sup> John-Paul Blandthorn, 3/6/15, T:528.4-35.

<sup>67</sup> See BMD bundle, 27/5/15, pp 356-360.

## **D AUSTRALIAN NETBALL PLAYERS' ASSOCIATION INC**

### **Introduction**

52. On 31 August 2005 the Australian Industrial Relations Commission approved the alteration of the AWU's rules to enable it to cover "*All persons engaged as professional netball players participating in the Commonwealth Bank Trophy (or equivalent) and/or for Netball Australia as an Australian Squad member*".<sup>68</sup>
53. The Australian Netball Players' Association (**ANPA**) is an unincorporated association. Its precise role in Australian netball is not clear from the evidence before the Commission. It would appear that there are netball associations in each state of which various netballers are members (such as, for example, Netball Victoria and Netball South Australia). Some of those members also become members of the ANPA. Payment for that membership is made by the state association in question upon receipt of invoices issued by the ANPA. So much is apparent on the face of various invoices issued by the ANPA to those state associations.<sup>69</sup> A press release issued by the AWU on 13 February 2005 suggests that it is only the elite netballers (or some of them) from the state associations playing for teams in the national league that become members of the ANPA.<sup>70</sup>
54. An incorporated association extract from the department of consumer affairs, Victoria, records Mr Blandthorn as the sole public officer of the ANPA, having commenced in that role on 1 July 2005. The same extract indicates that the registered address for the ANPA has, since 1 June 2006, been the offices of the AWU.<sup>71</sup> Mr Blandthorn said that the ANPA has a board made up of himself and a player from each team.<sup>72</sup>

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<sup>68</sup> Melhem MFI-3, 1/6/15, pp 45-48.

<sup>69</sup> Melhem MFI-3, 1/6/15, pp 64, 66, 68, 70, 72.

<sup>70</sup> Melhem MFI-3, 1/6/15, p 44.

<sup>71</sup> Melhem MFI-3, 1/6/15, p 59.

<sup>72</sup> John-Paul Blandthorn, 3/6/15, T:484.11-13.

## **Arrangement between the AWU and ANPA**

55. Mr Blandthorn said that in about 2006 the ANPA entered into an arrangement with the AWU whereby the AWU would provide management services to the ANPA, ANPA members would also become members of the AWU, and the AWU would receive a portion of the fees paid by netballers to the ANPA for membership of the ANPA.<sup>73</sup> According to Mr Blandthorn the arrangement was negotiated by 'athletes' on behalf of the ANPA and by him on behalf of the AWU.<sup>74</sup> The arrangement was never reduced to writing.
56. Quite what, if anything, the arrangement required of the AWU is unclear. It may be that all that was required was that Mr Blandthorn continue to perform his duties as sole public officer of the ANPA. The arrangement terminated when Mr Blandthorn left the AWU in 2014.<sup>75</sup> In financial terms, what appears to have occurred is that Mr Blandthorn, on behalf of the ANPA, issued invoices to the state association for fees for those members of the state associations who wished to join the ANPA.<sup>76</sup> The AWU then issued an invoice to the ANPA, Attention Mr Blandthorn, for 'Membership fees' for the year in question.<sup>77</sup>
57. The relationship between the fees paid to the ANPA and the fees paid to the AWU is unclear. The Commission has before it only the invoices issued by the ANPA for the 2011 year. They are issued to five different state associations. Each is for \$2,400 (inclusive of GST), representing a fee of \$200 per player for 12 named players. It would seem that no invoice was issued by the AWU to the ANPA in the 2011 financial year. Instead, on 16 May 2012, an invoice was issued for \$13,000 plus GST, representing \$6,000 for the 2010/2011 financial year and \$7,000 for the 2011/2012 financial year. It

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<sup>73</sup> John-Paul Blandthorn, witness statement, 3/6/15, para 30.

<sup>74</sup> John-Paul Blandthorn, 3/6/15, T:484.15-36.

<sup>75</sup> John-Paul Blandthorn, 3/6/15, T:487.44-488.32.

<sup>76</sup> Melhem MFI-3, 1/6/15, pp 64, 66, 68, 70, 72.

<sup>77</sup> Melhem MFI-3, 1/6/15, pp 61, 84

would seem from an AWU credit note and handwriting contained on it that \$7,000 plus GST was paid, and that the \$6,000 fee for the 2010/2011 financial year was waived.<sup>78</sup>

58. Mr Blandthorn said that his understanding was that the netballers who became members of the ANPA did not fill out any membership application forms to become members of the AWU.<sup>79</sup> Mr Melhem did not recall whether any such forms were provided.<sup>80</sup> The Commission has sought production of AWU membership application forms in respect of ANPA members listed on the invoices. No membership forms were produced. An analysis of the AWU membership roll performed by the Commission indicates that all of the 81 members of the ANPA who were recorded as AWU members were ‘archived’ on 18 June 2014. With 6 exceptions, those persons were added to the AWU roll on either 1 January 2008 or 6 January 2009.
59. As set out above, the ANPA paid \$7,700 pursuant to an invoice issued on 16 May 2012 for \$13,000 plus GST. That payment was made on 30 June 2012. A ‘Batch Report’ in respect of that payment has been produced to the Commission. It indicates that on the day of the payment the monies were allocated as membership contributions amongst 77 netballers in the amount of \$100 each.<sup>81</sup>
60. On 15 April 2013, the AWU issued an invoice to the ANPA for \$12,000 described as being for “Membership fees for Financial Year 2012/2103”.<sup>82</sup> It is apparent from the date stamp on that invoice that an amount of \$6,000 was paid by ANPA on 24 September 2013. A ‘Batch Report’ produced to the Commission indicates that this amount was allocated amongst 58 netballers at amounts of either \$103 or \$104 per person.<sup>83</sup>
61. From 1 July 2011 fees for members of the Netballer Players’ Association (sic) were set by the AWU National Executive at \$125. That increased to \$200 from 1 July 2013.

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<sup>78</sup> Melhem MFI-3, 1/6/15, p 88 (reversing the invoice on p74).

<sup>79</sup> John-Paul Blandthorn, 3/6/15, T:486.28-32.

<sup>80</sup> Cesar Melhem, 1/6/15, T:279.5-11.

<sup>81</sup> Melhem MFI-3, 1/6/15, pp77-79.

<sup>82</sup> Melhem MFI-3, 1/6/15, p 84.

<sup>83</sup> Melhem MFI-3, 1/6/15, pp 86 - 87.

The fees allocated in both of the above Batch Reports were less than either figure. Prior to 1 July 2011, no specific rate was set for netballers and thus ordinary rates applied.

## **Conclusion**

62. Were the netballers ever members of the AWU? Clearly they were not. No membership applications were completed and the required membership contributions were not made. Thus, the requirements of rules 9 and 10 of the AWU rules were never satisfied. As a consequence, the AWU may have contravened s 230(2) of the *Fair Work (Registered Organisations) Act 2009* (Cth).

## **E AJ LUCAS**

63. An invoice sent by the AWU to AJ Lucas is another example of the same kind of false invoicing procedure that was adopted in relation to Winslow and BMD.

64. On 23 March 2009, the AWU sent AJ Lucas (attention Kevin Lester) an invoice for \$23,400 (inclusive of GST). The invoice was in the same format as invoices issued to Winslow from 2010 and the 2007 and 2010 BMD invoices. The description in the invoice was 'delivering induction training for the Mortlake Project'. The item code was 'membership'. The GST exclusive amount (\$21,272.73) was expressed to be calculated by a rate of \$234.00 multiplied by a quantity of 100.<sup>84</sup>

65. After some prompting by the AWU, the invoice was paid by AJ Lucas on 30 June 2009. Like the Winslow and BMD invoices, this invoice was entered into the membership income ledger.<sup>85</sup>

66. The invoice appears to have been drafted on the basis of a handwritten note prepared by Mr Melhem.<sup>86</sup> The handwritten note has Mr Lester's details and address at the top followed by the word invoice 'four equals 100 x 6 monthly membership'. Beneath that appears the words 'delivering induction training for the Mortlake Project'.

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<sup>84</sup> Melhem MFI-3, 1/6/15, p 136.

<sup>85</sup> Melhem MFI-3, 1/6/15, p 143B.

<sup>86</sup> Melhem MFI-3, 1/6/15, p 143A.

67. At this time, the normal cost of a six month union membership was \$234.<sup>87</sup> Mr Melhem accepted that it was more than likely that he gave this handwritten note to someone in the accounts department in order to prepare an invoice.<sup>88</sup>

68. Mr Melhem did not accept that the invoice was false. He said that as far as he was aware it was an invoice for training. When asked why if the invoice was for training he wrote his handwritten note by reference to monthly memberships. Mr Melhem responded:<sup>89</sup>

The only – I understand that would be that- it would have been 100 people that delivered the training, per 100 people, and a figure of \$234, which is equivalent to the six monthly membership. That would have been the logic and that is not unusual to – for delivery the training.

69. When it was pointed out to Mr Melhem that the item code on the invoice was membership, Mr Melhem said ‘it could be put there in error. I can’t really answer that’.<sup>90</sup>

70. If, as Mr Melhem asserted, training was in fact provided and paid for but treated by the AWU as membership income, then the AWU has falsified its membership income and hence its membership numbers. By far the more likely conclusion is that no training was provided and the invoice was a false accounting record. That was the result of the investigation of Mr Davis and Mei Lin in 2014.<sup>91</sup>

71. This, it is submitted, is another instance in which Mr Melhem may have committed an offence under s 83 of the *Crimes Act* 1958 (Vic). That Mr Melhem knew that a false invoice was going to be issued is apparent from his handwritten note which refers at the same time to ‘100 x 6 monthly membership’ and ‘delivering induction training for the Mortlake Project’. The circumstances are not relevantly distinguishable from his conduct in relation to the 2010 BMD invoice and the Winslow invoices.

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<sup>87</sup> Melhem, 1/6/15, T:258.5-6; BMD bundle, 29/5/15, p 360.

<sup>88</sup> Melhem, 1/6/15, T:258.15-18.

<sup>89</sup> Melhem, 1/6/15, T:261.10-18.

<sup>90</sup> Melhem, 1/6/15, T:261.42-262.8.

<sup>91</sup> Mei Lin MFI-1, 4/6/15, p 26.

72. It does not follow that, because the invoice was not for training, it was in fact for membership. The evidence before the Commission does not deal with that issue.

## **F GEOTECHNICAL ENGINEERING**

73. Mr Lee Buntman is a legal officer at the AWU. In early 2013, he provided equal opportunity training for Geotechnical Engineering Pty Ltd (**Geotechnical**). The training consisted of presenting a Powerpoint presentation that Mr Buntman had previously presented to AWU officials a few months earlier. The training took about one hour.<sup>92</sup> The presentation occurred at Geotechnical's premises. Mr Buntman had to drive to those premises but did not need overnight accommodation to deliver the presentation.<sup>93</sup>
74. An account of the training provided, together with a description of the 'feedback' appears in an email from a Geotechnical representative of 21 March 2013. It is apparent from that email that the presentation lasted for 60 minutes and was provided to 18 employees.<sup>94</sup> The email also indicates that the presentation was delivered by Mr Buntman in conjunction with the Geotechnical HR manager, Mr Dene Macleod.
75. On the day after the presentation, a Geotechnical representative sent to Mr Buntman a list of names of persons who attended the presentation.<sup>95</sup> The list contained 19 names – and not merely the 18 who attended the presentation - because it included Mr Macleod.
76. The AWU appears to have sent Geotechnical an invoice for the training prior to its occurrence on 5 March 2013. The invoice bears the description 'EEO Training for Geotech Employees at the ESSO Gasplant Gippsland'. The amount of the invoice is \$15,600 exclusive of GST. The item code on the invoice is 'MEMBERSHIP'.<sup>96</sup> The amount of the invoice is recorded in the membership income ledger of the AWU.<sup>97</sup>

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<sup>92</sup> The matters in this paragraph are apparent from the email chain at Melhem MFI-3, 1/6/15, p 151 and p 187.

<sup>93</sup> Melhem MFI-3, 1/6/15, p 153.

<sup>94</sup> Melhem MFI-3, 1/6/15, p 277.

<sup>95</sup> Melhem MFI-3, 1/6/15, p 275.

<sup>96</sup> Melhem MFI-3, 1/6/15, p 329.

<sup>97</sup> Melhem MFI-3, 1/6/15, p 330.

77. The invoice was paid on 22 March 2013. On the same day, the 18 persons who attended the presentation, and whose names were on the list in the email sent to Mr Buntman on 22 March 2013, were added to the AWU membership roll.<sup>98</sup> The obvious and appropriate inference to draw from the above is that these 18 individuals were added to the AWU membership roll without their consent. AWU membership numbers and membership revenue, again, were falsely inflated and, as a result, the AWU may have contravened s 230(2) of the *Fair Work (Registered Organisations) Act 2009* (Cth).

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<sup>98</sup> Melhem MFI-3, 1/6/15, p 331.