



THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

LEVEL 17, 111 ST GEORGES TERRACE
PERTH WA 6000

1 March 2022

Ms Jasmine Sims
Steedman Stagg Lawyers
Level 1, Brookfield Place Tower 2
123 St Georges
PERTH WA 6000

And by e-mail: jasmine@steedmanstagg.com.au

Dear Ms Sims

APPLICATION NO. PRES 6 of 2021

Kate Ferguson

v.

Media, Entertainment and Arts Alliance of Western Australia (Union of Employees)

Please find enclosed a copy of the Reasons for Decision which issued in this matter, and a Minute of Proposed Order. Should you wish to speak to the minute, please provide a response by no later than **5pm on Wednesday, 2 March 2022**.

Yours sincerely

Isla Gibson
ASSOCIATE TO CHIEF COMMISSIONER S J KENNER

enc.

**ORDER PURSUANT TO S 66
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2022 WAIRC 00087

CORAM : CHIEF COMMISSIONER S J KENNER

HEARD : THURSDAY, 18 NOVEMBER 2021

DELIVERED : TUESDAY, 1 MARCH 2022

FILE NO. : PRES 6 OF 2021

BETWEEN : KATE FERGUSON
Applicant

AND

MEDIA, ENTERTAINMENT AND ARTS ALLIANCE
OF WESTERN AUSTRALIA (UNION OF
EMPLOYEES)
Respondent

Catchwords : Industrial law (WA) - Application under s 66 -
Inconsistency between State and federal union rules -
Section 71(5) certificate no longer satisfied - Interim Union
Council established - Order issued

Legislation : *Fair Work (Registered Organisations) Act 2009* (Cth)
Industrial Relations Act 1979 (WA) s 66, s 71, s 71(5)

Result : *Order issued*

Representation:

Counsel:

Applicant : Ms J Sims of counsel

Respondent : Ms J Sims of counsel

Solicitors:

Applicant : Steedman Stagg Lawyers
Respondent : Steedman Stagg Lawyers

Case(s) referred to in reasons:

Reasons for Decision

- 1 This application is made under s 66 of the *Industrial Relations Act 1979* (WA). The applicant, Ms Ferguson, is a member of the respondent, the Media, Entertainment and Arts Alliance of Western Australia (Union of Employees). The respondent is a registered organisation under s 60 of the *Act*. The respondent has a counterpart federal body, the Media Entertainment and Arts Alliance, which is registered under the *Fair Work (Registered Organisations) Act 2009* (Cth). In accordance with the requirements of s 71 of the *Act*, the respondent was issued a certificate under s 71(5) in May 2010. The certificate enabled persons elected to office in the Association, to hold the corresponding office in the respondent.
- 2 As a consequence of progressive changes to the registered rules of the federal Association between 2012 and 2020, the rules of the Association and the rules of the respondent, are no longer in alignment. Specifically, and most particularly, apart from other changes, was the replacement in the Association of the paid elected position of Federal Secretary, with an appointed position of Chief Executive. At the federal branch level, including the Western Australian Branch, the duties undertaken formerly by the position of an elected Secretary, are now performed by an employed Regional Director. The consequence of this change is that the employed Regional Director cannot constitute the ‘Registered Officer’ of the respondent, for the purposes of the *Act*, as required by rule 26(a) of the respondent’s rules. This is because the Regional Director does not occupy an ‘office’, as defined s 7 of the *Act*, due to the position being held by an employee, and not an elected officer, who does not have a vote on the committee of management of the respondent. Additionally, provisions of the respondent’s rules in relation to Branch Council positions, are inconsistent with those specified in the federal Association’s rules.
- 3 These matters were brought to the attention of the respondent by the Registrar in correspondence in April and July 2021. The correspondence pointed out that the inconsistency between the rules of the respondent and the federal Association, meant that the requirements of the s 71(5) certificate were no longer met. As a consequence of this, the application under s 66 of the *Act*, sought an order of the Commission for the establishment of an Interim Union Council, to have the carriage of the affairs of the respondent, until such time as the respondent’s rules can be amended, to align them with those of the federal Association.
- 4 The matter came before me on 18 November 2021 for directions. At the directions hearing, I was informed that an election for office bearers of the federal Association was underway, with the results of the election expected to be declared in early 2022. Whilst the applicant had initially sought orders for the

establishment of an Interim Union Council at that time, it was determined that the matter be adjourned until the completion of the election process.

- 5 The applicant has notified my Chambers that the election has now been concluded. In correspondence dated 15 February 2022, the applicant's solicitors attached correspondence from the Australian Electoral Commission, which included declarations of results for contested and uncontested offices in the federal Association made on 7 February 2022. In a supplementary statement of particulars, the applicant set out the chronology of the election process and a list of 11 persons in Western Australia, elected to various positions in the federal Association. Those positions include State President (National Media Section); State President, Equity (Actors/Performers Section); State President, ECS (Entertainment, Crew and Support Section); State President, Musicians (Musicians Section); National MEAA Board Member, WA; Federal President, Musicians; and delegates to the federal Council from the ECS, Media and Equity Sections. The applicant now seeks an order for the establishment of an Interim Union Council, comprising those duly elected officers who reside in Western Australia. The respondent consents to an order being made.
- 6 Having considered the matter, and in light of the recent declaration by the AEC of elected office bearers in the federal Association, resident in Western Australia, I am satisfied that an order should be made under s 66 of the *Act*. The order will establish an Interim Union Council, which will enable the respondent to conduct its affairs and to take steps to vary its rules, in order that a new s 71 certificate can be issued in due course.
- 7 The order also makes it clear that the Interim Union Council will have all of the powers, duties, and functions of the Council of the respondent, as its supreme governing body, for the period that the order is in effect. Additionally, the order also provides that the respondent's rules in relation to the election of office bearers have no effect whilst the order remains in force. Being an interim order, it will continue until 28 February 2023, unless it is varied in the meantime. A liberty to apply is included in the order for this purpose. By 28 February 2023, it is anticipated that the appropriate steps will have been taken by the respondent to its rules, to enable a new s 71 certificate to be issued by the Full Bench of the Commission.
- 8 The minutes of proposed order now issue.

ORDER PURSUANT TO S 66

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

PARTIES KATE FERGUSON

APPLICANT

-v-

MEDIA, ENTERTAINMENT AND ARTS ALLIANCE OF
WESTERN AUSTRALIA (UNION OF EMPLOYEES)

RESPONDENT

CORAM CHIEF COMMISSIONER S J KENNER

DATE TUESDAY, 1 MARCH 2022

FILE NO/S PRES 6 OF 2021

CITATION NO.

Result Order issued

Representation

Applicant Ms J Sims of counsel

Respondent Ms J Sims of counsel

Minute of Proposed Order

HAVING HEARD from Ms J Sims of counsel on behalf of the applicant and the respondent, the Chief Commissioner, pursuant to the powers conferred under the *Industrial Relations Act 1979* (WA), hereby orders –

- (1) THAT an Interim Union Council of the respondent is established constituted as follows:
 - a. President
Kate Ferguson, State President, Media (National Media Section)
 - b. Vice President

Nick Maclaine, State President, Equity (Actors/Performers Section)

c. Vice President

Eoin O'Briain, State President, ECS (Entertainment, Crew and Support Section)

d. Vice President

Liam O'Malley, State President, Musicians (Musicians Section)

e. Ordinary Board Member

Martin Saxon, National MEAA Board Member, WA

f. Ordinary Board Member

Cameron Brook, Federal President, Musicians

g. Ordinary Board Member

Nigel Devenport, Delegate to Federal Council, ECS

h. Ordinary Board Member

Neale Prior, Delegate to Federal Council, Media

i. Ordinary Board Member

Monica Main, Delegate to Federal Council, Equity

j. Ordinary Board Member

Ngaire Pigram, Delegate to Federal Council, Equity

k. Ordinary Board Member

Irma Woods, Delegate to Federal Council, Equity

(2) THAT rules 52 and 53 of the respondent's rules have no operative effect.

(3) THAT the Interim Union Council shall have the authority to exercise all of the powers, duties, and functions of the Council of the respondent and each of the members of the Interim Union Council shall have the authority to exercise all of the powers, duties and functions of the office held by each of them.

- (4) THAT unless otherwise varied, this order will operate until 28 February 2023.
- (5) THAT there be liberty to apply on short notice.

CHIEF COMMISSIONER S J KENNER