



30 June 2016

Ms Angela Smith
President
Police Federation of Australia-Australian Federal Police Association Branch
afpa@afpa.org.au

Dear Ms Smith

Organisation must respond to the post-election report of the Australian Electoral Commission: E2016/137 and E2016/60

On 24 June 2016 the Fair Work Commission (the Commission) received a post election report from the Australian Electoral Commission (AEC) for election E2016/137 and E2016/60 dated 24 June 2016. The AEC will have also provided the report to the organisation under section 197 of the *Fair Work (Registered Organisations) Act 2009* (the RO Act).

The report identifies rules that were difficult to interpret or apply, in particular rule(s) 96 (e)(ii) and 97 (c)(iv) Rule 66(a) and Rule 114. This letter serves as a reminder of the obligations imposed on the organisation or branch as a consequence of the AEC's report. If a response has already been sent to the AEC and made available to all members please disregard this letter.

A notice must be published on the organisation's website

The organisation or branch must publish on its website a notice that a copy of the report is available from the organisation, branch or the AEC on request. The notice must be kept on the website for a period of at least 3 months (see regs 141(4) and (5)).

A written response must be provided to the AEC

A written response must be provided to the AEC within 30 days of receipt of the report. The organisation's response must include whether the organisation or branch intends to take action and if so what action the organisation or branch intends to take (s198(2)).

Extract of report must be made available to members

The organisation or branch must make the section of the report relating to the difficult rules available to its members (s198(3)). This extract from the report must be made available to the members before or at the same time as the organisation's response is made available to members.

Written response must be made available to members

A copy of the organisation's response to the AEC must be made available to members either:

- within 30 days after the response is given to the AEC, or
- published in the next edition of the organisation or branch journal (s198(5))

Subsection 198(6) and regulation 142 prescribe ways in which the relevant extract and the copy of the response can be made available to members. These do not limit the ways in which they can be made available to members. The organisation will comply if it does all of the following:-

- publish the report extract and the copy of the response in the next edition of the organisation or branch's journal; and

- within 30 days of giving the response to the AEC:
 - lodges with the Commission a copy of the relevant extract and response, together with a declaration that a copy will be provided to any member who so requests; and
 - give notice in the next edition of the organisation or branch's journal, or an appropriate newspaper, that a copy of the relevant extract and response are available on request to each member free of charge; and
- publish the relevant extract on the website within 14 days after receiving the report, and publish the response on the website within 14 days of giving the response to the AEC (reg 142(2)).

Penalties may apply

If the organisation or branch does not:

- respond to the AEC within 30 days,
- make the extract of the report relating to the rules available to members no later than the organisation's response is made available to members, or
- make the organisation's response available to members within 30 days or in the next edition of the journal,

the organisation may face penalties under the RO Act. Each requirement listed above is a civil penalty provision that may result in fines for the organisation

As noted above, if the response and report have already been made available to members and the AEC, please disregard this letter. If you have any questions in relation to these obligations please contact the Commission for assistance by email to orgs@fwc.gov.au.

If the organisation or branch decides to alter its rules in response to the AEC's report

If the organisation or branch decides to alter its rules in response to the AEC's report, the Regulatory Compliance Branch of the Commission is able to provide advice and assistance regarding draft alterations, as well as about the processes required to make the alterations. We encourage the organisation or branch to forward drafts of proposed alterations to orgs@fwc.gov.au

Yours sincerely

Debbie Ball

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Regulatory Compliance Branch

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27 June 2016

Ms Angela Smith
President
Police Federation of Australia-Australian Federal Police Association Branch
afpa@afpa.org.au

Dear Ms Smith,

Reminder of actions required when persons elected to office

The Australian Electoral Commission has provided the Fair Work Commission (the Commission) a declaration of results for the election [E2016/60] for AFPA Branch. This letter is a reminder of certain obligations imposed on organisations and persons elected to office.

Section 154D(1) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires the rules of organisations (and branches of organisations) to require each officer with financial management duties to undertake approved training that covers those duties within 6 months after the person begins to hold office. Please ensure that relevant officers undertake approved training within the required timeframe.

Please also ensure that all new holders of office are advised of their obligations to make disclosures regarding remuneration, non-cash benefits and material personal interests, the details of which should be provided for in your organisation's rules.

Also, section 233(2) of the RO Act requires that an organisation must notify the Commission **within 35 days of any changes** to the holders of office in the organisation. **If there are no changes a notification is not required.** If the election has resulted in **any changes** to the holders of office, the Police Federation of Australia-Australian Federal Police Association Branch must notify the Commission of these changes. In particular, please advise:

1. Person(s) who have ceased to hold office:
 - the name of the office vacated;
 - the date of the change of office holder; and
 - the name of the person vacating the office.
2. Person(s) who have commenced to hold office:
 - the name of the office now held;
 - the date of the change of office holder;
 - the name of the person now holding the office;
 - the postal address of the person (generally the postal address of the organisation); and
 - the occupation of the person now holding the office.

The notification must include a declaration by the Secretary (or other prescribed officer) that the information is a correct statement of the changes made. I have attached a template notification of changes which may assist you. If any change does not apply until a specific date, you don't need to notify until then (e.g. AGM, 1 January, 2nd Monday in March). If you have already lodged this information, please disregard this reminder.

Regards

Debbie Ball
Regulatory Compliance Branch

NOTIFICATION OF CHANGES TO RECORDS (Changes to Records in the Annual Return) required to be kept in accordance with section 230 *Fair Work (Registered Organisations) Act 2009* and regulation 147 *Fair Work (Registered Organisations) Regulations 2009*

I, [NAME], being the [OFFICER] of the [ORGANISATION NAME], declare the following:

1. I am authorised to make this declaration.
2. The following is a correct statement of the changes made to the information contained in the records required to be kept by the organisation in accordance with s.230(1)(b), (c), and (d) of the *Fair Work (Registered Organisations) Act 2009*:

[delete all that do not apply]

- On [DATE] the address of the organisation changed to [STREET ADDRESS].¹
- On [DATE] the name and/or address of a branch[es] of the organisation changed to:²
 1. [include OLD name and address and NEW name and address of every branch that has changed]
 2. ...
- A list of changes to offices and the names, postal addresses and occupations of persons holding those offices is attached to this declaration at Annexure A and forms part of this declaration.
- On [DATE] the following branch[es]:³
 - COMMENCED/CEASED operation:
 1. [include name of each new branch]
 2. ...

Signed: [SECRETARY OR OTHER AUTHORISED OFFICER]

Dated: [DATE]

[PLEASE NOTE: This declaration must be submitted to the Fair Work Commission within 35 days of the change. It can be submitted to orgs@fwc.gov.au.]

¹ s.230(1)(d); reg.147(d)

² s.230(1)(d); reg.147(a) & (d)

³ s.230(1)(d); reg.147(b) & (c)

ANNEXURE A

- Changes to Offices and Office Holders in the Organisation and its Branches [*insert as many pages as required*]:

Please note the 35 days begins at the earliest event (for instance when the officer retires) and an organisation may need to notify the events separately if the appointment or election process will take longer than 35 days.

Branch	Date of Change	Name of Office that has changed	Name of <u>Outgoing</u> Office Holder	Reason for change	Name of <u>New</u> Office Holder	Postal Address of <u>New</u> Office Holder (for privacy reasons, we recommend NOT a private address)	Occupation of <u>New</u> Office Holder
<i>National</i>	<i>1.1.2014</i>	<i>Secretary</i>	<i>Full Name</i>	<i>Retiring</i>	<i>Full Name</i>	<i>c/- the Registered Organisation, postal address of Registered Organisation</i>	<i>Paid official</i>
	<i>25.12.2013</i>	<i>President</i>	<i>vacant</i>	<i>Scheduled Election</i>	<i>Full Name</i>	<i>As above</i>	<i>mechanic</i>
...							
<i>NSW</i>	<i>1.1.2014 (resigned) 7.1.2014 (appointed)</i>	<i>President</i>	<i>Full Name</i>	<i>Resignation</i>	<i>Full Name</i>	<i>c/- the Branch, postal address of the Branch</i>	<i>mechanic</i>
		<i>Committee of Management Member</i>	<i>Full Name</i>	<i>Scheduled Election</i>	<i>Full Name</i>	<i>As above</i>	<i>mechanic</i>
		<i>Treasurer</i>	<i>Full Name</i>	<i>Scheduled Election</i>	<i>vacant</i>	<i>vacant</i>	<i>vacant</i>
...							



Fair Work (Registered Organisations) Act 2009
POST ELECTION REPORT

Client: Police Federation of Australia - Australian Federal Police Association Branch

ELECTIONS COVERED IN THIS REPORT

Election Decision No/s: E2016/60 and E2016/137

RULES

Rules used for elections Rule ID: 200V: Incorporates alterations of 28/01/2016 [R2015/202, R2015/248 & R2015/261] (replaces rulebook dated 19/08/2015 [R2015/180])

Rules difficult to apply/interpret*: Rule 96 (e) (ii) – The rule states that nominations shall be delivered to the Returning Officer at the Office of the Branch. It is highly recommended that the Association considers changing this rule to state simply that nominations must be delivered to the Returning Officer, similar to Rule 73 (c) (iv). This allows flexibility for more modern means of lodgement.

Rule 114 – Dual Offices

The rule has an incomplete order of precedence for all offices listed in Rule 66(a). The name of some offices listed in rule 114 are different to rule 66(a)

** Note: Assessment of “rules difficult to apply/interpret” have been applied to Part D of the rules – Australian Federal Police Association Branch Rules only, as they relate.*

Model Rule reference (if any): See above

ROLL OF VOTERS

Total number of voters on the roll	NA - Uncontested
Number of apparent workplace addresses	NA – Uncontested
Number of non-current addresses	N/A – Uncontested
Other Matters	Nil

ALLEGATIONS OF IRREGULARITIES RECEIVED

Details of written allegations of irregularities, and action taken by AEC:	None
Other irregularities identified, and action taken:	None

ATTACHMENTS

1. E2016/60 - Declaration of Results
2. E2016/137 – Declaration of Results

**Police Federation of Australia
Australian Federal Police Association Branch**

E2016/60 Vacancy Election

Declaration of Results for Uncontested Offices

E2016/60

Below are the results of the election for the following offices, conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation.

Australian Federal Police Association

Branch Vice President AFP ACT Operations Portfolio

Candidates

COOPER, Graeme Robert

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidate elected.



Renee Damasena
Returning Officer

24 June 2016



DECISION

Fair Work (Registered Organisations) Act 2009
s.189—Arrangement for conduct of an election

Police Federation of Australia (E2016/60)

MR ENRIGHT

MELBOURNE, 30 MAY 2016

Arrangement for conduct of election.

[1] On 22 January 2016 the Australian Federal Police Association Branch (the Branch) of the Police Federation of Australia lodged with the Fair Work Commission (the Commission) the prescribed information in relation to an election for casual vacancies for the remainder of the term of office in the following offices:

Branch Vice President AFP ACT Operations Portfolio	(1)
Branch Vice President AFP Close Operations Portfolio	(1)

[2] In a decision issued on 19 February 2016¹ I made arrangements for the conduct of an election to fill the office of Branch Vice President AFP Close Operations Portfolio. In relation to the Branch Vice President AFP ACT Operations Portfolio I instead stated:

The circumstances surrounding the vacancy said to arise in the office of Branch Vice President AFP ACT Operations Portfolio are potentially more complex. Officers from the Fair Work Commission are currently engaging with officers of the Branch on my behalf in relation to the matter and I will determine whether or not to make arrangements for the conduct of an election in due course.²

[3] This decision determines the request to make arrangements for the conduct of an election in the office of Branch Vice President AFP ACT Operations Portfolio.

[4] The chronology of the matter can be summarised as follows.

[5] On or about 6 November 2015 Branch National President Jon Hunt-Sharman resigned from office.

[6] Mr Hunt-Sharman was declared elected to that office on 1 May 2013.³ The Branch National President's term of office is four years.⁴ If a casual vacancy occurs in the office of Branch National President and less than three quarters of the term of office remains, the vacancy may be filled by appointment.⁵

[7] After noting that there was less than three quarters of the term of office remaining, the Branch National Executive resolved to fill the casual vacancy caused by Mr Hunt-Sharman's resignation by appointment from amongst the membership of the National Council.⁶

[8] At a Special Branch National Executive Meeting on 11 November 2015 the Branch National Executive appointed Ms Angela Smith to the office of Branch National President for the remainder of the term of office under Branch Rule 73(d)(i)(a), effective immediately.⁷

[9] Prior to her appointment Ms Smith held the office of Branch Vice President AFP ACT Operations Portfolio.⁸ As a Branch Vice President, Ms Smith was a member of the Branch National Council as required by Branch Rule 73(d)(i)(a).⁹

[10] Ms Smith did not tender a resignation from the office of Branch Vice President AFP ACT Operations Portfolio when she ascended to the office of Branch National President. Nonetheless, "where the rules of an organization do not permit a person to hold more than one office, assumption of a second office will vacate the first by implied resignation."¹⁰ This legal concept, known as the doctrine of incompatible offices, has been held to apply to organisations registered under legislative antecedents to the *Fair Work (Registered Organisations) Act 2009* (the Act). The doctrine will apply "unless it is excluded by clear words"¹¹ in the rules of the organisation. In the case of the Branch Rules, the doctrine does not appear to be excluded by clear words in the rules. The relevant provisions of the Act are not distinguishable from the legislation under consideration when the doctrine was held to apply to registered organisations

[11] I note at this juncture that the present controversy centres on whether Ms Smith's appointment at the 11 November 2016 Special Meeting of the Branch National Executive was valid. If Ms Smith was validly appointed as Branch National President, then a casual vacancy was triggered in the office of Branch Vice President AFP ACT Operations Portfolio after she took up the appointment. If she was not, Ms Smith remains the Branch Vice President AFP ACT Operations Portfolio and I can therefore not be satisfied that an election to fill a casual vacancy in that office arises under the rules of the organisation.¹²

[12] On 8 December 2015 Mr Dennis Gellatly wrote to the Regulatory Compliance Branch of the Commission. Mr Gellatly is the Chief Executive Officer of the Branch. Mr Gellatly is an elected officer of the Branch,¹³ a member of the Branch National Council¹⁴ and a member of the Branch National Executive.¹⁵ It is convenient to note that when regard is had to Mr Gellatly's powers and duties under the Branch Rules¹⁶ and the fact that he is an elected official, he holds an office which would routinely be described as Branch Secretary in the rules of many registered organisations of employees.

[13] Mr Gellatly's correspondence set out a number of concerns. Relevantly, Mr Gellatly stated:

[O]n 11 November 2015, 4 members of Branch National Executive (four voting members), convened and appointed Ms Smith as the replacement AFPA President... As the CEO of the Association, I subsequently sought a legal advice in relation to the appointment and circumstances surrounding the appointment. According to legal advice received on 26 August 2015 and 24 November 2015 (Attached) it is understood that the meeting on 11 November 2015 and the appointment made during that meeting is invalid under AFPA Branch Rule 77(b).¹⁷

[14] Copies of legal advice dated 26 August 2015 and 24 November 2015 were appended to Mr Gellatly's letter.

[15] Mr Gellatly wrote to the Commission again on 23 December 2015. On this occasion the correspondence was addressed to the Commission's General Manager. In that correspondence, Mr Gellatly made a number of allegations, including an allegation that "false or misleading statements [have been made] by Branch Office Holders under s.233(3) of the *Fair Work (Registered Organisations Act 2009*"¹⁸ Those allegations will be separately addressed by the Fair Work Commission's Regulatory Compliance Branch. Relevant to my present task under section 189 of the Act, Mr Gellatly elaborated on his 8 December 2015 contention as follows:

[A]ccording to legal advice received by the AFPA on two occasions (Attached), a series of meetings of a group of the Branch National Executive have not been convened in accordance with AFPA Branch Rules. Legal advice relied upon goes on to state that resolution or decisions made as any such meeting is invalid and as such, the "appointment of Ms Smith as the replacement president at one of these meetings is also invalid. The group of Executive members have been advised several times of both the invalidly convened meetings and invalid resolutions, yet they persisted.

...

Consistent with that advice I have advised certain members of the AFPA National Executive in relation to their conduct of a series of meetings purporting to be 'special' or 'extraordinary' meetings of the Branch National Executive of the fact those meetings have not been convened in accordance with Branch Rule 77(b) rendering both the meetings and any decisions or resolutions made thereat, invalid.

[16] Copies of the 26 August 2015 and 24 November 2015 legal advice were again attached to Mr Gellatly's letter, along with some other material intended to support his position.¹⁹

[17] By letter dated 8 February 2016 Mr Gellatly again wrote to the General Manager of the Commission, "in furtherance to my correspondence... dated 23 December 2015... [because] I thought it may be of assistance to the FWC if further information was provided in support of my earlier correspondence".²⁰

[18] In addition to reiterating his arguments Mr Gellatly provided copies of, amongst other things:

[an e]mail dated 4 September 2015 by the former AFPA Branch National President which outlines the requirement for joint agreement of the President and CEO to convene a special executive meeting. All members of the Executive at that time were copied into the email including Ms Angela Smith and Mr Ian Bridle.

and

A number of emails from myself as CEO, based on independent legal advice, that the convening of a special executive meeting required the joint agreement of the CEO and

President, otherwise the meeting and any decision or resolution made there at was invalid.²¹

[19] According to Mr Gellatly, this material:

[D]emonstrates that members of the AFPA Branch executive, as early as September 2015, knew of the requirement for joint agreement of the President and CEO to before a special executive meeting could be properly convened under Branch Rules. Regardless, they proceeded to convene meetings in breach of Branch Rules.²²

[20] In addition, Mr Gellatly contended:

On 16 December 2015, members of the Executive demonstrated their understanding of the requirement under the Branch Rules that joint agreement between the President and CEO was necessary before a special meeting of the Executive could be convened, in that they delegated the authority of the CEO to another member of the Executive, Mr Bridle.²³

[21] After issuing my decision of 19 February 2016 the Regulatory Compliance Branch wrote to Ms Smith on 1 March 2016. That correspondence referred to Mr Gellatly's argument, noted that "[i]f, as Mr Gellatly asserts, the meeting at which you were appointed was not properly convened, it could not validly transact business"²⁴ and requested advice about:

- when the Branch Chief Executive Officer and the Branch National President last jointly decided to hold a Special Meeting of the Branch Executive;
- whether that meeting took place; and
- having regard to the methods for convening meetings set out in Branch Rules 77(a) and (b) how had subsequent meetings of the Branch Executive, including the 11 November 2015 meeting, been held?

[22] Ms Smith responded through submissions lodged by the Branch's solicitors on 10 March 2016.

[23] Mr Gellatly was offered and took up the opportunity to respond to the material put on behalf of Ms Smith and the Branch. Submissions in reply were lodged by his solicitors on 22 March 2016. I note in passing that the author of these submissions was not the Counsel engaged to provide opinions to Mr Gellatly in August and November 2015.

[24] Final submissions were lodged on behalf of the Branch on 15 April 2016.

[25] In their submissions of 22 March 2016 Mr Gellatly's solicitors stated that their client had not had the opportunity to sight the Special Branch Executive Meeting Minutes relied on by the Branch.²⁵ I therefore caused copies of those Minutes to be forwarded to Mr Gellatly's solicitors on 20 April 2016, along with a direction that any submission Mr Gellatly wished to make about the Minutes had to be lodged by the close of business on 28 April 2016. No material was lodged in reply, nor was an extension of time for complying with the direction sought.

[26] Some time has passed since the last day for lodging material in the matter. This is largely because I accommodated a request from the Australian Electoral Commission to hold off determining the matter until orders were made by the Federal Court of Australia in an election enquiry pertaining to an election for other offices within the Branch.²⁶ Those orders were made by Her Honour Justice Katzmann on 5 May 2016 and served on the Commission on 17 May 2016.²⁷

[27] The chronological summary above does not set out every contention relied on or refer to every piece of material which was lodged. I intend to adopt the same approach when referring to the submissions made on the Branch and Mr Gellatly's behalf. I have however had regard to all that has been put by both parties in reaching my decision.

[28] Branch Rule 77 states:

77 - MEETING OF BRANCH NATIONAL EXECUTIVE

- (a) The Branch National Executive shall meet at least every three months and at such other times as may be necessary, through either a physical meeting or a meeting conducted by electronic means or telephone conference.
- (b) Special meetings of the Branch National Executive shall be held by resolution of the Branch National Council or Branch National Executive or by joint decision of the Branch Chief Executive Officer in conjunction with the Branch National President.
- (c) The Branch Chief Executive Officer shall give each member of the Branch National Executive at least 7 days notice for a meeting of Branch National Executive and at least 48 hours notice of any special meeting thereof.

[29] So far as it relevantly deals with casual vacancies Rule 73 states:

(d) Extraordinary Vacancy

- (i) Where an extraordinary or casual vacancy (howsoever occurring) arises in the Office of the Branch National President, Branch Chief Executive Officer, Branch Vice President AFP ACT Operations Portfolio, Branch Vice President AFP Chief Operating Officer Portfolio, Branch Vice President AFP Close Operations Portfolio, Branch Vice President AFP Executive & AFPA Associate Portfolio, Branch Vice President AFP National Security Portfolio and the Branch Vice President AFP Operations Portfolio; then the Branch Chief Executive Officer or in the case of casual vacancy in the office of Branch Chief Executive Officer, the Branch National President, shall take immediate action to have such vacancy filled provided that:

...

- (b) where the unexpired portion of the term of office in which the vacancy occurs exceeds three quarters of the term, the Branch National Executive may fill such vacancy by appointment of an eligible member of the Branch until an election is held, provided that no person so appointed shall hold office for a period exceeding three months.

[30] At issue here is the mechanism by which Branch Executive may meet “at such other times as may be necessary”.

[31] A Special Meeting of the Branch National Executive was held by joint decision of the Branch Chief Executive Officer in conjunction with the Branch National President on 8 September 2015.²⁸

[32] There is some evidence that at its 8 September 2015 meeting, Branch Executive resolved to meet again on 16 September 2015. In any event, the Branch Chief Executive Officer and Branch National President jointly agreed to call another Special Meeting of the Branch National Executive on 16 September 2015 and notice of that meeting was given to Branch Executive Members.²⁹ Mr Gellatly subsequently sought to withdraw his consent for that meeting to occur³⁰. Minutes supplied by the Branch indicate that the Branch Executive met anyway. Mr Gellatly did not attend, “saying he had to seek medical assistance”.³¹

[33] Mr Gellatly submits that he withdrew:

... his necessary consent to that meeting going ahead. As a consequence, that special meeting was not, and could not be regarded as, a meeting held – and we place emphasis on that word, as the clear purpose of Rule 77 is to set out the circumstances in which special meetings can be held, rather than called – by joint decision between the Branch National CEO and Branch National President. That being the case, any business purportedly transacted at that meeting must necessarily be of no effect.³²

[34] I am unable to accept this submission. The seventh edition of *Horsleys’ Meetings, Procedure Law and Practice* states:

After a notice of meeting has been validly issued, the meeting is not able to be cancelled or even postponed unless the rules or standing orders permit this, which would be unusual: *Bell Resources Ltd v Turnbridge* (1988) 13 ACLR 429; *McPherson v Mansell* (1994) 16 ASCR 261; *McKerlie v Drillsearch Energy Ltd* (2009) 74 NSWLR 673; (2009) 72 ACSR 288. In fact, once an actual resolution has been passed to convene a meeting a similar situation occurs: *Smith v Paringa Mines Ltd* [1906] 2 CH 193.³³

[35] There is no Branch rule which permits the cancellation of a Special Meeting of the Branch National Executive. Nor does the scheme of the rules taken as a whole contemplate this eventuality. The purported withdrawal of Mr Gellatly’s necessary consent to the 16 September 2015 meeting was ineffective. Mr Gellatly places too narrow an emphasis on the word “held”. In my view, once a joint decision of the Branch Chief Executive Officer in conjunction with the Branch National President has been made, a Special Meeting of the Branch National Meeting *shall be held*. “Shall” in Branch Rule 77(b) is mandatory. A meeting must occur once one of the three criteria in Branch Rule 77(b) are met.

[36] Beyond 8 or 16 September 2016, there is no dispute that Special Meetings of the Branch National Executive were not held by joint decision of the Branch Chief Executive Officer in conjunction with the Branch National President. There is no suggestion they were held by resolution of the Branch National Council. The Branch does not submit (nor does Mr Gellatly concede) that the 11 November 2016 meeting at which Ms Smith was purportedly appointed was the quarterly meeting contemplated in the first line of Branch Rule 77(a).

[37] What remains is whether the meetings which were held were “Special Meetings of the Branch National Executive... held by resolution of the... Branch Executive” per Branch Rule 77(b).

[38] Mr Gellatly submits:

If the CEO does not concur with the calling of a Special Meeting of the Branch National Executive, the only way that Executive can be legitimately assembled is either by resolution of the Branch National Council or by resolution of the Branch National Executive. A Special Meeting of the Branch National Executive is one which is held other than a meeting held in accordance with Rule 77(a), being a meeting of the Branch National Executive held "every 3 months". A meeting of the Branch National Executive which is held in accordance with Rule 77(a) could determine that a Special Meeting of that Executive would be held at some post-date. Such a determination could be made without the CEO's concurrence. That meeting of the Branch National Executive authorising a Special Meeting would, however, be the regular meeting held in accordance with Rule 77(a).

...

In other words, in my opinion, other than the regular 3 monthly meeting of the Branch National Executive, as determined in Rule 77(a) and as may be authorised by the Branch National Council biennial meeting, a Special Meeting of the Branch National Executive could only, in practice, be called by a joint decision to that effect made by both the CEO and the Branch National President. (footnotes omitted)³⁴

[39] In Mr Gellatly's submission, this interpretation “reflects a plain and common sense interpretation of Rule 77... It is clear from the plain language of Rule 77 that special meetings are the exception, rather than the norm, and intended to only be held in limited circumstances”.³⁵

[40] The Branch submits that

In our submission there is simply no basis for interpreting Rule 77 (b) in the confined way that [Mr Gellatly's Counsel] Mr Warren propounds... With respect to Mr Warren, his construction of Rule 77 is incorrect. We submit that the National Executive has the right to convene a meeting of the National Executive by a resolution fixing such a meeting at a previous meeting, whether it is "special" or not... there is nothing anywhere in the Rules to suggest that such a resolution cannot be adopted at Special meeting of the National Executive.³⁶

and:

An abiding principle for the interpretation of Rules of registered organisations is that, while the words used are to be given their normal or ordinary meaning, "they are not to subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers, and should not be restrictively construed" Mr Warren's interpretation seriously offends that principle, by seeking to restrict the words used in a way that is not obvious from the Rules and which has negative practical impacts if adopted. Indeed, his opinion does not only seek to restrict the plain meaning of the Rule, it has the

effect of negating the clear intention of Rule 77 (b): that is, the mechanism of agreement between the President and the CEO for the calling of a Special National Executive meeting is clearly a facilitative provision (ie an additional option for calling such meetings), but on Mr Warren's interpretation of Rule 77 it operates as a restriction on the capacity for Special National Executive meetings to be called otherwise. (citations omitted)³⁷

and finally:

the Rule does not impliedly limit the number of meetings (whether special or not) that the National Executive may hold if it wishes to do so... there is nothing absurd at all about an interpretation of the Rules that would allow the calling of multiple special meetings, if the National Executive resolved (as it has here) to do so. They after all have the responsibility to manage the affairs of the Association between meetings of the National Council.³⁸

[41] I concur with the position adopted by the Branch. Branch Rule 77(b) requires a Special Meeting of the Branch National Executive to be held if, amongst other things, the Branch Executive resolves that a meeting shall occur. Branch Rule 77(b) is silent as to the type of Branch Executive meeting which may so resolve. There is nothing elsewhere in Branch Rule 77 or within the Branch Rules generally that limits the type of Branch Executive meeting which may so resolve.

[42] In *J.J Richards & Sons Pty Ltd v Fair Work Australia*, His Honour Justice Flick of the Federal Court referred to the following “long established and fundamental principles of statutory construction”:

“First, the so-called ‘golden rule’ of the common law as to statutory construction is that “the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther...”

Second, the common law also recognised that “[i]t is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is a wrong thing to do...”

Third, a construction of a statutory provision is to be preferred ‘that would best achieve the purpose or object of the Act’: Acts Interpretation Act 1901 (Cth) s 15AA. The requirement to look to the purpose or object of an Act is more than an instruction to adopt the traditional mischief or purpose rule in preference to the literal rule of construction; s 15AA requires no ambiguity or inconsistency in a statutory provision before a court is not only permitted, but required to have regard to purpose...”. (citations omitted)³⁹

[43] The rules of organisations registered under the Act do not have the status of statutes. It is well established that the rules of registered organisations should be read in a practical and common sense way which avoids giving them an unduly technical, narrow or legalistic construction. In this regard I accept the Branch’s submission, set out in paragraph [37] above, that *while the words used are to be given their normal or ordinary meaning, “they are not to*

subjected to the same meticulous scrutiny as a deed carefully prepared by lawyers, and should not be restrictively construed. However, I do not believe that the “golden rules” of statutory construction are of no assistance in construing the rules of registered organisations, including the Branch Rules under consideration.

[44] The grammatical and ordinary sense of the words contained in Rule 77(b) suggest that the Branch Executive may resolve to hold a Special Branch National Executive meeting. There is no restriction on the number of times that it may do so or the type of Branch National Executive Meeting which may pass the resolution to hold the special meeting. No repugnance or inconsistency arises when the interpretation is looked at in the context of Branch Rule 77 or the Branch Rules as a whole. Nor, for the reasons submitted by the Branch, does any absurdity arise.

[45] To adopt the construction contended for by Mr Gellatly requires me to read the word “quarterly” or “regular” or some synonym thereof into Branch Rule 77(b). There is no clear necessity to do so.

[46] Turning to relevant purposes, rules of an organisation dealing with convening committee of management meetings were considered by Smithers J in *Egan v Maher*:

In construing rules in a matter of this kind it is proper to have in mind that meetings of the governing bodies of representative organizations are essential to the achievement of the objects of such bodies. Accordingly a resolution of questions in manner facilitating the holding of meetings rather than frustrating it is to be preferred. A meeting of the Committee of Management to conduct the business of the Branch is prima facie a beneficial act in the course of the Branch government and there is every reason to refrain from taking a narrow or destructive view of the provisions for calling such meetings.⁴⁰

[47] Each of these considerations favours the construction of Branch Rule 77(b) advanced by the Branch. In my view any meeting of the Branch National Executive may resolve to hold a Special Meeting of the Branch National Executive.

[48] For completeness I note Mr Gellatly’s submission set out in paragraph [19] above. I understand the substance of that submission to be that the Branch Executive demonstrated their acceptance of Mr Gellatly’s position by delegating to one of their own power to jointly call Special Branch National Executive meetings. This was done some time after Ms Smith’s appointment.

[49] I accept the Branch’s response to this submission. The Branch submitted:

This initiative was taken by the National Executive by resolution on 16 December 2015, after Mr Gellatly commenced a period of personal leave that the National Executive apprehended might be lengthy (indeed he is still on personal leave now). It was intended for the Christmas/New Year/January period, to allow a Special National Executive meeting to be convened without fixing one in advance for that period when it might not be needed. Up until that resolution was adopted, the National Executive had convened its meetings, post 8 September 2015, by resolution at a previous meeting.

But, in any case, the adoption of such a resolution is not inconsistent with the interpretation of Rule 77 for which we contend.⁴¹

[50] The Branch produced minutes for each of the Special Branch National Executive Meetings held between 16 September 2015 and the 11 November 2015 meeting at which Ms Smith was appointed. In each case the Minutes include a resolution to convene the next Special Branch National Executive Meeting.

[51] Mr Gellatly “urge[d] the Commission to exercise caution in accepting the veracity of minutes of any special meeting of the Branch National Executive”⁴² and sought to cast doubt on the accuracy of the Minutes. I am not persuaded by this submission. It was made when Mr Gellatly had not seen any of the Minutes in question and was unaware of their content. As noted in paragraph [22] above, Mr Gellatly sought and obtained copies of the Minutes and was invited to elaborate on his concerns. He did not do so.

[52] I am satisfied that a Special Branch National Executive Meeting took place on 11 November 2015 and that Ms Smith was validly appointed to the vacant office of Branch National President at that meeting.

[53] There are two final issues that must be addressed.

[54] First, Mr Gellatly submits that Ms Smith was appointed in a manner contrary to Branch Rule 73(d)(i). Mr Gellatly relies on the following legal advice:

Rule 73(d)(i) relevantly, in circumstances where there is a casual vacancy in the position of Branch National President, directs the CEO to “take immediate action to have such vacancy filled”. I do not take these words quoted as meaning that the vacant office of National President needs to be filled immediately, rather the CEO is obliged to immediately commence the process to have the vacancy filled, which process must be in accordance with the rules.

...

I do not consider that rule 73(d)(i)(a) provides an option for the National Executive to take if the CEO does not take immediate action to have a casual vacancy filled.⁴³

[55] I do not accept this submission. It ignores the proviso: “provided that” at the conclusion of the sub rule. That proviso vests in the Branch National Executive the power to fill a relevant casual vacancy in certain circumstances. That proviso was utilised in the present case.⁴⁴

[56] Secondly, Mr Gellatly submits that the process used to fill the National President vacancy was not appropriate. He stated:

Without any prior discussion with other members of the Branch National Council (BNC), who under the Rule 73(d)(i)(a) also are entitled to be considered for appointment, on 11 November 2015, 4 members of Branch National Executive (four voting members), convened and appointed Ms Smith as the replacement AFPA President.

Members of the BNC have since questioned the legitimacy of the appointment under the Rules.⁴⁵

[57] There is nothing in the Branch Rules which mandates such a process. Branch Rule 73(d)(a)(i) merely requires the Branch National Executive to appoint an eligible member of the Branch Council. It is silent as to the manner by which one eligible Branch Council member is chosen over the next. Ms Smith was a member of the National Council. No one has suggested she was not an eligible member. This challenge must also fail.

[58] I am satisfied that Ms Smith was validly appointed to the office of Branch National President. The office of Branch Vice President AFP ACT Operations Portfolio became vacant as a consequence. I am therefore satisfied that an election for the office of Branch Vice President AFP ACT Operations Portfolio is required to be held under the rules of the organisation and, under subsection 189(3) of the Act, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE GENERAL MANAGER

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¹ [2016] FWCD 835; PR576842.

² [2016] FWCD 835 at paragraph [4].

³ See E2012/411, declaration of returning officer dated 1 May 2013. See also Branch Rule 73(1)(a).

⁴ See Branch Rule 73(1)(a).

⁵ See Branch Rule 73(d)(i)(a). The proper application of this rule will be returned to below.

⁶ See Final Minutes of 4 November 2015 Special Branch National Executive Meeting - resolution carried in relation to motion 10.4.

⁷ See Final Minutes of 11 November 2015 Special Branch National Executive Meeting - resolution carried in relation to motion 9.1.

⁸ See E2015/116, declared 17 June 2015.

⁹ See Branch Rules 66(a)(iii) and 67(a)(i).

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- ¹⁰ See *Johnson v Beitseen* [1989] FCA 80 at paragraphs 43 – 47; See also *Mellor v Horn* [1988] FCA 214 at paragraphs 7 – 9
- ¹¹ Ibid
- ¹² See subsection 189(3)(b) of the Act.
- ¹³ See E2012/411, declaration of returning officer dated 1 May 2013 and Branch Rule 66(a)(ii).
- ¹⁴ See Branch Rule 67(a)(i).
- ¹⁵ See Branch Rule 76(a).
- ¹⁶ See Rule 80
- ¹⁷ Correspondence from Dennis Gellatly to Ms Debbie Ball dated 8 December 2015 at pages 1 – 2.
- ¹⁸ Correspondence from Dennis Gellatly to Ms B. O’Neill dated 23 December 2015 at page 1.
- ¹⁹ Ibid at page 2.
- ²⁰ Correspondence from Dennis Gellatly to Ms B. O’Neill dated 8 February 2016 at page 1.
- ²¹ Ibid at page 2.
- ²² Ibid at page 2.
- ²³ Ibid at page 2.
- ²⁴ Correspondence from M. Elliott to A. Smith dated 1 March 2016. Note that the quoted point referred for instance to *Joske’s Law and Procedure at Meetings In Australia Tenth Edition*, Lawbook Co, 2007 at 3.05
- ²⁵ Correspondence from Ben Tallboys, Russell Kennedy Lawyers of 22 March 2016 at pages 2 – 3.
- ²⁶ See NSD1038/2015
- ²⁷ See R2016/86.
- ²⁸ P. Punch’s 10 March 2016 submissions on behalf of the Branch at page 2 and B Tallboy’s 22 March 2016 submissions for Mr Gellatly at page 1.
- ²⁹ B Tallboy’s 22 March 2016 submissions for Mr Gellatly at page 1.
- ³⁰ Ibid at page 1
- ³¹ P. Punch’s 10 March 2016 submissions on behalf of the Branch at page 3 and Attachment II.
- ³² B Tallboy’s 22 March 2016 submissions for Mr Gellatly at page 1.
- ³³ *Horsleys’ Meetings, Procedure Law and Practice*; 7th Edition; AD Lang; LexisNexis Butterworths; Australia 2015 at 4.19.
- ³⁴ Advice given to Mr Gellatly by R.S.Warren on 26 August 2016 at dot point 11; See also Mr Warren’s advice to Mr Gellatly of 24 November 2016 at dot point 9.
- ³⁵ B Tallboy’s 22 March 2016 submissions for Mr Gellatly at page 2.
- ³⁶ P. Punch’s 10 March 2016 submissions on behalf of the Branch at page 5 – 6.
- ³⁷ P. Punch’s 10 March 2016 submissions on behalf of the Branch at page 6 (paragraph 3).
- ³⁸ P. Punch’s 15 April 2016 submissions on behalf of the Branch at page 1.
- ³⁹ [2012] FCAFC 53 at [49]-[53] per Flick J.
- ⁴⁰ (1978) 20 ALR 421 at 490 per Smithers J. See also *Rennie v Curley* [1997] FCA 765 & *Geneff v Peterson* (1986) 19 IR 40.
- ⁴¹ P. Punch’s 10 March 2016 submissions on behalf of the Branch at page 8
- ⁴² B Tallboy’s 22 March 2016 submissions for Mr Gellatly at page 2.
- ⁴³ Advice given to Mr Gellatly by R.S.Warren 24 November 2016 at paragraphs 12, 15.
- ⁴⁴ See 4 November 2015 Special National Executive Meeting Minutes at resolution 10.3; 6 November 2015 Special National Executive Meeting Minutes at resolution 10.3.2 point 6; 11 November 2015 Special National Executive Meeting Minutes at resolution 10.3.1
- ⁴⁵ Correspondence from Dennis Gellatly to Ms Debbie Ball dated 8 December 2015 at page 1



DECISION

Fair Work (Registered Organisations) Act 2009
s.189—Arrangement for conduct of an election

Police Federation of Australia
(E2016/60)

MR ENRIGHT

MELBOURNE, 19 FEBRUARY 2016

Arrangement for conduct of election.

[1] On 22 January 2016 the Australian Federal Police Association Branch of the Police Federation of Australia (the Branch) lodged with the Fair Work Commission the prescribed information in relation a casual vacancy election, for the remainder of the term, for the following offices:

Branch Vice President AFP ACT Operations Portfolio	(1)
Branch Vice President AFP Close Operations Portfolio	(1)

[2] Further information was provided by the Branch on 10 February 2016.

[3] I am satisfied that an election for the Branch Vice President AFP Close Operations Portfolio is required to be held under the rules of the organisation and, under subsection 189(3) of the *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.

[4] The circumstances surrounding the vacancy said to arise in the office of Branch Vice President AFP ACT Operations Portfolio are potentially more complex. Officers from the Fair Work Commission are currently engaging with officers of the Branch on my behalf in relation to the matter and I will determine whether or not to make arrangements for the conduct of an election in due course.



DELEGATE OF THE GENERAL MANAGER

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Copy of Prescribed Information

Title of Matter: Application/Notification by Police Federation of Australia-Australian Federal Police Association Branch
Section: s.189(1) RO Act - Notification of elections for office - Casual vacancy or insufficient nominations
Subject: Branch Vice-President AFP ACT Operations Portfolio, Branch Vice-President AFP Close Operations Portfolio
Matter Number(s): E2016/60

Attn: Electoral Officer

A copy of the Prescribed Information in relation to the above matter is attached for your information.

The election decision will be forwarded to your office in due course.

Inquiries:

Any inquiries relating to this are to be directed to: orgs@fwc.gov.au.

5 FEBRUARY 2016


Statement of Prescribed Information for an Election

I, Angela Smith, being the National President of the Australian Federal Police Association Branch of the Police Federation of Australia, make the following statement:

I am the National President of the Australian Federal Police Association Branch of the Police Federation of Australia,

I am authorised to lodge the following prescribed information concerning forthcoming elections in the National President of the Australian Federal Police Association Branch of the Police Federation of Australia, and

I confirm that the following information is being lodged under subsection 189(1) of the *Fair Work (Registered Organisations) Act 2009*.

Signed: 

Dated: 21 January 2016

Offices/Positions

Branch Vice-President AFP ACT Operations Portfolio Branch Vice-President AFP Close Operations Portfolio
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Reasons for election:

- Election for office is required to fill casual vacancies that have recently occurred (documentary information relating to the resignation of the persons holding the offices of Branch Vice-President AFP Chief Operating Officer Portfolio, Branch Vice-President AFP Close Operations is enclosed)

Elected by:

- The electorate for collegiate electoral system is by and from the Branch National Council, totalling 41 persons (Rule 73(d)(ii))

Roll of Voters

- The Roll of voters shall close on a date to be determined by the Returning Officer

Nominations and ballot open and close:

- To be determined by the Returning Officer (Rule 73(d)(ii))

Electoral system

- The electoral system to be used in the election is a collegiate electoral system