



Fair Work (Registered Organisations) Act 2009

POST ELECTION REPORT

**Australian Education Union
Northern Territory Branch**

ELECTION COVERED IN THIS REPORT

Election Decision No: E2014/132

RULES

Rules used for the election: 284v: Incorporates alterations of 6 January 2014 –
(Federal Branch Rules – Northern Territory Branch -
R2013.266)

Rules difficult to apply/interpret: None

Model Rule reference (if any): N/A

ROLL OF VOTERS

As there were no contested offices, no Roll of Voters was required.

ALLEGATIONS OF IRREGULARITIES RECEIVED

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

Other irregularities identified and action taken: None

ATTACHMENT

Declaration of Results

Chris Roper
Assistant Manager
Elections Services

24 September 2014



Australian Education Union Northern Territory Branch

Declaration of Results for Uncontested Offices

E2014/132

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.

Branch Executive Councillors – Darwin Region (3)

Candidates

BURY, Rachel
GEORGE, Barry
LEPPITT, Alice

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

Chris Roper
Returning Officer

25 August 2014



DECISION

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

Australian Education Union
(E2014/132)

MR ENRIGHT

MELBOURNE, 13 MAY 2014

Arrangement for conduct of election.

[1] On 30 April 2014 the Australian Education Union - Northern Territory Branch lodged with the Fair Work Commission the prescribed information in relation to an election for the following offices due to insufficient nominations in E2013/207:

Branch Executive Councillors - Darwin Region (2)

[2] On the same date the organisation lodged the prescribed information in relation to an election to fill a casual vacancy for the remainder of the term of office in the following office:

Branch Executive Councillor - Darwin Region (1)

[3] I am satisfied that an election for the abovenamed offices 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.



DELEGATE OF THE GENERAL MANAGER



Ref: 3004140030

30 April 2014

Manager
Fair Work Commission
GPO Box 1994, Melbourne, 3001

Dear Manager,

RE: 2014 AEU-NT Election - alteration

On 12 March 2014 I submitted notification of 2014 AEU NT Elections, our reference 1203140023.

At that time there were vacant positions on the AEU NT Executive for two Darwin Executive Council Members because of insufficient nominations during the 2013 elections, see Attachment 1.

We believed that asking for another election then would not have been successful because no further nominations were likely.

On 31 March 2014, Liam Phillips resigned as Darwin Executive Council Member, see Attachment 2.

Previously these vacancies would be addressed in accordance with Rules 117- Insufficient Nominations, 118 - Casual Vacancy and 27 - Branch Conference and Branch Executive - Filling Casual Vacancy.

That is to say that normally these positions would be filled by nomination of a financial member through the Darwin Regional Council, when a member had indicated that they now wished to nominate for the position(s).

I am advised by the Darwin Regional Council that a number of members have indicated they would now like to nominate for the Executive Council Member positions.

However, the advice received from the FWC last year regarding our current Rule 27 - Branch Conference and Branch Executive - Filling Casual Vacancy, precludes us from following that course of action at this time, see Attachment 3.

Specifically, as the term of office remaining for these positions exceeds 18 months they may only be filled by election to be consistent with Section 146 of the Registered Organisations Act.

Accordingly I request that you initiate election proceedings for the vacant AEU NT Branch Executive Council positions representing the Darwin region.

I believe an examination of our membership records will affirm that the Darwin region shall be entitled to elect 4 Executive Council Members and as there is currently only one, Judy Boland, on Executive a further 3 positions will be open to election.

The relevant AEU-NT rules are numbers 18 (a) (vi), 108 (d) , 109 and 110 – given below .

The relevant AEU-NT rules are:

18 - CONSTITUTION OF BRANCH EXECUTIVE

- (a) The Branch Executive shall consist of the following -
 - (i) Branch President,
 - (ii) Vice-President (General) and Vice-President (TAFE),
 - (iii) Branch Secretary,
 - (iv) Treasurer,
 - (v) Women's Officer,
 - (vi) Executive Councillors from each Region, elected on a basis of one member for every 200 members or part thereof;
 - (vii) An Executive Councillor representing Indigenous teachers and Indigenous education workers in schools and educational institutions.
- (b) The Branch officers shall be the Branch President, Vice-President (General), Vice-President (TAFE), Branch Secretary, Treasurer and Women's Officer.
- (c) For the purposes of Rule 136 only, the position of Secretary will be deemed to be a higher position than that of Vice-President (General) or Vice-President (TAFE).

108 - ELECTION OF MEMBERS OF BRANCH EXECUTIVE

- (a) The Branch President shall be biennially elected by financial members of the Branch by secret postal ballot.

- (b) The Vice-President (General) shall be elected from and by the financial members of the General Division, and the Vice-President (TAFE) shall be biennially elected by and from the financial members of the TAFE Division. The Treasurer shall be biennially elected by and from financial members of the Branch. The Woman's Officer shall be a female, biennially elected by and from financial members of the Branch. These elections shall be by secret postal ballot.
- (c) The Branch Secretary shall be elected for a term of 3 years by secret postal ballot.
- (d) Executive Council Members shall be biennially elected by financial members of their respective Regions in a secret postal ballot from 2001.

109 - NOMINATIONS - BRANCH EXECUTIVE

Nominations for positions on Branch Executive shall be called in accordance with this Rule

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- (a) The Returning Officer shall call for nominations not later than 22nd July. The closing date for nominations shall be 5.00 p.m. on the 21st day of August;
- (b) Nominations shall be in writing, signed by 2 financial members and by the candidate as acceptance of the nomination;
- (c) The Returning Officer shall call for nominations by sending to all Sub- Branches a notice which shall specify the following:-
 - (i) the designations of the positions for which nominations are being called and the number of positions to be filled in respect of each designation;
 - (ii) the address to which nominations are to be forwarded (for this purpose the Returning Officer shall rent a post office box in Darwin);
 - (iii) the time and date of closure of nominations;
 - (iv) that a nomination to be valid shall be signed by at least 2 financial members other than the member nominated and by the latter to indicate that she/he consents to the nomination;
 - (v) that a separate form of nomination must be submitted in respect of each position for which a member is nominated;
- (d) A Returning Officer shall only accept a nomination for Branch Executive positions which comply with the requirements of these Rules. When she/he received a defective nomination, she/he shall forthwith notify the person concerned of the defect and, where it is practicable to do so, give him/her the opportunity of remedying the defect which shall, where practicable, be not less than 7 days after his/her so being notified;
- (e) Subject to (d) a Returning Officer shall notify all candidates of the acceptance or rejection of their nominations.

110 - BALLOT - BRANCH EXECUTIVE

The ballot for Branch Executive positions shall be held in accordance with this rule.

(a) On the closing of nominations, the Returning Officer shall cause a ballot paper to be printed in respect of those positions for which an election is necessary. Such ballot paper may contain provision for voting for more than one position or separate ballot papers may be prepared in respect of each contested position. A ballot paper shall:

(i) list candidates for each position in the order determined by lot by the Returning Officer and state the position for which they are candidates;

(ii) include instructions on how to vote;

(iii) state the date and time of closing of the ballot and the postal address to which the ballot paper shall be returned.

(b) All members who are financial members of the Union attached to the Branch at the date of closing of the roll of voters shall be eligible to vote. The Branch Secretary, shall provide the Returning Officer with a list of such members showing the full name and address and place of employment of each member.

(c) Not later than 14th September the Returning Officer shall forward by prepaid post to each financial member a ballot paper in respect of each position to be voted on. Such envelope shall also contain a smaller declaration envelope in which the voter shall place his/her completed ballot paper or papers and a larger pre-addressed envelope for return to the Returning Officer. Both envelopes shall be in the form prescribed by the regulations made under Schedule 1B of the Workplace Relations Act 1996.

(d) Ballot papers shall be returned to the Returning officer not later than 5.00 p.m. on 15th October. Only ballot papers then received by the Returning Officer shall be included in the count.

The ballot, including the appointment of a Returning Officer, will be conducted through the Australian Electoral Commission.

The voting system for these elections shall be a **direct voting system**.

105(a)(ii) of the AEU-NT Rules states:

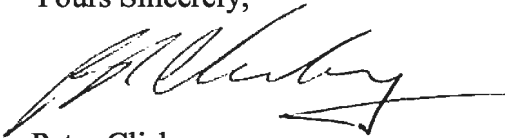
to vote at any election or any meeting or in any plebiscite; provided that the roll of voters for any election to be conducted pursuant to these rules is to be closed seven days before the day on which nominations are opened in relation to all elections by a direct voting system for offices in the Branch.

Hence, **the roll of voters** for these elections will be closed seven days before the day nominations open.

I am lodging the above prescribed information in relation to these elections which are required to be held for the above mentioned offices of the AEU-NT, in accordance with Section 189(1) of the Fair Work (Registered Organisations) Act 2009.

Please contact me if you further wish to discuss these matters.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Clisby', with a long horizontal flourish extending to the right.

Peter Clisby
Secretary, AEU-NT

30/11/2014

Australian Education Union Northern Territory Branch

DECLARATION OF RESULTS FOR CONTESTED AND UNCONTESTED OFFICES

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.

E2013/207

Branch Secretary (1)

Total number of names on the roll of voters	1810
Ballot papers issued	1795
Duplicate ballot papers issued	13
TOTAL BALLOT PAPERS ISSUED	1808
Ballot papers / envelopes returned for scrutiny	551
Less ballot papers / envelopes rejected at preliminary scrutiny	14
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	537
Percentage of ballot papers returned to number issued	30.7%
Ballot papers returned as unclaimed mail	6
Ballot papers not returned	1251

<u>Candidates</u>	<u>First Preference Votes</u>	<u>Votes</u>
CLISBY, Peter	338	338
LAMPE, Adam	195	195
Total votes	533	533
Formal ballot papers	533	533
Informal ballot papers	4	4

I declare Peter Clisby elected.

Branch Executive Councillor – Arnhem Region (2)

Total number of names on the roll of voters	261
Ballot papers issued	261
Duplicate ballot papers issued	0
TOTAL BALLOT PAPERS ISSUED	261
Ballot papers / envelopes returned for scrutiny	40
Less ballot papers / envelopes rejected at preliminary scrutiny	0
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	40
Percentage of ballot papers returned to number issued	15.3%
Ballot papers returned as unclaimed mail	0
Ballot papers not returned	221

<u>Candidates</u>	<u>Primary Votes</u>
TREE, Antony R	13
PARKIN, Dean	25
SANDFORD, Michael John	23
Exhausted Votes	13
Formal primary votes	74
Primary votes each ballot paper	Divided by 2
Formal ballot papers	37
Informal ballot papers	3

I declare Dean Parkin and Michael Sandford elected.

Branch Executive Councillor – Katherine Region (1)

Total number of names on the roll of voters	170
Ballot papers issued	170
Duplicate ballot papers issued	0
TOTAL BALLOT PAPERS ISSUED	170
Ballot papers / envelopes returned for scrutiny	43
Less ballot papers / envelopes rejected at preliminary scrutiny	2
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	41
Percentage of ballot papers returned to number issued	25.2%
Ballot papers returned as unclaimed mail	0
Ballot papers not returned	127

<u>Candidates</u>	<u>First Preference Votes</u>	<u>Votes</u>
FOTAKIS, Sheryl	28	28
MCGILLIVRAY, Wayne	13	13
Total votes	41	41
Formal ballot papers	41	41
Informal ballot papers	0	0

I declare Sheryl Fotakis elected.

Branch Executive Councillor – Alice Springs Region (2)

Candidates

PHILLIPS, Carly
THORNTON, Paula

I declare Carly Phillips and Paula Thornton elected.

Branch Executive Councillor – Barkly Region (1)

Candidate

SMALL, Bernard John

I declare Bernard Small elected.

Branch Executive Councillor – Darwin Region (4)

Candidates

BOLAND, Judith Maree
PHILLIPS, Liam
No further nominations received

I declare Judith Boland and Liam Phillips elected.

Branch Executive Councillor – Palmerston & Rural Region (2)

Candidates

HARDCASTLE, Peter
WINSLADE, Glynis

I declare Peter Hardcastle and Glynis Winslade elected.



Chris Roper
Returning Officer
Australian Electoral Commission

16 October 2013



DECISION

Fair Work (Registered Organisations) Act 2009
s.159—Alteration of other rules of organisation

Australian Education Union
(R2013/266)

MR ENRIGHT

MELBOURNE, 6 JANUARY 2014

Alteration of other rules of organisation.

[1] On 28 June 2013, the Australian Education Union lodged with the Fair Work Commission a notice and declaration setting out particulars of alterations to the rules of the Australian Education Union - Northern Territory Branch (the Branch). On 11 December 2013, the Branch provided further information to the Commission regarding the procedure undertaken to alter the rules.

[2] The particulars provide for, among other alterations, the insertion of new rules 141 to 145 into the rules of the organisation. These alterations were made for the purpose of complying with provisions of the *Fair Work (Registered Organisations) Amendment Act 2012* (the Amendment Act) regarding the rules of registered organisations. In particular, the alterations provide for specified disclosures, the implementation of policies relating to expenditure, the mandatory training of officers with duties that relate to the financial management of the organisation and consequential renumbering of rules.

[3] The particulars also set out alterations to existing rule 27 which were made for the purpose of clarifying casual vacancy rules in relation to particular positions.

The 35 day period for lodgment

[4] Regulation 126(1) of the *Fair Work (Registered Organisations) Regulations 2009* (the Regulations) requires an alteration of the rules of a registered organisation to be lodged within 35 days after the alteration is made or within any additional period that the General Manager may allow.

[5] The declaration that accompanied the notifications indicates that the alterations were made by the NT Executive on 10 May 2013. During communications between the staff of the Fair Work Commission and the Branch, the Branch expressed the belief that they had sent the documents to the Commission sometime between 27 and 30 May 2013 and therefore within the specified period. However, there is no record of the Commission receiving the notification and, once this was discovered, the documents were lodged with the Commission without further delay.

[6] Though the Branch was unable to provide evidence of the date of lodgment, it drew the Commission's attention to the fact that the notification is dated 27 May 2013. While the

possibility exists that the documents were lodged within time, in the event that they were not, regulation 126(1) provides me with the discretion to allow any additional period for lodgement of this notification. The words 'any additional period' do not import any constraint on the timing of or on the length of the additional period. On this occasion I have exercised my discretion to allow an additional period of fourteen days, being the period between 35 days after the alterations were made on 10 May 2013 and when the Commission has evidence they were lodged on 28 June 2013.

Casual vacancies

[7] Currently sub rule 27(b) outlines a manner for filling casual vacancies in offices of Treasurer, Vice-President, the Women's Officer, and Executive Councillor. The existing sub rule provides that should the office become vacant the relevant body shall appoint a person to the office for the remainder of the term. Existing rule 108 provides for a two year term for the offices listed in sub rule 27(b).

[8] Section 146 of the RO Act requires that while the rules of an organisation may provide for the filling of a casual vacancy it cannot do so by a method other than by ordinary election for so much of the unexpired part of the term as exceeds 12 months or three-quarters of the term of the office, whichever is the greater. As such, currently rule 27(b) provides a manner of filling a casual vacancy other than by an ordinary election for a period which is not limited to eighteen months, and therefore contravenes s146 of the RO Act.

[9] The proposed alterations to sub rule 27(b) provide that Vice-President (TAFE) shall be appointed from the members of the TAFE Division and that an Indigenous person shall be appointed to the office of Executive Councillor representing Indigenous teachers and Indigenous education workers.

[10] The contravention of the RO Act as explained in paragraphs [7] and [8] of this decision exists and will continue to exist irrespective of whether or not the alterations to sub-rule are certified. In so far as the proposed alterations set out the pool of persons from which appointments can be made and in so far as the existing sub rule 27(b) is already in contravention of s146 of the RO Act, I am unable to certify this alteration.

Severability

[11] I must now turn my mind to whether or not the alteration to sub-rule 27(b) is severable from the remainder of the alterations. In reaching my decision, I refer to the authority *In Re Food Preservers' Union of Australia*¹ in which the question of severing rules was considered. The majority held that:

....where an organisation has made alterations to a number of its rules, each rule and alteration being completely independent of any other rule or alteration, the Registrar would be free to give his certificate with respect to some of those rule alterations and to refrain from giving his certificate with respect to others. On the other hand, where alterations to rules are dependent upon other alterations to rules, difficulties arise where the certificate is given to some of the alterations and not to others."

[12] Their Honours go on to note:

There would need to be a full examination of all the rules to ascertain whether the meaning and effect of the rules to which the certificate had been given had been altered or modified by the fact that some rules or parts of rules have not come into effect.ⁱⁱⁱ

[13] Sub rule 27(b), as discussed above, concerns casual vacancies. With this in mind, I am satisfied that its removal would not affect those alterations that relate wholly to the Amendment Act.

[14] However the particulars contain alterations to sub rules 27(a) and 27(c) both of which affect the casual vacancy rule. An examination of sub rules 27(a) and 27(c) demonstrates that they relate to the offices of Branch President and Branch Secretary, further they are fundamentally different to 27(b) in that they both provide for elections when the unexpired portion of the term exceeds 12 months. The alterations, in both cases, seek to limit the term of the election to the unexpired portion of the predecessor's term. In my opinion, because sub rule 27(b) relates to the pool of people from which appointments are made, the refusal to certify the alterations to this rule does not affect the meaning or effect of the alterations to sub rules 27(a) and 27(c).

[15] As the removal of the alterations to sub rule 27(b) do not affect the meaning or the effect of the other alterations, they are, in my view, sufficiently independent and therefore able to be severed from remaining alterations contained in the notice of particulars.

The existing rule 27(b)

[16] As stated above, s146 of the RO Act mandates that rules relating to casual vacancies of more than 12 months or three-quarters of the term (whichever is the greater), must require that they be filled by ordinary election. In my view, current sub rule 27(b) contravenes this requirement. I urge that the Branch remedy this contravention, and I urge that it be remedied as expeditiously as possible.

[17] On the information contained in the notice, and the subsequent communication to the Commission on 11 December 2013, I am satisfied the alterations have been made under the rules of the organisation.

[18] In my opinion, with the exception of sub rule 27(b), the alterations comply with and are not contrary to the *Fair Work (Registered Organisations) Act 2009* (the RO Act), the Amendment Act, the *Fair Work Act 2009*, modern awards and enterprise agreements, and are not otherwise contrary to law. I certify accordingly under subsection 159(1) of the RO Act.



DELEGATE OF THE GENERAL MANAGER

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¹ (1988) 79 ALR 138

² *Re Food Preservers' Union of Australia and Another* (1988) 79 ALR 138 per Northrop & Ryan JJ at 145.

³ *Ibid* at 146.