

Fair Work (Registered Organisations) Act 2009

**POST ELECTION REPORT**

**Client:** Australian Nursing and Midwifery Federation Western Australian Branch  
**Contact details:** Mark Olson **Email:** [Mark.Olson@anfiuwp.org.au](mailto:Mark.Olson@anfiuwp.org.au)  
**Tel:** 08 6218 9444

**FWA contact officer:** Carolyn Moloney **Email:** [carolyn.moloney@fwc.gov.au](mailto:carolyn.moloney@fwc.gov.au)  
**Tel:** Not provided

**ELECTION/S COVERED IN THIS REPORT**

Election Decision No/s: E2015/196

**RULES**

Rules used for the election: [145V: Incorporates alterations of 25/02/2015 (R2015/18)] (*replaces 02/01/2014 (R2013/442) version*)

Model Rule reference (if any): N/A  
Rules difficult to apply/interpret: Nil  
Model Rule reference (if any): Nil

**ROLL OF VOTERS**

The roll of voters was supplied by the ANMF WA Branch. As there was not a contest the roll was not used.

**IRREGULARITIES**

Details of written allegations of irregularities, and action taken by AEC: Nil

Other irregularities identified, and action taken:

**ATTACHMENTS**

Declaration of Results for Contested Uncontested Offices



Simon Bulloch  
Returning Officer  
23 September 2015

# Australian Nursing and Midwifery Federation WA Branch Election

## Declaration of Results for Uncontested Offices

E2015/196

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.

### Western Australian Branch

#### Branch President

##### Candidates

FOWLER, Trish

#### Branch Executive Committee Members (2)

##### Candidates

CLANCY, Michael Barrie  
MARIE, Dorothy

#### Branch Councillors (9)

##### Candidates

BARRON, Samuel  
CASEY, Dean James  
DANIELS, Elaine  
MAGILL, Andrea  
MCDERMOTT, Megan  
NATOLI, Lisa Maree  
TUTT, Lyn  
VOKE, Stephen  
WATERS, Beth

#### Branch Councillors (casual vacancy) (2)

##### Candidates

No nominations were received

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



Simon Bulloch  
Returning Officer

22 September 2015



## DECISION

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

### **Australian Nursing and Midwifery Federation** (E2015/196)

MR ENRIGHT

MELBOURNE, 6 AUGUST 2015

*Arrangement for conduct of election.*

[1] On 29 June 2015 the Western Australian Branch (the Branch) of the Australian Nursing and Midwifery Federation (the ANMF) lodged with the Fair Work Commission (the Commission) the prescribed information in relation to an election for the following offices:

|                                    |     |
|------------------------------------|-----|
| Branch President                   | (1) |
| Branch Executive Committee Members | (2) |
| Branch Councillors                 | (9) |

[2] On the same day the Branch also lodged with the Commission the prescribed information in relation to an election due to insufficient nominations in a previous election (E2014/171):

|                    |     |
|--------------------|-----|
| Branch Councillors | (2) |
|--------------------|-----|

[3] Rule 51 of the ANMF rules deals with casual vacancies. Subrule 51.6 provides that where an election has been held for any office in the ANMF or any of its branches but no person has been elected, a further election shall be conducted. It further provides that in conducting the latter election the casual vacancy election procedures shall, so far as practicable, apply. Subrule 51.3 provides that where an election is required to fill a casual vacancy, such election shall be conducted ‘as soon as possible’.

[4] In my view, it is practicable, as contemplated by subrule 51.6, to conduct an election as soon as possible where an election is required because insufficient nominations were received in an earlier election.

[5] In a previous decision concerning the Branch (E2013/203; [2013] FWCD 3943), I noted that the prescribed information for an election was lodged some eight months after the declaration of the results formally indicated that the offices had not been filled. I also noted that such a period did not appear to meet the requirement in subrule 51.3 for an election to be held “as soon as possible” and that future prescribed information should be lodged with the Commission in a more timely manner.

[6] The circumstances of that decision are similar to those of the election currently before me, for which the prescribed information was lodged approximately nine months after the declaration of results formally notified the ANMF of several vacancies.

[7] On 22 July 2015 the Commission wrote to the Branch and, with reference to the previous decision in E2013/203, requested an explanation for what appeared to be an even greater delay in lodging prescribed information in relation to the vacancies for the two Branch Councillors than had occurred in E2013/203.

[8] On 28 July 2015 the Commission received correspondence from the Branch Secretary Mr Mark Olson. Mr Olson indicated that the Branch conducts elections each year and that the Branch believed that because it had not received any enquiries from its members regarding the unfilled 2014 casual vacancies, it believes that including the casual elections in the 2015 elections is conducting elections ‘as soon as possible’.

[9] Mr Olson opined that the alternative would involve the Branch constantly calling for elections and considered that such a scenario would be impractical.

[10] In this regard I note that section 5(3)(d) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) provides that one of the standards set out in the RO Act is to ‘provide for the democratic functioning and control of organisations’. A key component of democratic functioning includes the conduct of regular scheduled elections to ensure that the number of office holders elected by members of an organisation corresponds with the number provided in its rules. It is a normal and reasonable expectation that registered organisations take steps to ensure that they comply with the time-frame requirements set out not only in the RO Act but also in instruments or references pertaining to the governance arrangements formulated by organisations themselves.

[11] In my decision in E2013/203 I advised the Branch that a period of eight months after the declaration of election results did not appear to meet the requirement for an election to be held ‘as soon as possible’. The logic of that analysis, requires me to now draw a similar conclusion that lodging prescribed information nine months after the declaration of election results does not meet the requirement for an election to be held ‘as soon as possible’.

[12] It may be that lodging prescribed information for unfilled offices at what appears to be annual elections for offices in the Branch is a matter of convenience for the Branch. In my view, such a matter of convenience does not comply with sub rule 51.3 which requires that the vacancy be filled by an election conducted as soon as possible.

[13] Further, it appears from an analysis of the available material that the two Branch Councillor offices which have been included in the prescribed information lodged for the purposes of E2015/196 have now been vacant for a continuous period approaching 3 years (since 2012).

[14] I do not propose to frustrate the democratic function of the ANMF and its Branch to conduct an election to fill the unfilled offices. However, I reiterate that future prescribed information in relation to elections arising as a result of casual vacancies or insufficient nominations must be lodged with the Commission in a more timely manner in accordance with the organisation’s rules.

[15] Having considered all of the available material and circumstances, 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 RO 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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## Copy of Signed Decision

**Title of Matter:** Application/Notification by Australian Nursing and Midwifery Federation-Western Australian Branch

**Section:** s.189(1) RO Act - Notification of elections for office

**Subject:** WA Branch - Branch President; Branch Executive Committee Members (2); Branch Councillors (9); and 1-year casual vacancies for Branch Councillors (2).

**Matter Number(s):** E2015/196

A copy of the Delegate's election decision in relation to the above matter is attached for your information.

**Please note:** Section 233(2) of the *Fair Work (Registered Organisations) Act 2009* requires details of changes to an organisation's records be declared to the Fair Work Commission. This includes changes resulting from the conduct of elections. Changes must be declared within 35 days of their occurrence.

### Inquiries:

Any inquiries relating to this are to be directed to Carolyn Moloney  
Phone: 02 8374 6510, email: carolyn.moloney@fwc.gov.au, Fax: 02 9380 6990.

**6 AUGUST 2015**



# Copy of Signed Decision

**Title of Matter:** Application/Notification by Australian Nursing and Midwifery Federation-Western Australian Branch  
**Section:** s.189(1) RO Act - Notification of elections for office  
**Subject:** WA Branch - Branch President; Branch Executive Committee Members (2); Branch Councillors (9); and 1-year casual vacancies for Branch Councillors (2).  
**Matter Number(s):** E2015/196

Dear Australian Electoral Commissioner via the Electoral Officer

Under subsection 189 of the *Fair Work (Registered Organisations) Act 2009*, please arrange for the conduct of the above election.

A copy of the Delegate's decision is attached for your information.

The relevant rulebook can be accessed via the Fair Work Commission's [website](#).

**Contact:** Mr Mark Olson of the organisation, as per the prescribed information.

Please send the declaration(s) and post election report to the Fair Work Commission at [orgs@fwc.gov.au](mailto:orgs@fwc.gov.au).

**Inquiries:**

Any inquiries relating to this matter are to be directed to Carolyn Moloney through [orgs@fwc.gov.au](mailto:orgs@fwc.gov.au).

**6 AUGUST 2015**



## DECISION

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

### **Australian Nursing and Midwifery Federation** (E2015/196)

MR ENRIGHT

MELBOURNE, 6 AUGUST 2015

*Arrangement for conduct of election.*

[1] On 29 June 2015 the Western Australian Branch (the Branch) of the Australian Nursing and Midwifery Federation (the ANMF) lodged with the Fair Work Commission (the Commission) the prescribed information in relation to an election for the following offices:

|                                    |     |
|------------------------------------|-----|
| Branch President                   | (1) |
| Branch Executive Committee Members | (2) |
| Branch Councillors                 | (9) |

[2] On the same day the Branch also lodged with the Commission the prescribed information in relation to an election due to insufficient nominations in a previous election (E2014/171):

|                    |     |
|--------------------|-----|
| Branch Councillors | (2) |
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[3] Rule 51 of the ANMF rules deals with casual vacancies. Subrule 51.6 provides that where an election has been held for any office in the ANMF or any of its branches but no person has been elected, a further election shall be conducted. It further provides that in conducting the latter election the casual vacancy election procedures shall, so far as practicable, apply. Subrule 51.3 provides that where an election is required to fill a casual vacancy, such election shall be conducted ‘as soon as possible’.

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[5] In a previous decision concerning the Branch (E2013/203; [2013] FWCD 3943), I noted that the prescribed information for an election was lodged some eight months after the declaration of the results formally indicated that the offices had not been filled. I also noted that such a period did not appear to meet the requirement in subrule 51.3 for an election to be held “as soon as possible” and that future prescribed information should be lodged with the Commission in a more timely manner.



[6] The circumstances of that decision are similar to those of the election currently before me, for which the prescribed information was lodged approximately nine months after the declaration of results formally notified the ANMF of several vacancies.

[7] On 22 July 2015 the Commission wrote to the Branch and, with reference to the previous decision in E2013/203, requested an explanation for what appeared to be an even greater delay in lodging prescribed information in relation to the vacancies for the two Branch Councillors than had occurred in E2013/203.

[8] On 28 July 2015 the Commission received correspondence from the Branch Secretary Mr Mark Olson. Mr Olson indicated that the Branch conducts elections each year and that the Branch believed that because it had not received any enquiries from its members regarding the unfilled 2014 casual vacancies, it believes that including the casual elections in the 2015 elections is conducting elections 'as soon as possible'.

[9] Mr Olson opined that the alternative would involve the Branch constantly calling for elections and considered that such a scenario would be impractical.

[10] In this regard I note that section 5(3)(d) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) provides that one of the standards set out in the RO Act is to 'provide for the democratic functioning and control of organisations'. A key component of democratic functioning includes the conduct of regular scheduled elections to ensure that the number of office holders elected by members of an organisation corresponds with the number provided in its rules. It is a normal and reasonable expectation that registered organisations take steps to ensure that they comply with the time-frame requirements set out not only in the RO Act but also in instruments or references pertaining to the governance arrangements formulated by organisations themselves.

[11] In my decision in E2013/203 I advised the Branch that a period of eight months after the declaration of election results did not appear to meet the requirement for an election to be held 'as soon as possible'. The logic of that analysis, requires me to now draw a similar conclusion that lodging prescribed information nine months after the declaration of election results does not meet the requirement for an election to be held 'as soon as possible'.

[12] It may be that lodging prescribed information for unfilled offices at what appears to be annual elections for offices in the Branch is a matter of convenience for the Branch. In my view, such a matter of convenience does not comply with sub rule 51.3 which requires that the vacancy be filled by an election conducted as soon as possible.

[13] Further, it appears from an analysis of the available material that the two Branch Councillor offices which have been included in the prescribed information lodged for the purposes of E2015/196 have now been vacant for a continuous period approaching 3 years (since 2012).

[14] I do not propose to frustrate the democratic function of the ANMF and its Branch to conduct an election to fill the unfilled offices. However, I reiterate that future prescribed information in relation to elections arising as a result of casual vacancies or insufficient nominations must be lodged with the Commission in a more timely manner in accordance with the organisation's rules.

[15] Having considered all of the available material and circumstances, 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 RO 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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ANMF WA Branch

260 Pier St Perth WA 6000

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# Australian Nursing & Midwifery Federation

28 July 2015

Carolyn Moloney  
NSW Team Member  
Regulatory Compliance Branch  
Fair Work Commission

Dear Carolyn

Thank you for your letter dated 22 July 2015.

Rule 51.3 states "...that vacancy shall be filled by an election conducted as soon as possible...".

Given that an election is conducted each year; that we were short two nominations in the 2014 elections; and that we have not received any enquiries from our members regarding the casual vacancies we believe that including them in this years' election is conducting an election as soon as possible.

The alternative would be having to constantly call for one election after another should the positions remain vacant. We consider that scenario to be impractical and not best use of FWC, AEC and ANMF resources.

Regards

Mark Olson  
Branch Secretary WA Branch



22 July 2015

Mr Mark Olson  
Branch Secretary  
Western Australian Branch  
Australian Nursing and Midwifery Federation  
PO BOX 8240  
Perth Business Centre WA 6849

CC: Michael Clancy: [REDACTED]  
Also by facsimile: [REDACTED]

Dear Mr Olson

**Arrangement for the conduct of an election - E2015/196**

I refer to the prescribed information which was lodged with the Fair Work Commission on 29 June 2015 for an election of the Western Australian Branch (the Branch) of the Australian Nursing and Midwifery Federation (the ANMF).

The offices listed in the prescribed information included 2 Branch Councillors to be elected to fill casual vacancies, in addition to the 9 Branch Councillors scheduled to be elected. I note that the reason for the casual vacancies occurring is that the 2 Branch Councillors were not filled in the previous scheduled Branch election in E2014/171.

The declaration of the election results in E2014/171 is dated 23 September 2014. The prescribed information for the election to fill those vacancies was therefore lodged approximately 9 months after the vacancies occurred.

I note that in a previous election matter involving similar circumstances in E2013/203, the Delegate's decision stated that prescribed information should be lodged with the Fair Work Commission 'in a more timely manner', in accordance with subrule 51.3 of the organisation's rules. A copy of that decision is attached for your reference.

Could you please provide a written explanation why the prescribed information for the casual vacancy elections was not lodged until 29 June 2015. This can be provided by email to [orgs@fwc.gov.au](mailto:orgs@fwc.gov.au). Could you do so by 28 July 2015 in order to facilitate a decision being issued as soon as possible.

Yours sincerely

Carolyn Moloney  
NSW Team Member  
Regulatory Compliance Branch  
Fair Work Commission



# Copy of Prescribed Information

**Title of Matter:** Application/Notification by Australian Nursing and Midwifery Federation-  
Western Australian Branch  
**Section:** s.189(1) RO Act - Notification of elections for office  
**Subject:** WA Branch - Branch President; Branch Executive Committee Members  
(2); Branch Councillors (9); and 1-year casual vacancies for (2) Branch  
Councillors.  
**Matter Number(s):** E2015/196

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](mailto:orgs@fwc.gov.au).

**30 JUNE 2015**



ANMF WA Branch

260 Pier St Perth WA 6000

Phone (08) 6218 9444

Fax (08) 9218 9455

anmf@anmfwa.org.au

**Australian  
Nursing &  
Midwifery  
Federation**

Monday, 29 June 2015

**Notice and Statement of Prescribed Information for an Election**

I, Mark Olson, being the Branch Secretary of the Australian Nursing & Midwifery Federation Western Australian Branch make the following statement:

I am the Branch Secretary of the Australian Nursing & Midwifery Federation, WA Branch.

I am authorised to lodge the following prescribed information concerning forthcoming elections in the Western Australia Branch of the Australian Nursing & Midwifery Federation and

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

**Offices/Positions**

|   |
|---|
| Branch President (1) - Direct Voting System (DVS)     |
| Branch Executive Committee Members (2) (DVS)          |
| Branch Councillors (9) (DVS)                          |
| Branch Councillors - 1 year Casual Vacancy- (2) (DVS) |

**Reasons for election:**

- Election for offices and positions is required as the terms of office are due to expire in the normal course of events under the rules of the organisation.

**Elected by:**

- The electorate for the direct voting system is the whole of the Branch.

**Nominations open:**

- For offices to be elected by direct voting system – after 1 September



ANMF WA Branch

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**Australian  
Nursing &  
Midwifery  
Federation**

**Nominations close:**

- For offices to be elected by direct voting system no later than - 12 noon, 31<sup>st</sup> October

**Cut off date for roll:**

- In all cases - 7 days prior to the opening date for nominations - rule 85.4

Yours sincerely

Mark Olson

Branch Secretary