

# Health Services Union

## HSU East Branch

### DECLARATION OF RESULTS FOR UNCONTESTED OFFICES

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.

E2010/E2651

#### **President**

##### Candidate

POLLARD, Stephen

#### **Vice President (3)**

##### Candidates

KNIGHT, Iris

O'CONNOR, Sean

WILKINSON, Katharine

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

LEE JONES  
Returning Officer

20 October 2010



Fair Work (Registered Organisations) Act 2009  
**POST ELECTION REPORT**

**Health Services Union  
HSU East Branch**

**ELECTION/S COVERED IN THIS REPORT**

Election Decision No/s: E2010/2651

**RULES**

Rules used for the election: 051V: Incorporating alterations  
of 24 May 2010 (R2010/35)

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

**ROLL OF VOTERS**

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

**IRREGULARITIES**

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

Other irregularities identified, and action taken: Nil

**ATTACHMENTS**

- 1) Declaration of Results for Uncontested Offices

Lee Jones  
Returning Officer

22 November 2010

# Health Services Union

## HSU East Branch

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#### **President**

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##### Candidates

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O'CONNOR, Sean

WILKINSON, Katharine

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

LEE JONES  
Returning Officer

20 October 2010



Fair Work  
Australia

## DECISION

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

**Health Services Union**  
(E2010/2651)

T. NASSIOS

MELBOURNE, 1 SEPTEMBER 2010

*Arrangement for conduct of election.*

[1] On 12 August 2010 the Health Services Union lodged with Fair Work Australia prescribed information in relation to an election for the following offices:

**HSU East Branch**

President (1)

Vice Presidents (3)

[2] 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.



Acting General Manager  
Fair Work Australia

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MW/AO038898  
11 August 2010

The General Manager  
Fair Work Australia  
GPO Box 1994  
MELBOURNE VIC 3001

Email: [melbourne@fwa.gov.au](mailto:melbourne@fwa.gov.au)

Dear Sir

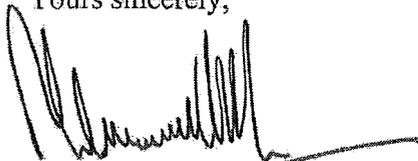
**Re: Prescribed Information for elections s189 (1)**

I have been advised by the AEC that the elections for offices in the HSU East Branch of the Health Services Union have been completed, and he will be in a position to formally declare the results shortly.

Consequently, I enclose a Statement and Notice of Prescribed Information in relation to the HSU East Branch as required under Regulation 138 and s 189 (1) of the Fair Work(Registered Organisations) Act 2009.

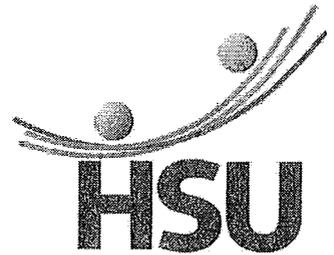
If you require any further information, please contact me on 0418 229 712.

Yours sincerely,



**Michael Williamson**  
General Secretary

Attch.



**Health Services Union**  
ABN 85 037 751 682

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**South Eastern Region**  
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**Greater Murray Region**  
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**Far North Coast Region**  
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**Western Sydney Region**  
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Orange NSW 2800  
Tel: 1300 478 679  
Fax: 1300 329 478

**STATEMENT AND NOTICE OF PRESCRIBED INFORMATION UNDER  
REGULATION 138**

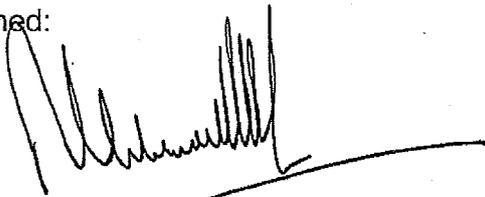
I, Michael Williamson, General Secretary of the HSU East Branch of the Health Services Union (HSU), make the following statement:

I am the General Secretary of the HSU East Branch of the Health Services Union.

I am authorised to lodge the following prescribed information concerning forthcoming Branch Officer.

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

Signed:

A handwritten signature in black ink, appearing to read 'Michael Williamson', written over a horizontal line.

**MICHAEL WILLIAMSON  
GENERAL SECRETARY**

## **PART A – Branch Elections**

In accordance with subsection 189 (1) of the Fair Work Act, please find enclosed prescribed information for elections due to be held for the following branches of the Health Services Union in 2010.

### ***a) Name of each office or position for which an election is required***

#### **HSU EAST BRANCH**

President (1)  
Vice-Presidents (3)

### ***b) Reason for election***

The reason for all elections is that;

- i) The term of the offices have expired or are due to expire in the normal course of events; and
- ii) A new office has been created.

### ***c) Numbers of multiple offices***

Rule 51A (1) provides that there be 3 Vice-Presidents

### ***d) Electorates***

All positions to be elected are to be elected by members of the Union Council of the branch except for the General Secretary, Executive President, Deputy General Secretaries, Divisional Secretaries and Assistant Divisional Secretaries, and any other employees of the Branch who hold an office (see rule 29A(b)(ii)).

### ***e) Open and Close of Nominations***

In accordance with rule 29A(d) (xxvi)a5)

“The opening date of nominations shall be the 15<sup>th</sup> day of August and the closing date of nominations shall be the 31<sup>st</sup> day of August.”

Further In accordance with rule 29A(d) (xxvi)b:

“The provisions of this sub-rule (d) shall otherwise apply to the election of the President and Vice-Presidents of the HSU East Branch with the necessary changes.”

***f) Close of Rolls***

In accordance with rule 29 A (d)(x):

“The day on which the roll of voters for the ballot is closed shall be on the seventh day prior to the opening of nominations.”

Therefore the voter rolls should close on 8<sup>th</sup> day of September 2010.

***g) Kind of voting system used***

The voting system is a collegiate voting system and in accordance with rule 29 A (b).



Fair Work  
Australia

## DECISION

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

**Health Services Union**  
(R2010/35)

T. NASSIOS

MELBOURNE, 24 MAY 2010

*Alteration of other rules of organisation.*

[1] On 13 April 2010, the Health Services Union lodged a notice and declaration setting out details of alterations to its Rules under s159 of the *Fair Work (Registered Organisations) Act 2009* (RO Act) – being amendments to Rules 19, 20, 29, 46, 48, 48B, 49, 50, 51A, 60, 62, 73, insertion of new Rules 54, 56, 58 - 61, 67, 68 and associated renumbering.

[2] The alterations seek to:

- merge the NSW Branch, Victoria No 1 Branch (VN1) and Victoria No 3 Branch (VN3) into a new East Branch; and
- amend Rule 46 (Finance Committee).

[3] The alterations raise a number of issues regarding the abolition of branches and the truncation of terms of office before they expire (particularly in the VN1 Branch).

[4] On 8 April 2010, Mr Clive King, a VN1 Branch Delegate to the National Council, lodged a written objection to the branch merger.

[5] On 23 April 2010, the organisation provided a response to Mr King's letter.

[6] On 13 May 2010, FWA wrote to the organisation in relation to the Branch officers whose terms would be truncated as a result of the branch merger and requested clarification regarding a number of ambiguities in the alterations.

[7] On 19 May 2010, additional information was lodged - as discussed further below.

### Principles

[8] The following principles pertain to the abolition of branches and the truncation of offices:

- An organisation has the right to structure itself as it sees fit – whether by establishing, restructuring or abolishing branches, divisions and so on [*Williams v Hursey* (1959) HCA 51, 103 CLR 30].
- An organisation is not required to have branches nor does the abolition of a branch necessarily require the consent or approval of the branch concerned [*Imlach v Daley* (1985) 7 FCR 457].

- An elected office may be abolished during the term of an incumbent provided such abolition is effected in accordance with the rules and is bona fide [majority in *Saint v Australian Postal and Telecommunications Union and Others* (1976) 13 ALR 649].
- Alterations that seek to abolish an office during its term or a branch must not have an oppressive, unreasonable or unjust effect on members or applicants for membership (in the plural) [*Roughan v Australasian Meat Industry Employees' Union* (1992) 36 FCR 536].

[9] The current terms of office in the NSW and VN3 Branches have almost expired. Elections are due to commence in June 2010 [E2010/2562]. The table in Rule 48B appears to provide all of those officers with offices during the transitional period<sup>1</sup>. In essence, there has been no truncation of term for officers from the NSW or VN3 Branch.

[10] The VN1 Branch is an exception. Its terms of office are due to expire in 2014 in accordance with a Scheme to reconstitute the branch approved by Tracey J on 4 August 2009.<sup>2</sup> Paragraph 5 of that Scheme ordered new elections to be held later in 2009 to fill all branch offices until 2014 as follows:

*The officers elected under the Scheme shall hold office until the conclusion of the elections for offices conducted in accordance with the rules in 2014.*

[11] The results of that election were declared in December 2009 [E2009/10032].

Resignations relating to truncation of office

[12] Consistent with the above principles, it has been the practice of this office to seek resignations or declarations from officers whose term of office is abolished mid term – which state that the incumbents understand and accept that the alterations will truncate their terms. Such resignations play a key role in determining whether the truncation of a term is bona fide and whether or not it may be oppressive, unreasonable or unjust under s142(1)(c) of the RO Act.

[13] Indeed, in correspondence with the organisation's solicitors on 1 April relating to a draft version of the alterations, FWA understood that each Victorian No 1 Branch officer would resign in 2010 to enable the alterations to be passed – to ensure the order of Tracey J was not breached. Subsequently, on 4 May 2010, Tracey J amended the s323 Scheme.

[14] The organisation submits that no further consideration should be given to the principles relating to bona fides because Tracey J, in effect, approved the abolition of the VN1 Branch and the truncation of its terms of office when he amended the s323 Scheme on 4 May 2010 as follows:

*The officers elected under the Scheme shall hold office until the conclusion of the elections for offices conducted in accordance with the rules in 2014 subject to the continued constitution of the Branch under the Rules of the Union*

[15] The organisation's submission is misplaced. Relevant extracts of the judgment of Tracey J of 4 May 2010<sup>3</sup> make it clear that the order was varied to ensure that the organisation was not impeded from structuring itself as it sees fit - in accordance with the normal principles in *Williams v Hursey*:

<sup>1</sup> The transitional period ends when new offices commence in mid 2010 – see proposed rule 48B.

<sup>2</sup> The branch was reconstituted under s323 of the RO Act on the grounds that the branch had ceased to function effectively [2009] FCA 829.

<sup>3</sup> *Re Health Services Union (No 2)*, [2010] FCA 485

8. *It was not my intention, in approving the scheme, to prevent an amalgamation of the kind presently proposed. Rather, as I have said, paragraph 5 was designed to obviate the necessity of the newly elected officers of the Branch having to face election as part of the normal cycle within a few months of them having been elected.*

...

18... *All that the amendment [to the Scheme] will do is, ..... alleviate any concern on the part of the General Manager of Fair Work Australia that the proposed amendments to the Rules would be inconsistent with the terms of the scheme.*

19. *I do not know whether, even once this issue is clarified, the General Manager will be minded to certify the amended Rules. That, under the Act, is a matter for him. If any of the parties represented before the Court consider that their interests would be prejudiced by some or all of the amendments then they will have the opportunity, and, in fact, already have the opportunity, of making submissions to the General Manager, which he will, no doubt, take into account in making his decision.*

[16] The above comments also make clear what should be self evident – that it is the General Manager of FWA (or his Delegate) who determines, in the first instance, whether alterations are capable of certification under s159(1). The task of determining such alterations includes an obligation to consider whether the alterations are bona fide and whether or not they have an oppressive, unreasonable or unjust effect on members.

[17] The organisation also submitted that the VN1 Branch officers should not be required to give resignations as FWA did not require such resignation letters when the NUW merged its Queensland, SA, WA and Central Branches (and truncated offices in those branches) in 2009 [R2009/256]. In that matter the branch merger was approved by a referendum of all members of the organisation conducted by the AEC. Notwithstanding the referendum, the affected branches actively contested the merger and initiated proceedings in the Federal Court to try and stop it.

[18] Resignation letters were not sought in that case because it was clear that the relevant officers would never resign. Therefore, in the absence of resignations, the determination of whether the branch merger and related truncations of office were bona fide was conducted in accordance with the principles set out above. This involved the consideration of objections lodged by the affected branches. On the basis of those objections, the alterations were initially refused. The alterations were only approved once they were further amended to rectify what were considered to be their oppressive and unreasonable effects.

[19] The approach in this matter will be the same. Resignation letters from affected officers have not been provided. Therefore I must first determine whether the alterations are bona fide and second, whether or not they have an oppressive, unreasonable or unjust effect on members.

[20] The issues relevant to my consideration are:

- the objection by Mr King;
- the possibility that the East Branch could overwhelm the other branches; and
- the potential ambiguities in the election rule pertaining to the East Branch.

#### The objection

[21] The main thrust of Mr King's objection appears to be that the organisation failed to adequately consult with members and thereby failed to comply with its rules.

[22] Mr King suggests that there was either an express or implied obligation on the organisation to consult with the members regarding the branch merger. The rules contain no express obligation.

[23] There are a number of mechanisms under the rules by which members could either seek a further level of consultation or to overturn the decision to merge the branch. Rule 44 provides for a vote of a special general meeting in any of the affected branches and rule 66 provides for a Branch plebiscite (on the request of 5% of financial members in a Branch). As far as I am aware, neither Mr King nor any other member has utilised these mechanisms. While the extent of consultation is markedly different to that adopted by the NUW in the matter referred to above, it cannot be said that there is an implied obligation to consult with all members regarding the branch merger.

[24] I have also taken into account that no other objections to the alterations have been lodged with FWA notwithstanding that:

- a notice regarding the alterations were posted on the organisation's website - on or about 20 April 2010 in accordance with Regulation 126(1)(b) of the *Fair Work (Registered Organisations) Regulations 2009*; and
- Tracey J stated in his judgment of 4 May 2010 that:

*If any of the parties represented before the Court consider that their interests would be prejudiced by some or all of the amendments then they will have the opportunity, and, in fact, already have the opportunity, of making submissions to the General Manager, which he will, no doubt, take into account in making his decision;*

[25] Finally, Mr King's objection itself states that he does "not have a problem with the intended intentions and functions of this proposal".

[26] Accordingly, the objection provides no grounds for finding that the alterations were not made bona fide or for otherwise refusing the alterations.

#### National Council – balance between branches

[27] If the East Branch is established it will have more than half of the HSU members.

[28] FWA previously advised the organisation<sup>4</sup> that representation of the other branches on National Council<sup>5</sup> should be enhanced to ensure they are not overwhelmed by the East Branch – as per the case law cited in *Re Australian Education Union* [2008] AIR 804:

#### [8] Disproportionate representation

The principle of disproportionate representation in democratic systems is well established and it generally operates to protect minority groupings from the potentially overwhelming numbers of the majority. The structure of the Australian Senate, which allocates an equal number of senators to each State regardless of its population, follows this principle. This principle has been affirmed with respect to the federal structure of registered organisations in a number of decisions of the Federal Court. In particular I can identify three principles in the case law that are relevant to the present matter as follows:

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<sup>4</sup> In FWA correspondence of 1 April 2010 regarding draft versions of the present alterations.

<sup>5</sup> The National Executive does not appear to be as affected by the size of the East Branch – see Rules 19 and 26.

- ‘...if the rules (of a federal system) provided for votes in strict accord with membership then ... the smaller branches would feel swamped by the larger and the organization might well cease to exist or be viable’ [*McLeish v Kane* (1978) 22 ALR 547];
- hence to ‘protect smaller Branches from domination by larger branches disproportionate representation to some degree is acceptable’ [*Cook v Crawford* [1982] FCA 122]; and
- to facilitate this, a ‘spectrum of disproportion’ may be allowed in favour of smaller branches [*McLeish v Kane* (1978) 22 ALR 547].

[29] As a result, the original draft alterations were amended to reduce the number of National Councillors the East Branch would be entitled to by adding the underlined words:

20 (a) *The National Council shall consist of -*

- (i) *the Officers of the Union, and,*
- (ii) *delegates elected by and from each branch on the basis of one delegate for every 1000 members or part thereof up until 10,000 members, and one delegate for every 2,000 thereafter.*

[30] Under these revised provisions it appears that the East Branch would have more than half (but less than two thirds) of the positions on National Council.<sup>6</sup>

[31] I have considered the powers of the National Council under the rules and have found that a number of actions require a *two-thirds* majority of National Council:

- imposition of levies (Rule 9(a));
- appointment of the National Ombudsman (a minimum of three branches can also veto any such appointment) (Rule 17(a));
- changes to the National Council agenda at National Council meetings (Rule 23(e))
- changes to capitation fees (Rule 36(e)).

[32] In addition, the current rules also provide that:

- a national plebiscite can be requested by a minimum of 5% of financial members or by a resolution of special general meetings of three branches - a plebiscite prevails over any decision of National Council or National Executive (Rule 45);
- the VN4 Branch has an entrenched Rule that protects its existence (Rule 48(e));
- the Queensland Branch is also protected by Rule 48(j);
- other branches cannot be restructured without their approval (Rule 48(n)); and
- Rule 44 (which provides for branch autonomy) can only be changed by a two-thirds majority of financial members of the union (Rule 44(a)).

<sup>6</sup> The HSU Annual Return for 2010 would suggest the following representation on National Council:

Branch	Total members as per 2010 HSU Annual Return [AR2010/2664]	Approximate number of National Council Delegates under proposed rules
East	58,292 (NSW - 38,025, VN1 - 15,187, VN3 - 5,080)	35
Vic No 2	6,124	7
Vic No 4	2,794	3
Tas No 1	7,714	8
Tas No 2	36	1
SA	685	1
WA	4,865	5
QLD	#	?
Total	80,510	about 60 (plus 7 National Officers = about 67)

[33] In light of the above I am satisfied, on balance, that the size of the East Branch would not impose oppressive, unreasonable or unjust effects on the members in the other branches of the organisation.

#### Ambiguities in the proposed rules

[34] On 13 May 2010, FWA sought further information relating to a number of ambiguities in the alterations regarding:

- the table of transitional offices in Rule 48B
- the nomination process for various offices
- the role of sub-branches in elections
- the voting rights of members of the Union Council
- the status of NSW Organisers/General Representatives during the merger

[35] On 19 May 2010, the organisation provided a response to those issues.

[36] I am particularly mindful of any ambiguities in election rules in light of s143(1)(f) which provides that the rules of an organisation '*must be such as to ensure, as far as is practicable, that no irregularities can occur in relation to an election*'.

[37] I have considered the response provided by the organisation on 19 May 2010 and am satisfied, on balance, that they address my concerns.

[38] Therefore the rules should be read in light of the explanations provided in the correspondence of 19 May 2010. These issues include, but are not limited to:

- in Rules 51A (i), (j) and (k) – the respective officers would be elected from all members of the branch;
- in Rule 51A (f) – the respective officers would be elected from all members of the Branch in NSW
- the President and three Vice Presidents of the Union Council would be elected by and from all members of the Union Council (except for the officers listed in Rule 29A(b)(ii)) notwithstanding the wording in the first paragraph of Rule 51A
- The transitional table in Rule 48B refers erroneously to a total of 22 NSW Organisers – the correct number is a total of 19 (one of whom becomes a Divisional Secretary, one of whom becomes an Assistant Divisional Secretary and 17 of whom become NSW General Representatives during the transitional period)

[39] The organisation should, as soon as possible, make suitable alterations to clarify the operation of the abovementioned provisions.

#### Rule 46 – Finance Committee

[40] This rule has been amended to expand the size (and duties) of the Finance Committee.

[41] On 19 May 2010, the organisation advised that this alteration is unrelated to the branch merger and should be dealt with separately.

[42] I accept that Rule 46 is discrete. It has been severed and will be considered separately.<sup>7</sup>

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<sup>7</sup> See the principles set out by the majority in *Re Food Preservers' Union of Australia* (1988) [79 ALR 138].

Typographical, clerical or formal errors

[43] I have corrected a number of typographical, clerical or formal errors in the alterations with the consent of the organisation in accordance with s159(2) - though I note that Rules 48(e) and (m) will be vacant after the rules have been certified.

Conclusion

[44] I have nothing before me to indicate that the present alterations are not bona fide. Nor have I found any grounds to believe that the alterations have an oppressive, unreasonable or unjust effect on members of the organisation.

[45] In my opinion, the alterations (with the exception of the alterations to Rule 46 which will be considered separately) have been made in accordance with the rules, comply with and are not contrary to this 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 Act.



Delegate of the General Manager  
Fair Work Australia

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