

# Health Services Union Tasmania Branch Elections

## Declaration of Results for Uncontested Offices

E2014/115

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.

### Tasmania Branch

#### Branch Secretary

Candidates

JACOBSON, Tim

#### Branch Assistant Secretary

Candidates

MOORE, Robbie

#### Branch President

Candidates

RICHMOND, Judy

#### Branch Senior Vice-President

Candidates

RICHARDSON, John

#### Branch Junior Vice-President

Candidates

WEBB, Chris

#### Branch Trustee (2)

Candidates

GORRINGE, Leigh  
MOORE, Peter

#### Ordinary member of the Branch Committee (9)

Candidates

BROCK, Pamela  
CHALLIS, Andrew  
COOMBS, Michael  
HANSSON, Christine  
MCHENRY, Marlene  
PESCHAR, Pru  
PROSSER, Audrey  
RUSH, Lynn-Maree  
SHEARER, Carolyn



**Branch delegate to National Council (8)**

Candidates

COOMBS, Michael  
GORRINGE, Leigh  
HANSSON, Christine  
MOORE, Peter  
MOORE, Robbie  
RICHARDSON, John  
RICHMOND, Judy  
WEBB, Chris

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



Michael Horwood  
Returning Officer

14 August 2014

**- Health Services Union  
Branch Election SA/NT E2014/115**

**Declaration of Results for Uncontested Offices**

**E2014/115**

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.

**South Australian Branch**

**Branch President**

Candidates

HEWITT, Tony

**Branch Senior Vice-President**

Candidates

SONZA, Bruno

**Branch Junior Vice-President**

Candidates

NEWMAN, Anthony

**Branch Secretary**

Candidates

NAVAS, Jorge

**Branch Assistant Secretary**

Candidates

DI SANTO, Tom

**Branch Trustee (2)**

Candidates

IANNELLA, Riccardo  
PANES, Mark

**Ordinary Member of Branch Committee (5)**

Candidates

ALSTIN, Sandra  
DRYSDALE, John  
DUMMIN, Lesley  
HRISTOPOULOS, John  
SAMPSON, Karryn

**Branch Delegate to National Council**

Candidates

NAVAS, Jorge

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



Barry Barons  
Returning Officer

7 August 2014

# **- Health Services Union Victoria No. 4 Branch**

## **Declaration of Results for 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.

### **Victoria No. 4 Branch**

#### **Branch President**

Candidates

COWEY, Maxwell Wallace

#### **Branch Senior Vice-President**

Candidates

REGINATO, Victor

#### **Branch Junior Vice-President (Psychologist)**

Candidates

BLEESER, Jacinta

#### **Branch Secretary**

Candidates

ELLIOTT, Paul

#### **Branch Assistant Secretary**

Candidates

KELLY, Rosemary

#### **Trustee (Psychologist)**

Candidates

EDWARDS, Stephen

#### **Trustee (MSAV)**

Candidates

WELLS, Peter

#### **Committee Member (Psychologist)**

Candidates

CHAPMAN, Megan

**Committee Member (Pharmacist) (2)**

Candidates

KING, Julie  
O'CONNOR, Shaun

**Committee Member (MSAV) (3)**

Candidates

BISIGNANO, Maria  
DURKIN, Catherine  
FELEPPA, Sandra

**National Council Delegate (3)**

Candidates

ELLIOTT, Paul  
KELLY, Rosmary  
REGINATO, Victor

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



Jeff Webb  
Returning Officer

6 August 2014

# **- Health Services Union Victoria No. 3 Branch**

## **Declaration of Results for 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.

### **Victoria No. 3 Branch**

#### **Branch President**

Candidates

O'CONNOR, Cheryl Ann

#### **Branch Senior Vice-President**

Candidates

GINN, Joanne

#### **Branch Junior Vice-President**

Candidates

BARNDEN, Rebecca

#### **Branch Secretary**

Candidates

MCGREGOR, Craig

#### **Branch Assistant Secretary**

Candidates

HEWAT, Andrew

#### **Branch Trustee (2)**

Candidates

D'AMORE, Anthony  
POOLE, Bruce

#### **Ordinary Member of Branch Committee (5)**

Candidates

BOURKE, Jenni  
JACKSON, Marni  
KINGHAM, Kaye  
PLOWMAN, Scott  
VIEN, Kim

**Branch Delegate to National Council (4)**

Candidates

BARNDEN, Rebecca  
GINN, Joanne  
HEWAT, Andrew  
MCGREGOR, Craig

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



Jeff Webb  
Returning Officer

6 August 2014



# Health Services Union Victoria No. 2 Branch

## Declaration of Results for 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.

### Victoria No. 2 Branch

#### Branch Secretary

##### Candidates

WILLIAMS, Lloyd

#### Ordinary Member of Branch Committee (8)

##### Candidates

BROPHY, David  
COGO, Debra  
GAMBIN, Bernadette  
KIM, Jane  
OLDHAM, Kerrie  
OSBORNE, Matthew  
WATTS, Wayne  
YOUNG, Roslyn

#### Branch Delegate to National Council (8)

##### Candidates

BARNARD, Sarah  
DOWLING, Jane  
GUNN, Debbie  
HEALEY, Paul  
MULDOON, Ross  
MURPHY, John  
NUZUM, Patrick  
TOMLINS, Jo

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



Jeff Webb  
Returning Officer

21 August 2014

## Health Services Union Victoria No. 2 Branch

### Declaration of Results for Contested 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.

#### Victoria No. 2 Branch

Total number of names on the roll of voters	7282
Ballot papers issued	7282
Replacement ballot papers issued	6
<b>Total Ballot Papers Issued</b>	<b>7288</b>
Ballot papers / envelopes returned for scrutiny	2514
Less ballot papers / envelopes rejected at preliminary scrutiny	48
<b>Total Ballot Papers Admitted to Scrutiny</b>	<b>2466</b>
Percentage of ballot papers returned to number issued	33
Ballot papers returned as unclaimed mail	55
Ballot papers not returned	4767

#### Branch President

<u>Candidates</u>	<u>Votes</u>
GLEESON, Andrea	286
GUNN, Debbie	2135
Total votes	2421
Formal ballot papers	2421
Informal ballot papers	45

I declare Debbie Gunn elected.

#### Branch Senior Vice-President

<u>Candidates</u>	<u>Votes</u>
THOMPSON, Andrew	288
HO, Serena	2132
Total votes	2420
Formal ballot papers	2420
Informal ballot papers	46

I declare Serena Ho elected.

#### Branch Junior Vice-President

<u>Candidates</u>	<u>Votes</u>
GLEESON, Daisy	277
ADDISON, Brian	2141
Total votes	2418
Formal ballot papers	2418
Informal ballot papers	48

I declare Brian Addison elected.

**Branch Assistant Secretary**

Candidates

Votes

MOORE, Gina	299
HEALEY, Paul	2129

Total votes	2428
Formal ballot papers	2428
Informal ballot papers	38

I declare Paul Healey elected.

**Branch Trustee (2)**

Candidates

Votes

BAYNE, Colin Kingsley	257
ALLIS, Gordon B.	254
ANDERSON, Bella	2164
LINDSAY, Kimberlee	2145

Total votes	4820
Formal ballot papers	2410
Informal ballot papers	56

I declare Bella Anderson and Kimberlee Lindsay elected.



Jeff Webb  
Returning Officer  
Australian Electoral Commission

13 October 2014

# - Health Services Union Victoria No. 1 Branch

## Declaration of Results for 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.

### Victoria No. 1 Branch

#### Branch Senior Vice-President

Candidates

ATKINSON, Lee

#### Branch Junior Vice-President

Candidates

JACKS, Sherida Leanne

#### Branch Trustee (2)

Candidates

HARGREAVES, Andrew  
STONE, Susan

#### Ordinary Member of the Branch Committee (8)

Candidates

ALIMI-ARSLAN, Nurije  
FISCHER, Caroline  
FISHER, Lisa  
KATSIS, Nick  
MEDLEY, Peter  
MITCHELL, Velda  
SMITH, Lance Edward  
TONKIN, Sarah

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



Jeff Webb  
Returning Officer

7 November 2014

## Health Services Union Victoria No. 1 Branch

### Declaration of Results for Contested 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.

#### Victoria No. 1 Branch

Total number of names on the roll of voters	10387
Replacement ballot papers issued	20
<b>Total Ballot Papers Issued</b>	<b>10407</b>
Ballot papers / envelopes returned for scrutiny	3669
Less ballot papers / envelopes rejected at preliminary scrutiny	97
<b>Total Ballot Papers Admitted to Scrutiny</b>	<b>3572</b>
Percentage of ballot papers returned to number issued	35%
Ballot papers returned as unclaimed mail	105

#### Branch President

<u>Candidates</u>	<u>Votes</u>
BOULTON, Timothy	78
GREGOR, Denise	180
BARCLAY, Rhonda	3095
Total votes	3353
Formal ballot papers	3353
Informal ballot papers	219

I declare Rhonda Barclay elected.

#### Branch Secretary

<u>Candidates</u>	<u>Votes</u>
DOYLE, Karen	21
LEECH, Malcolm	6
MAIN, Melanie	4
THOMAS, Babu	3
DOYLE, June	4
LWIN, Ainda	1
HAMILTON, Janice	7
MAYLANDER, Marianne	2
IVES, Raymond	1
MCGINLEY, Janet	3
GRAY, Bernadette	165
JACKSON, Andrew B	3
NUGUID, Silvi	0
ST LOUIS, Jacques	0
HORBURY, Pamela	4
TAU, Kam Lee	2
HERNANDEZ, Elsa	0
DANTANAROYANA, Gunaseeli	0
COSMI, Leno	1
MOUSER, Eleanor	6
LAZAR, Mulakken Issac	1
EL-HAGE, Diana	0
AYRES, Robyn	7
ASMAR, Diana	3113
Total votes	3354
Formal ballot papers	3354
Informal ballot papers	218

I declare Diana Asmar elected.

**Branch Assistant Secretary**

<u>Candidates</u>	<u>Votes</u>
HICKS, Damien	236
EDEN, David	3094

<b>Total votes</b>	<b>3330</b>
Formal ballot papers	<b>3330</b>
Informal ballot papers	<b>242</b>

I declare David Eden elected.

**National Council Delegate (10)**

<u>Candidates</u>	<u>Votes</u>
BOULTON, Timothy	203
ASMAR, Diana	3098
VASILADIS, Koula	3089
MITCHELL, Steven	3089
AUSTIN, Graeme	3086
ROWLEY, Timothy	3088
HEY, Brett	3088
CROSS, Dennis	3089
CALVITTO, John	3086
ROTHERHAM, Maria	3089
EDEN, David	3087

Total votes	31092
Formal ballot papers	3309
Informal ballot papers	263

I declare Diana Asmar , Graeme Austin , John Calvitto , Dennis Cross , David Eden , Brett Hey , Steven Mitchell , Maria Rotherham , Timothy Rowley and Koula Vasiliadis elected.



Jeff Webb  
Returning Officer  
Australian Electoral Commission

16 December 2014

# Health Services Union Western Australia Branch

## Declaration of Results for Uncontested Offices

**E2014/115**

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 Australia Branch**

#### **Branch President**

Candidates

HAMILL, Cheryl

#### **Branch Senior Vice President**

Candidates

FARRALL, Anthony

#### **Branch Junior Vice President**

Candidates

FREEMAN, Jodie

#### **Branch Secretary**

Candidates

HILL, Dan

#### **Branch Assistant Secretary**

Candidates

PANIZZA, Christopher

**Branch Trustees (2)**

Candidates

O'BRIEN, Robyn  
SHAW, David

**Ordinary Members of Branch Committee (7)**

Candidates

CLAIR, Dean  
KESHAVARZ-RAHBAR, Shaun  
LARSEN, Kimberley  
MCKERNAN, Brendan  
SHEHADE, John  
SILVER, Sarah  
SKIPWORTH, Ric

**Branch Delegates to National Council (6)**

Candidates

FARRALL, Anthony  
FREEMAN, Jodie  
HAMILL, Cheryl  
PANIZZA, Christopher  
SHAW, David  
SHEHADE, John

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

6 August 2014



# FEDERAL COURT OF AUSTRALIA

## **Asmar, in the matter of an election for office in the Victoria No 1 Branch of the Health Services Union (No 2) [2014] FCA 1113**

Citation: Asmar, in the matter of an election for office in the Victoria No 1 Branch of the Health Services Union (No 2) [2014] FCA 1113

Parties: **DIANA ASMAR, JAYNE GOVAN, JAMIE MARTORANA, AUSTRALIAN ELECTORAL COMMISSION and HEALTH SERVICES UNION**

File number: VID 522 of 2014

Judge: **GORDON J**

Date of judgment: 21 October 2014

Catchwords: **INDUSTRIAL LAW** – Inquiry into election in registered organisation – alleged irregularity in accepting nominations – rules of organisation – whether person employed or usually employed within the industry – whether person member of registered organisation having been struck from register of members

Legislation: *Evidence Act 1995* (Cth)  
*Fair Work (Registered Organisations) Act 2009* (Cth)

Cases cited: *Australasian Meat Industry Employees' Union v Belandra Pty Ltd* (2003) 126 IR 165  
*Mcjannett v Bulloch* [2012] FCA 1233  
*Re Asmar (No 3)* (2012) 207 FCR 476  
*Re Howard; Re Slaters, Tilers & Roofing Industry Union (Vic.)* (1983) 4 IR 95

Date of hearing: 13 October 2014

Date of last submissions: 14 October 2014

Place: Melbourne

Division: FAIR WORK DIVISION

Category: Catchwords

Number of paragraphs: 107

Counsel for the Applicant: Mr MR Champion

Solicitor for the Applicant: Slater and Gordon Limited

Solicitor for the  
Candidates: Mr M Addison of Maddison & Associates

Solicitor for the Returning  
Officer on behalf of the  
Australian Electoral  
Commission: Mr R McClure of Australian Government Solicitor

Counsel for the Health  
Services Union: Mr E White

Solicitor for the Health  
Services Union: Holding Redlich

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
FAIR WORK DIVISION**

**VID 522 of 2014**

**IN THE MATTER OF AN ELECTION FOR OFFICE IN THE VICTORIA NO 1  
BRANCH OF THE HEALTH SERVICES UNION**

**DIANA ASMAR  
Applicant**

**JUDGE: GORDON J  
DATE OF ORDER: 21 OCTOBER 2014  
WHERE MADE: MELBOURNE**

**THE COURT DECLARES THAT:**

1. Pursuant to s 206(4)(a) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**), the acceptance by the Returning Officer of the Australian Electoral Commission of the nominations lodged by each of Ms Jayne Govan and Mr Jamie Martorana in the Health Services Union Scheduled Election 2014 Victoria No 1 Branch (**Election**) is void.

**AND THE COURT ORDERS THAT:**

2. Paragraph 2 of the orders made by North J on 8 September 2014 be set aside.
3. Pursuant to s 206(4)(c)(i) of the FWRO Act, the General Manager of the Fair Work Commission is to make arrangements for the uncompleted steps in the Election to be taken.
4. Pursuant to ss 206(4)(c)(i) and / or (d) of the FWRO Act, the Returning Officer of the Australian Electoral Commission shall notify the other members listed under the “Jamie Martorana Team” in Annexure A to this Order of the declaration in paragraph 1 and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity.
5. Liberty to apply on 48 hours’ written notice to all interested parties.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011* (Cth).

**ANNEXURE A**

**BALLOT PAPER**  
HEALTH SERVICES UNION - VICTORIA No. 1 BRANCH



The ballot paper must be completed by you, the voter personally.  
Do not put any mark or writing on the ballot paper by which you can be identified.

You may vote in one of two ways, either above the line or below the line. **DO NOT VOTE ABOVE AND BELOW THE LINE**

**Voting above the Line**

To vote for a team, you must place a cross  in the team box. This will indicate a vote for every candidate listed below the line in the column for that team.

**Voting below the line**

To vote for any individual or team candidates, you must mark your votes by placing a cross  in the box opposite the names of the candidates for whom you wish to vote. Do not vote for more than the number of candidates required for each position.

EITHER ABOVE THE LINE		<input type="checkbox"/> DIANA ASMAR TEAM	<input type="checkbox"/> JAMIE MARTORANA TEAM
OR BELOW THE LINE	INDIVIDUAL CANDIDATES	DIANA ASMAR TEAM	JAMIE MARTORANA TEAM
Branch President (1)	<input type="checkbox"/> BOULTON Timothy <input type="checkbox"/> GREGOR Denise	<input type="checkbox"/> BARCLAY Rhonda	<input type="checkbox"/> McINTOSH Dee
Branch Senior Vice President (1)		<input type="checkbox"/> ATKINSON Lee	<input type="checkbox"/> DICKSON Winston
Branch Junior Vice President (1)		<input type="checkbox"/> JACKS Sherida Leanne	<input type="checkbox"/> GOVAN Daniel Norman
Branch Secretary (1)	<input type="checkbox"/> DOYLE Karen <input type="checkbox"/> LEECH Malcolm <input type="checkbox"/> MAIN Melanie <input type="checkbox"/> THOMAS Babu <input type="checkbox"/> DOYLE June <input type="checkbox"/> LWIN AIna <input type="checkbox"/> HAMILTON Janice <input type="checkbox"/> MAYLANDER Marianne <input type="checkbox"/> IVES Raymond <input type="checkbox"/> McGINLEY Janet <input type="checkbox"/> GRAY Bernadelle <input type="checkbox"/> JACKSON Andrew B <input type="checkbox"/> NUGUID Silvi <input type="checkbox"/> ST LOUIS Jacques <input type="checkbox"/> HORBURY Pamela <input type="checkbox"/> TAU Kame Lee <input type="checkbox"/> HERNANDEZ Elsa <input type="checkbox"/> DANTANAROYANA Gunaseeli <input type="checkbox"/> COSMI Leno <input type="checkbox"/> MOUSER Eleanor <input type="checkbox"/> LAZAR Mulakken Issac <input type="checkbox"/> EL-HAGE Diana <input type="checkbox"/> AYRES Robyn	<input type="checkbox"/> ASMAR Diana	<input type="checkbox"/> MARTORANA Jamie
Branch Assistant Secretary (1)	<input type="checkbox"/> HICKS Damlen	<input type="checkbox"/> EDEN David	<input type="checkbox"/> GOVAN Jayne
Branch Trustees (2)		<input type="checkbox"/> HARGREAVES Andrew <input type="checkbox"/> STONE Susan	<input type="checkbox"/> NENADOVIC Milica <input type="checkbox"/> PERRI Anastasia

Court Use Only

<p>Ordinary Members of Branch Committee (8)</p>		<p><input type="checkbox"/> SMITH Lance Edward  <input type="checkbox"/> MITCHELL Velda  <input type="checkbox"/> FISCHER Caroline  <input type="checkbox"/> KATSIS Nick  <input type="checkbox"/> MEDLEY Peter  <input type="checkbox"/> ALIMI-ARSLAN Nurije  <input type="checkbox"/> TONKIN Sarah  <input type="checkbox"/> FISHER Lisa</p>	<p><input type="checkbox"/> LEIU Sone  <input type="checkbox"/> NAIDOO Ronald  <input type="checkbox"/> HOGG Clive  <input type="checkbox"/> PHILLIPS Roland  <input type="checkbox"/> KAIGG Rebecca  <input type="checkbox"/> APOSTOPOULOS Labrini  <input type="checkbox"/> BENSON Sharon  <input type="checkbox"/> McCORMACK Sue</p>
<p>National Council Delegates (10)</p>	<p><input type="checkbox"/> BOULTON Timothy</p>	<p><input type="checkbox"/> ASMAR Diana  <input type="checkbox"/> VASILIADIS Koula  <input type="checkbox"/> MITCHELL Steven  <input type="checkbox"/> AUSTIN Graeme  <input type="checkbox"/> ROWLEY Timothy  <input type="checkbox"/> HEY Brett  <input type="checkbox"/> CROSS Dennis  <input type="checkbox"/> CALVITTO John  <input type="checkbox"/> ROTHERHAM Maria  <input type="checkbox"/> EDEN David</p>	<p><input type="checkbox"/> McCORMACK Sue  <input type="checkbox"/> GOVAN Daniel Norman  <input type="checkbox"/> DICKSON Winston  <input type="checkbox"/> KERR Philip Adrian  <input type="checkbox"/> MARTORANA Jamie  <input type="checkbox"/> GOVAN Jayne  <input type="checkbox"/> LEIU Sone  <input type="checkbox"/> HOGG Clive  <input type="checkbox"/> McINTOSH Dee  <input type="checkbox"/> NAIDOO Ronald</p>

After marking your vote:

- Place the ballot paper in the DECLARATION ENVELOPE, seal it and sign your name on the back
- Place that envelope in the Reply Paid envelope
- Post the Reply Paid envelope so that it reaches the addressee not later than 5:00pm on Friday 10 October 2014.

Jeff Webb – Returning Officer  
AEC Melbourne



**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
FAIR WORK DIVISION**

**VID 522 of 2014**

**IN THE MATTER OF AN ELECTION FOR OFFICE IN THE VICTORIA NO 1  
BRANCH OF THE HEALTH SERVICES UNION**

**DIANA ASMAR  
Applicant**

**JUDGE: GORDON J  
DATE: 21 OCTOBER 2014  
PLACE: MELBOURNE**

**REASONS FOR JUDGMENT**

**INTRODUCTION**

1 Pursuant to s 200(1) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**), particular people can apply to the Court for an inquiry into a claim that there has been an irregularity in relation to an election for an office in a branch of an organisation registered under the FWRO. On such an inquiry, the Court is to inquire into and determine the question whether an irregularity had happened in relation to that election: s 206(1) of the FWRO Act. The Court is not bound by the rules of evidence: s 205(3)(b) of the FWRO Act.

2 The Applicant, **Ms Asmar**, made application for an inquiry (the **Inquiry**) into alleged irregularities in respect of the Health Services Union (**HSU**) Scheduled Election 2014 Victoria No 1 Branch (**Election**). Ms Asmar is the current Branch Secretary of the Victoria No 1 Branch of the HSU. The HSU is sometimes referred to as the Health Workers Union.

3 The alleged irregularity was described by Ms Asmar as follows:

The decision of the [Australian Electoral Commission (**AEC**)] Returning Officer, ... determining that:

- (a) The nomination of Jamie Martorana [**Mr Martorana**] to the office of Branch Secretary should be accepted; and
- (b) The nomination of Jayne Govan [**Ms Govan**] to the office of Branch Assistant Secretary should be accepted;

is wrong on the grounds that in respect of:

- (c) Mr Martorana on the grounds that he is not eligible to stand as a candidate for the office of Branch Secretary and National Council [D]elegate because he is not eligible for membership of the [HSU] because he is not employed in the industry (within the meaning of rule 3 of the Rules) and not usually employed in the industry; and
- (d) Ms Govan on the grounds that she is not entitled to stand as a candidate because she is not a member of the [HSU] and has been struck from the Register of Members on 30 June 2014 having not made her membership contributions since 19 August 2013.

4 On 5 September 2014, when the Originating Application for inquiry relating to the Election was filed, Ms Asmar applied for interim orders under s 204 of the FWRO Act. On 8 September 2014 North J made orders, amongst others, that:

- 1. The [HSU], the Returning Officer and candidates in the elections referred to in paragraph 2 be notified of the Inquiry by letter from the solicitors for the Applicant
  - (a) informing them of the time and place fixed;
  - (b) annexing copies of the Application and this Order;
  - (c) informing them of affidavit material filed by the applicant available upon request.
- 2. Until the completion of this proceeding in relation to the elections for the positions of Branch Secretary, Branch Assistant Secretary and National Council Delegate in the Health Services Union Victoria No 1 Branch (the Branch), or until further orders of the Court, the Returning Officer shall not take any further steps in the conduct of the elections for the offices of the Branch President, Branch Secretary, Branch Senior Vice President, Branch Junior Vice President, Branch Assistant Secretary, Branch Trustee, Ordinary Member of the Branch Committee or National Council Delegate in the Branch.

The Inquiry was listed for hearing by North J on a date to be fixed.

5 The Inquiry was subsequently heard on 13 October 2014. At that hearing, each of Ms Asmar, Mr Martorana, Ms Govan, the AEC and the HSU were represented.

6 These reasons will consider the relevant legislative context, the facts and then turn to consider the position of Ms Govan and then Mr Martorana.

## LEGISLATIVE CONTEXT

### Inquiry

7 As noted earlier, particular people can apply to the Court for an inquiry into a claim that there has been an irregularity in relation to an election for an office in a branch of an organisation registered under the FWRO: s 200(1) of the FWRO Act. On such an inquiry, the Court is to inquire into and determine the question whether an irregularity had happened in relation to that election: s 206(1) of the FWRO Act.

8 “Irregularity” in relation to an election or ballot is defined in s 6(1) of the FWRO Act to include, among other matters, “a breach of the rules of an organisation or branch of an organisation”.

### The HSU

9 The HSU is an association of employees and a registered organisation under the FWRO Act. The HSU is comprised of a National Organisation, and eight branches, established under the Rules of the HSU. The Victoria No 1 Branch is one of those branches (the **Branch**).

### Need for rules and their content

10 Pursuant to s 140 of the FWRO Act, the HSU must have rules, including rules which address the matters specified in s 141 of the FWRO Act. One of the matters which the rules must provide for is “the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members” of the HSU: s 141(1)(b)(vii).

11 Section 142 sets out general requirements for the rules which include that the rules:

(a) must not be contrary to, or fail to make a provision required by this Act, the Fair Work Act, a modern award or an enterprise agreement, or otherwise be contrary to law; and

...

(c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to Parliament’s intention in enacting this Act (see section 5) and the objects of this Act and the Fair Work Act, are oppressive, unreasonable or unjust; and

(d) must not discriminate between applicants for membership, or members, of the organisation on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.



12 Further, the rules of the HSU must provide for election of the holder of each office (s 143 of the FWRO Act) including rules in relation to the manner in which persons may become candidates for election and the conduct of the elections.

13 The HSU's rules have been amended over time. Two sets of the HSU's rules are relevant. One set of rules came into force from 1 January 2014 (the **Previous Rules**). **New Rules** came into force from 5 June 2014.

14 Some of the relevant events in this Inquiry occurred pursuant to or under the Previous Rules while others occurred pursuant to or under the New Rules.

15 Under the Previous Rules, rules 8(f)(v) and (vi) relevantly provided:

- (f) Notwithstanding anything contained elsewhere in these Rules:
  - ...
- (v) Where a member's payment of an instalment has not been received by the Branch by the date on which it was due, the Branch Secretary shall notify that member:-
  - A. the Branch has not received that member's instalment payment;
  - B. of the consequences to the member of the failure to pay that instalment as provided by this Rule; and
  - C. of the amount of the balance of the member's annual contribution owing for the year to which that contribution relates.
- (vi) A member notified in accordance with paragraph (v) above shall pay the instalment within 21 days from the date of the written notice from the Branch Secretary. A member who fails to pay that instalment within those 21 days shall cease to be entitled to pay the membership contribution by instalment and shall within a further 7 days from those 21 days be liable to pay the balance of that member's contribution for the relevant year.

The letter Ms Asmar sent to Ms Govan on 1 May 2014 (see [54] below) was sent pursuant to rule 8(f)(v).

16 Rule 10 of the Previous Rules dealt with a member's financial status, and relevantly stated:

- (a) A member owing contributions, fines, fees or levies equivalent to an amount in excess of 13 weeks contributions shall be deemed to be unfinancial.
- (b) An unfinancial member shall not be entitled -
  - (i) to any of the rights and privileges of membership;

- (ii) to nominate for or hold any office or in any way participate in any ballot or election in the [HSU] or any branch of the [HSU];
  - (iii) to attend or speak or vote at any meeting of the [HSU] or branch of the [HSU].
- (c) Any member exempted pursuant to Rule 8(e) of these Rules from payment either in whole or in part of any contribution, fee or levy shall, for the purposes of these Rules, retain continuity of membership and be deemed financial but shall not, during the period of exemption, be eligible to nominate for or hold any office in the [HSU] or any branch of the [HSU].

17 The New Rules are relevant to events after 5 June 2014, including the Election. Rule 3, entitled “Conditions of Eligibility for Membership” relevantly provides, for example:

The [HSU] shall consist of an unlimited number of persons -

A. *employed or usually employed* -

(a) throughout Australia in or about or in connection with the carrying on of all hospitals, benevolent homes, dispensaries, asylums, mental hospitals, sanatoriums, rest homes, convalescent homes, medical schools, laboratories, colleges, industrial and other homes, charitable institutions, ambulance work, all classes of nursing, public or private;

...

B. employed or usually employed -

...

C. such other persons, whether or not employees in the industries of the [HSU] as have been elected or appointed full time National Officers or Branch Officers or organisers of the [HSU] or any Branch thereof and admitted as members of the [HSU]. For the purposes of this Clause C of this Rule, the full-time Officers of the [HSU] and of any Branch thereof shall be the holders of any of the offices of National Officers or Branch Officers where the duties of such office are of a full-time nature; and,

...

(Emphasis added.)

18 Rule 6 entitled “Admission to Membership” includes Rule 6(g)(v) which relevantly provides:

(g) On receipt of the application for membership:

...

(v) where the applicant has previously been a member of the [HSU] and owes a debt to the [HSU], the Branch Secretary shall either accept the application unconditionally, or accept it on the condition that the applicant shall first pay the whole or part of the debt owed, or

otherwise refer the matter to the Branch Committee of Management.

19 Rule 10 addresses “Termination of Membership”. The rule relevantly states:

...

Termination because the member ceases to be eligible

- (i) Membership terminates automatically when the member ceases to be eligible to be a member of the [HSU] unless the person is a National or Branch life member, in which case the person shall continue to be a National or Branch life member.
- (j) A person who is a member of the [HSU] because the person is eligible for membership by virtue of rule 3C... shall, unless otherwise eligible to become or remain a member of the [HSU], automatically cease to be a member of the [HSU] when he or she ceases to hold the office or position referred to in that rule.

Termination as the result of purging the register

...

- (l) Each Branch Secretary shall, from time to time, review the register of the Branch’s members and identify the names of members of the Branch who have been unfinancial for more than three months. The Branch Secretary shall write to each such member to his or her last address shown on the register and give the member one month’s written notice of the intention to strike his or her name off the register.
- (m) If the member does not become financial within a month of the letter being sent, the member’s name shall be purged from the register of members. The member shall cease to be a member when his or her name is purged from the register.

20 Quite apart from the operation of Rule 10, reference should also be made to s 171A of the FWRO Act which relevantly has the effect that a person’s membership of the HSU automatically ceases when the person is not, or is no longer, an employee or an officer. “Employee” has its “ordinary meaning and includes a person who is usually such an employee”: s 6 of the FWRO Act.

21 Next, Rule 11 addresses “Union Dues”. Rule 11(h) relevantly provides that a member was entitled to pay HSU dues by any one or more of the following methods – payroll deductions, direct debit, charge or credit card, cheque, cash or any other method approved by the Branch Committee of Management. Rule 11(k) addresses non-payment of HSU dues in the following terms:

Where a member's payment of [HSU] dues has not been received by the Branch within one month of the date on which it is due, the Branch Secretary shall notify the member:

- (i) The dues have not been received;
- (ii) The amount of the balance of the member's dues owing;
- (iii) That if the member does not pay the dues owing within three months of the due date then member shall be unfinancial. (sic)

22 "Financial and Unfinancial Members" are addressed in Rule 12. It relevantly provides:

- (a) Where a member's payment of [HSU] dues has not been received by the Branch within three months of the date on which it is due, the member shall be unfinancial. ...
  - (b) An unfinancial member shall not be entitled -
    - (i) to any of the rights and privileges of membership;
    - (ii) to nominate for or hold any office in the [HSU] or any Branch;
    - (iii) to participate in any ballot or election in the [HSU] or any Branch;
    - (iv) to attend, speak at or vote in any meeting of the [HSU] or Branch.
  - (c) When the Branch Committee of Management has decided to waive a member's annual contribution or any levy, the member:
    - (i) shall retain continuity of membership and be deemed financial for the period covered by the waiver;
- ...

23 "Elections" are addressed in Rule 23. The conduct of Branch elections are addressed in Rule 23A(d). Rule 23A(d)(vii) relevantly provides that when conducting elections and ballots of the HSU:

The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event that he or she finds a defect in any nomination, the Returning Officer shall before rejecting the nomination notify the person concerned of the defect, and, where it is practicable to do so, give the person the opportunity of remedying the defect where practicable within seven days of being notified.

24 Qualifications for office are relevantly set out in Rule 23A(e):

- (i) Nominations for any position of paid Branch Officer shall have been a continuously financial member of the [HSU] for not less than twelve months

immediate (sic) preceding his or her nomination and shall be a financial member of the [HSU] at the date of his or her nomination.

- (ii) Nominations for any position other than that of paid Branch Officer shall have been a continuously financial member of the [HSU] for not less than three months immediately preceding his or her nomination and shall be a financial member of the [HSU] at the date of his or her nomination.

25 The positions of Branch Secretary and Branch Assistant Secretary are paid Branch Officer positions and therefore a nominee must have continuously been a financial member of the HSU for not less than 12 months immediately preceding the nomination and must be a financial member of the HSU at the date of the nomination: Rule 23A(e)(i). The position of National Council Delegate is not a paid Branch Officer position and therefore requires continuous financial membership for not less than three months: Rule 23A(e)(ii).

26 Team Nominations are governed by Rule 23A(f) as follows:

Notwithstanding sub rule (d) of this rule, candidates in an election of:

- (i) Officers of a Branch;
- (ii) Ordinary members of a Branch Committee;
- ...
- (iv) Branch delegates to the National Council:

may, subject to the following conditions, nominate as members of a “team nomination”:-

- a. Each candidate being nominated as a member of a team nomination must signify his or her acceptance of such nomination by signing the nomination to the Returning Officer.
- b. *No member of a team nomination may nominate or be nominated as a member of another “team nomination” or as an individual candidate.*
- c. A “Team” nomination must nominate a candidate (or the required number of candidates) for each position for which nominations have been called whereupon each candidate will be considered to have nominated for each position concerned.

...

- f. The Returning Officer shall ensure that the ballot paper makes provision for the recording of a vote for each member of a team nomination by way of marking one box at the top of the list of names of members of that team (a “team box”). The Returning Officer shall also ensure that the ballot paper contains clear instructions to the effect that a member voting may vote individually for candidates, including members of a team nomination, or,

alternatively, vote for each member of a team by marking the team box.

- g. Once a candidate has nominated for a team nomination he or she cannot withdraw unless with the consent of all the members of that team. Where there is consent for a candidate to withdraw, the team nomination form may be amended to provide for a replacement nominee.

(Emphasis added.)

## **FACTS**

27 A statement of agreed facts was prepared and signed on behalf of Ms Asmar, Mr Martorana, Ms Govan, the AEC and the HSU for the purposes of s 191 of the *Evidence Act 1995* (Cth) as well as a Supplementary Agreed Document Tender (collectively the **SOAF**). The following summary of facts is primarily extracted from the SOAF. If the fact or facts are not sourced from the SOAF, the reasons identify the source.

### **HSU Election**

28 Rule 23A(d)(ii) of the New Rules provides for the opening of nominations on 1 June and closing on 14 June.

29 Pursuant to s 189(3) of the FWRO Act, by decision of a delegate dated 27 June 2014 and also an amended decision dated 17 July 2014, the General Manager of the Fair Work Commission arranged for the conduct of the Election for offices in the Branch (including with respect to the offices of Branch Secretary, Branch Assistant Secretary and National Council Delegates).

30 As compliance with the particular timetable provided for under the New Rules was not possible, the Returning Officer determined a revised timetable, pursuant to s 193(1)(b)(ii) of the FWRO Act, as follows:

- (1) 15 July 2014 – Close of Roll for the Branch;
- (2) 22 July 2014 – Nominations open;
- (3) 4 August 2014 at 5pm – Nominations close;
- (4) 4 August 2014 at 5pm – Candidate withdrawal period ended;
- (5) 9 September 2014 – Ballot opens;
- (6) 10 October 2014 at 5pm – Ballot closes.

31 On 4 August 2014, the Returning Officer sent a Nominations report to the Branch Secretary and requested that she certify as to the financial status and eligibility of all candidates and nominators.

32 On 8 August 2014, the Returning Officer received the Branch Secretary's certification report. That report included statements to the effect that Mr Martorana (candidate for Branch Secretary) and Ms Govan (candidate for Branch Assistant Secretary) were not eligible to stand for office.

33 On 8 August 2014, the Returning Officer wrote to Mr Martorana and to Ms Govan, and also to candidates relying on either Mr Martorana or Ms Govan as nominators, notifying them of the defects stated in the Secretary's report and requesting that they respond by 15 August 2014.

34 On 15 August 2014, the Returning Officer received responses and documents from Mr Martorana and Ms Govan in support of their nominations as candidates as part of the "Martorana Team" nomination. The Returning Officer then accepted the nominations as valid under the New Rules.

35 On 1 September 2014, the Returning Officer conducted a draw for positions on the ballot paper. A ballot paper was prepared by the Returning Officer and would have been distributed to electors but for the interim order made on 8 September 2014. A copy of that ballot paper is attached as Annexure A to these reasons. The ballot paper identifies all of the candidates whose nominations were accepted by the Returning Officer for inclusion in the ballot for election to office in the Branch. The ballot paper takes the form of a table. On the vertical axis, the different offices subject to election are identified. On the horizontal axis, there are three columns. The first column lists the names of candidates who have nominated as individuals. The second column lists the names of persons who have nominated by way of a "team nomination" for the "Asmar Team". The third column lists the names of persons who have nominated by way of a "team nomination" for the "Martorana Team".

### **Ms Govan**

36 Between 29 January 2013 and 12 July 2013, Ms Govan was employed as an organiser in the Branch. This was Ms Govan's second period of employment as a branch organiser.

37 An issue in the inquiry is whether Ms Govan was a member of the HSU when she lodged her nominations.

38 Records of payments of HSU dues by members are maintained in the Branch's membership database. A relevant extract from the Branch's membership database was in evidence.

39 On 11 July 2013, the membership database records contain a record as to Ms Govan that "... *the amount of \$544.68 has now been waived.*" Further, Ms Govan provided credit card details so that dues could be taken by the organisation on an ongoing basis.

40 The membership database records that on 22 July 2013, 5 August 2013 and 19 August 2013, fortnightly payments of membership dues each of \$21.15 was received from Ms Govan.

41 The membership database also records that on 5 August 2013, the Branch Committee held a meeting where the membership of Ms Govan was discussed. Ms Asmar noted that the process for requesting a membership waiver (being the waiver recorded in paragraph [39] above) had not been followed by Ms Govan. A motion was carried that Ms Asmar write to Ms Govan and explain "that the process for every member is that they must write to request the Secretary to waive membership fees and that the [Branch Committee] will then make a decision; and that therefore the records on [the membership database] in relation to [Ms Govan's] fees be changed back to what they were before [Ms Govan] went to see the Membership Officer". For reasons that were not clear, the membership database was only updated to reflect this meeting on 10 September 2013. Ms Asmar gave evidence at the hearing that she wrote to Ms Govan straight after the meeting on 5 August 2013. Ms Govan denied that Ms Asmar wrote to her.

42 The membership database records that on 3 September 2013, a credit card payment of \$21.15 was recorded as received from Ms Govan, but on 4 September 2013, the payment was recorded as reversed with the narration "05 - Do Not Honour". Similarly, payments from Ms Govan of \$21.15 made on 17 September, 1 October and 15 October 2013 were recorded as reversed the following day with the narration "05 - Do Not Honour".

43 On 17 October 2013, the solicitor for Ms Govan, Mr Addison, wrote to the solicitors for the HSU. In part, Mr Addison's letter reads as follows:

.... In 2012 our client changed banks resulting in a changed credit card number which in turn caused a lack of transfer of funds to the [HSU] resulting in our members' dues not being paid. As a result Ms Govan spoke to the membership department in August 2012 and reached agreement on a process to regain her financial status.

The process that was agreed did not occur and as a result further discussions were



entered into in July 2013 when it became apparent that the agreed outcome had not occurred. At that time the question of her financial status was resolved by agreement with the [HSU]. Ms Govan from that point on made sure that the [HSU] had her correct credit card details and was from that point paying \$21.15 per fortnight contributions. Any outstanding dues were by agreement waived by the [HSU].

We are instructed that your client has now unilaterally altered that agreement and in addition is refusing to deduct the union membership fees from Ms Govan's credit card thus putting our client in the position of being un-financial ....

44 The membership database records that credit card payments from Ms Govan of \$21.15 made on 29 October and 12 November 2013 were again reversed the following day with the narration "05 - Do Not Honour". Ms Antoun, an employee of the HSU who has administrative and membership duties, gave evidence at the hearing that on 14 November 2013 she called Ms Govan and left her a voicemail asking her to return the call. Ms Antoun's evidence was that she then changed Ms Govan's membership from a direct debit membership to a membership where statements or tax invoices were sent, as was the practice that would be followed for all members after several payments were declined. Ms Govan denied that Ms Antoun left her a voice message. The membership database records that the first invoice after the change was issued on 1 January 2014. Ms Govan denied receiving that invoice.

45 On 15 January 2014, the Branch's solicitors responded to Mr Addison's letter. In part, the letter read:

.... If your client wishes to regain her financial membership of the [HSU], she should either make a payment to the Branch of \$339.98 which is the total amount in arrears or make an application in writing to the Branch Committee to have all or part of the arrears waived. To then remain financial Ms Govan will need to pay her next quarterly invoice ...

46 Ms Govan gave evidence at the hearing that she did not become aware of this letter until May 2014.

47 The membership database records that a further invoice was issued on 1 April 2014. At the hearing, Ms Govan denied receiving that invoice.

48 On 3 April 2014, Ms Govan sent an email to the HSU. She requested a statement of outstanding dues.

49 At about 4.28 pm on Thursday afternoon, 10 April 2014, Ms Govan attended at the HSU's office. Ms McIntosh was with Ms Govan. What transpired at the HSU's offices is in dispute. Ms McIntosh swore an affidavit in this proceeding but was not required for cross-

examination. Evidence was given by Ms Govan, Ms Antoun and Mr Katsis. Mr Katsis was a Lead Organiser at the Branch. According to some of the witnesses, Mr Cameron Granger was part of the discussions with Ms Govan and Ms McIntosh. Mr Granger did not give evidence.

50 The evidence of Ms Antoun was that Ms Govan asked if she could speak to the membership manager because she had issues with her membership. Ms Antoun rang Ms Di Pierro, the membership manager. Ms Di Pierro told her that she was working and she would try to finish and come see Ms Govan. Ms Antoun waited some time and then went upstairs, and Mr Katsis returned with her. Ms Govan, Ms McIntosh and Mr Katsis all had a discussion, but Ms Antoun did not hear it and Mr Katsis did not tell her what it was about.

51 The evidence of Ms McIntosh was that upon entering the building they immediately went to the receptionist who was Ms Antoun. Both Ms Govan and Ms McIntosh advised Ms Antoun that they were there to pay Ms Govan's fees. Ms Antoun asked them to wait while she called Ms Di Pierro in membership. After several minutes Ms Antoun hung up and told them she could not take Ms Govan's money. No reason was given. Ms Govan and Ms McIntosh found this to be unacceptable at which point Ms McIntosh asked Ms Antoun to ask someone, who had the authority to take the money, to come downstairs and speak to them. Ms Antoun picked up the phone and spoke to someone and then told Ms Govan and Ms McIntosh to take a seat and someone would be down shortly. Approximately 15-20 minutes later, Mr Katsis and Mr Granger came down to speak to the two women. When Ms Govan asked Mr Katsis about paying her membership, he told her that he would need to discuss it with senior management and would get back to her in the appropriate time. Ms Govan then politely asked for her response to be communicated to her within seven days. Mr Katsis smirked, looked at Mr Granger and then back at Ms Govan and said "I'll talk with senior management".

52 Ms Govan's evidence was that she spoke with Ms Antoun and told her that she was there to get the outstanding amount and pay her membership. Ms Antoun told Ms Govan that she could not do that and would call Ms Di Pierro. Ms Antoun then called Ms Di Pierro. Ms Govan and Ms McIntosh waited in the reception area for 10 to 15 minutes until Mr Katsis came down with Mr Granger. Ms Govan did not recall whether Mr Katsis asked her if she knew how much was outstanding on her membership dues, but she recalled that she wanted to know how much was outstanding and she wanted to pay her fees. Ms Govan said that, in

going into the office, she had no purpose other than to pay her fees. Ms Govan told Mr Katsis that she did not know how much was outstanding. Mr Katsis told Ms Govan that he would have to speak to senior officials. The meeting with Mr Katsis ended on the basis that he would pass on her enquiry about her membership. Ms Govan asked for a prompt response, within seven days.

53 Mr Katsis' evidence was that Ms Govan did not say that she was there to pay the union fees. He accepted that Ms Govan mentioned that she wanted to sort the matter out with regards to her membership, and that as she had been out of work, she had fallen behind. Mr Katsis' evidence was that he asked Ms Govan how much money was outstanding. He said this was usually the first question that he tended to ask of members. Mr Katsis was cross examined about his statement in his affidavit that he told Ms Govan that there was no one available in the office that could look at the computer system and work out how much was outstanding. His oral evidence was that statement was based on the fact that had told Ms Govan that he would put the question of how much was owing to the hierarchy. He accepted that he did not ask Ms Antoun to look on the computer and tell him how much was outstanding. His explanation for that was he had been asked as a senior to go down to speak to Ms Govan and Ms McIntosh because presumably there was an issue that nobody could rectify. He accepted that he had the capacity to check the database but said that did not have the capacity to determine the exact figure. His evidence was that Ms Di Pierro had not been available because she was attending to some deadlines.

54 On 1 May 2014, Ms Asmar wrote to Ms Govan about her arrears in payment of membership dues. That letter was sent pursuant to rule 8(f)(v) of the Previous Rules: see [15] above. In part, the letter read:

Your total outstanding dues stand at \$562.32 as of 30 April 2014

....

To regain financial membership of the [HSU] you are required to:

- [P]ay your outstanding dues;
- Provide details of your employment and your employer;
- Advise whether you wish to alter your membership classification; and
- Advise how you wish to pay your dues, that is, with what frequency.

If you are seeking a reduction in your total outstanding dues, you can ask the Branch Committee to have all or part of the arrears waived; advice you also received in the letter of 15 January.

Furthermore, as you have noted, you have not made a membership payment since

19 August 2013. This equates to a period in excess of thirty-six weeks since you have made a membership payment.

....

Consequently, I hereby provide you notice that unless the matter of your outstanding dues is remedied in full by 31 May 2014 you will be struck from the register of members, and your [HSU] membership terminated.

55 Ms Govan confirmed that she received this letter by post. In May and June 2014, Ms Govan did not respond to the letter dated 1 May 2014. Ms Govan did not pay the arrears notified to her by that letter. Ms Govan gave evidence at the hearing that she did not pay those dues immediately as she was in and out of the Royal Children's Hospital with her son. She accepted that it would have been open to her to immediately pay her outstanding dues on receipt of this letter. Ms Govan also accepted that she was on notice that her name would be struck from the register of members if she did not pay her outstanding dues by 31 May 2014, and that this letter told her what she needed to do to regain financial membership. Ms Govan gave evidence to the effect that she thought that the HSU already had the details required by the second and third dot points in the letter.

56 On 30 June 2014, Ms Asmar, as the Branch Secretary, purged Ms Govan's name from the register of members.

57 For reasons that are not clear, the membership database records that a further invoice was issued to Ms Govan on 1 July 2014. By letter dated 14 July 2014, Ms Asmar wrote to Ms Govan that:

I refer you to my previous letter, dated May 1 .... as we are yet to hear from you or yet to receive any payment, I am now obliged under Section 10 of [the HSU] rules to cancel your membership, and hereby give you notice of that cancellation. ....

58 On 4 August 2014, Ms Govan lodged her nominations for Branch Assistant Secretary and National Council Delegate with the Returning Officer.

59 On 14 August 2014, Mr Daniel Govan, Ms Govan's brother, telephoned the HSU and spoke to Ms Antoun. Mr Govan asked to make a payment of outstanding dues on behalf of Ms Govan. He was informed that no payments could be accepted on behalf of a person who was not a member of the HSU. He was informed that if Ms Govan wished to rejoin the HSU, she could make an application to the Branch Committee of Management.

**Mr Martorana**

60 Mr Martorana was employed by Western Health as a Security Officer for about 13 years, between June 1992 and June 2005.

61 On 13 June 2005, after a secondment from Western Health, lasting about 3 months, Mr Martorana commenced a period of full time employment with the Branch, as an Area Organiser. The Branch sponsored Mr Martorana to undertake a certificate 4 in Unionism which he completed in 9 months in addition to carrying out his normal work for the Branch.

62 In February 2009, Mr Martorana was subjected to a traumatic experience during the “Black Saturday” bushfires. The Black Saturday bushfires occurred on 7 February 2009.

63 Although Mr Martorana commenced his employment as an Area Organiser, during his employment he served in an elected capacity as a Branch Assistant Secretary.

64 Until on or about 20 October 2010, Mr Martorana remained in the full time employment of the HSU. Effective on or about 20 October 2010, Mr Martorana resigned from his employment. Since 20 October 2010, Mr Martorana has not worked in any of the callings identified in the HSU’s membership rules, or at all.

65 On 4 August 2014, Mr Martorana nominated for election to the office of Branch Secretary of the Branch.

66 On 12 August 2014, Dr Anthony Diamantaras, a general practitioner, issued a medical certificate in the following terms:

I have been treating Mr Martorana for over 5 years for severe depression and anxiety. He has endured multiple severe stressors including losing his home in the Black Saturday fires and facing near certain death in the same fires.

As a result of this and severe work related stressors he resigned from work in October 2010. Immediately following his resignation his mother unexpectedly died. Mr Martorana has not been in pain [sic] employment since. Both I and Mr Martorana have expressed a desire for him to recommence work but to this point in time this has not been possible.

67 Mr Martorana gave evidence and was cross examined at the hearing. Mr Martorana gave evidence that he took two weeks off work immediately following the Black Saturday bushfires, and returned to work for about the next two weeks, and then took two further weeks off. It was his understanding that this time off was taken as sick leave. Mr Martorana also took four days of sick leave from 28 September 2010 to 1 October 2010. Other than

those specific time periods, Mr Martorana continued to perform his duties until his resignation.

68 Minutes from meetings of the HSU Council/HSU East Council indicated that at around October 2010 there was a proposed restructure of allocation of areas of responsibility to certain positions within HSU East, and Mr Martorana did not agree with the proposed structure. The minutes recorded that the General Secretary had engaged in “sensible discussions” with Mr Martorana, and “would continue to negotiate” with him. The evidence indicates that the HSU East Branch was a precursor branch which demerged into separate branches including the Victoria No 1 Branch.

69 Mr Martorana gave evidence that he resigned following those negotiations and with the agreement of the HSU. At the time of his resignation, he was Branch Assistant Secretary of the Branch, which is an elected position. He received compensation of \$240,000 which was paid in weekly instalments over the course of 2 years under terms set out in a settlement agreement. Mr Martorana gave evidence that he was not happy about leaving the HSU, but he felt that he had no option but to leave.

70 Mr Martorana has not been in paid employment since October 2010. He gave evidence that it was his intention to return to work when possible, but that for most of the time, a return to work has not been possible. It is only relatively recently that he has found himself in a position where he is prepared and able to re-enter the workforce. It is his intention to resume work in the industry either as a health sector employee or as Branch Secretary. He has been focused on getting elected to the HSU position and has not made any other job applications.

71 On 9 October 2014, Dr Diamantaras issued a medical certificate stating “Mr Jamie Martorana is fit to return to full time work. He has capacity to perform any duties for which he is qualified or experienced to do”. Dr Diamantaras also filed an affidavit in these proceedings. He was not cross examined. Dr Diamantaras’ evidence outlined the state of Mr Martorana’s health over the last five years and stated that “the condition is one which is improving and I am of the view that Mr Martorana is now fit to return to work”.

## **ANALYSIS**

### **Ms Govan**

72 Ms Asmar contends that Ms Govan was not a member of the HSU at the time she nominated for office and for that reason her nominations were invalid. Ms Govan had been a member

but her name had been purged from the register of members because of her failure to pay membership dues: see [19] and [56] above.

73 The question which arises is whether Ms Govan was unfinancial at the time she lodged her nominations.

74 Ms Govan contends she was not unfinancial. Ms Govan's contention was founded on an allegation that a deliberate strategy was engaged in by Ms Asmar (and presumably other HSU officials) to ensure that Ms Govan was unfinancial or not a member of the HSU so to prevent her from contesting the election. In support of that contention, Ms Govan relies upon the facts set out at [36]-[59] above and *Re Howard; Re Slaters, Tilers & Roofing Industry Union (Vic.)* (1983) 4 IR 95; *McJannett v Bulloch* [2012] FCA 1233 at [229] and *Re Asmar (No 3)* (2012) 207 FCR 476 at [49]-[51].

75 In *Re Asmar (No 3)* (2012) 207 FCR 476 at [49]-[51], Tracey J stated:

49. ... In *Re Howard; Re Slaters, Tiling and Roofing Industry Union (Vic.)* (1983) 4 IR 95 Keely J dealt with a case in which a person who had sought to maintain his financial status as a member of a Union had failed to do so because the secretary had refused to accept his subscriptions. His Honour held that, in such circumstances, the member was not to be treated as being unfinancial. He declined ... to accept a construction of the Rules which resulted "in a member being deemed to be unfinancial where ... *he has offered his union dues to the secretary at the union office and the secretary has refused to accept payment.*" His Honour so held in a case where the Union Rules did not contain an express obligation on officials to accept contributions tendered by members or potential members.

50. In *McJannett v Bulloch* [2012] FCA 1233 Barker J also dealt with a case in which an applicant for union membership alleged that union officials had acted to prevent him from becoming financial in order to prevent him from contesting union elections. His Honour (at [228]) accepted that the breach of an implied obligation of a union to accept the contributions of a person entitled to be a member of that union could constitute an irregularity for the purposes of the Act. His Honour continued at [229] that:

"In my view, if it could be established that there was any deliberate strategy undertaken by or on behalf of the Union or an elected officer, such as the Secretary, at all material times, to prevent the applicant being financial ... then there would be evidence that suggests a breach of the Rules of the Union in relation to the payment of contributions."

51. I would also observe that, in *Re Slaters*, Keely J said that, were the union's rules properly to be construed as causing *a member who had done all that was required*, under the rules, to make contributions to be regarded as being unfinancial because an official had refused to accept payment, the rules would have contravened the then s 140(1)(c) of the *Conciliation and*

*Arbitration Act 1904* (Cth), (see now s 142(1)(c) of the [FWRO] Act), because such a rule would impose upon members of the organisation conditions, obligations and restrictions, which, having regard to the objects of the Act, would be oppressive, unreasonable or unjust. This was the case as, if taken literally, such a rule would permit Union officials to prevent members from participating in those aspects of Union affairs which were reserved for financial members by refusing to receive their subscriptions.

(Emphasis added.)

76 The question in the present case concerning Ms Govan *may* be put in these terms – did one or more of the HSU officials refuse to accept payment of Ms Govan’s union dues, or otherwise act to prevent her from becoming financial, in order to prevent her from contesting union elections even though Ms Govan did all that was required of her under the rules to make contributions of her union dues?

77 Having regard to all the circumstances set out at [36]-[59] above, the answer to that question is “no”. The answer is “no” because although some of the steps taken by the HSU officials may be described as being less than helpful (see, in particular, at [49]-[53] above), it cannot be said that Ms Govan did all that was required of her under the rules to make contributions of her HSU dues or that the HSU acted to prevent her becoming financial.

78 From at least August 2013, Ms Govan and the HSU were in dispute as to the quantum of her outstanding membership dues. By 15 January 2014, the position had crystallised to the point that the Branch’s solicitors informed Ms Govan’s solicitor that:

.... If your client wishes to regain her financial membership of the [HSU], she should either make a payment to the Branch of \$339.98 which is the total amount in arrears or make an application in writing to the Branch Committee to have all or part of the arrears waived. To then remain financial Ms Govan will need to pay her next quarterly invoice ...

Ms Govan took neither step. Ms Govan’s evidence was that she did not become aware of the existence of this letter until May 2014: see [46] above. There was no indication that the HSU were responsible in any way for that occurring.

79 Next, on 3 April 2014, Ms Govan sent an email to the HSU requesting a statement of outstanding dues: see [48] above. She received no immediate response. So, at about 4.28 pm on 10 April 2014, Ms Govan attended at the HSU’s office: see [49] above. As I have noted, on that day the actions of the HSU staff, at the very least, were less than helpful.



80 However, by 1 May 2014, Ms Govan had her answer. She was sent a letter by Ms Asmar answering the very question she had asked – the quantum of arrears of her membership dues. The letter informed her that as at 30 April 2014, Ms Govan’s total outstanding membership dues were \$562.32: see [54] above. That letter was sent pursuant to rule 8(f)(v) of the Previous Rules: see [15] above. Significantly, the letter contained other important information. It listed the four steps Ms Govan was required to take to regain financial membership of the HSU: see [54] above. Finally, the letter notified Ms Govan that unless the matter of outstanding fees was remedied in full by 31 May 2014, she would be struck from the register of members and her membership terminated.

81 Ms Govan took no step in response to that letter. In May and June 2014, Ms Govan did not respond to the letter. Ms Govan did not pay the arrears notified to her by the letter. Ms Govan’s evidence at the hearing was that she had a son in the Royal Children’s Hospital and that was her priority. That is completely understandable. However, the HSU was not responsible for Ms Govan’s failure to respond to that letter.

82 On 30 June 2014, Ms Asmar (as the Branch Secretary) purged Ms Govan’s name from the register of members. On 14 July 2014, Ms Asmar again wrote to Ms Govan, referred to the letter of 1 May 2014, told Ms Govan that the HSU had not received payment and that under Rule 10 of the New Rules (see [19] above), her membership had been cancelled. Again, Ms Govan took no step in June, July or August 2014 to remedy the position. Indeed, Ms Govan last paid subscription fees on 19 August 2013 when \$21.25 was paid by credit card: see [40] above. As a consequence, at 30 June 2014, Ms Govan had been unfinancial for more than three months: New Rule 12 extracted at [22] above. In fact, Ms Govan had been unfinancial since at least January 2014 (the date on which the Previous Rules came into force): see Previous Rule 10 extracted at [16] above; New Rule 12 extracted at [22] above. Ms Govan had not undertaken any of the steps listed in the letter of 1 May 2014 by the time she lodged her nominations on 4 August 2014.

83 In all the circumstances, Ms Govan’s nominations which she lodged on 4 August 2014 should have been rejected. She was not a member of the HSU and, in any event, she was not a member of the HSU with a period of financial continuity sufficient to satisfy the eligibility requirements under rule 23A(e) of the New Rules (see [24] above) to nominate for election to the offices of Branch Assistant Secretary and National Council Delegate. The Court is satisfied that an irregularity occurred in relation to the Election.

84 The Court must not declare any step taken in relation to an election to be void unless the Court is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have happened or may happen, the result of the election may be affected, by irregularities: s 206(5) of the FWRO Act. In my view, it is appropriate to declare that the Returning Officer's acceptance of the nominations lodged by Ms Govan is void: s 206(4)(a) of the FWRO Act. The result of the Election may be affected by an irregularity if the Court did not make that declaration because it would permit Ms Govan to stand for election to the offices of Branch Assistant Secretary and National Council Delegate when she was not entitled to nominate for those offices.

85 What is to now happen in relation to the Election will be addressed later in these reasons.

**Mr Martorana**

86 Ms Asmar contends that at the time Mr Martorana nominated for election to offices in the HSU he was not a member of the HSU because, at the time he nominated, he was *not* "employed or usually employed" in one of the callings identified in Rule 3 of the New Rules: see [17] above.

87 Membership is a necessary (but not sufficient) criterion for eligibility to nominate: see [24] above. There is no suggestion that Mr Martorana was employed at the time he nominated: see [64] above. The question is whether, when he nominated, he was *usually employed* in one of the callings identified in Rule 3 of the New Rules.

88 As noted earlier, "employee" is defined in s 6 of the FWRO Act to have its ordinary meaning "and includes a person who is usually such an employee". The phrases "usually employed" and the "usual occupation is that of employee," were considered by North J in *Australasian Meat Industry Employees' Union v Belandra Pty Ltd* (2003) 126 IR 165 at [43]-[46]:

43. Whether a person is usually an employer is a question of fact to be determined in the light of all the circumstances in each case. There is no formula appropriate in all cases which can be used to answer the question. As to a past employment relationship, it may be relevant to know how long ago the person ceased to be an actual employer or to understand why the person ceased to be an actual employer. As to future employment, it may be relevant to know when such employment is to commence or resume, and the circumstances of any delay in commencing or resuming employment.

44. The unusual circumstances of the present case demonstrate how difficult it would be to reduce the inquiry to some generally applicable formula. In the present case, the inability of Belandra to conduct operations and to employ people resulted from the occurrence of the fire. The cessation of employment

was forced upon Belandra because the fire destroyed the premises in which the work was done. If it had not been for the fire, Belandra would have continued to employ its workforce to operate the slaughter floor at Brooklyn. Significantly, however, immediately after the fire Belandra intended to re-employ the workforce. That was the reason Belandra delayed payment of the severance entitlements, as it was entitled to do. The evidence of Mr Catalfamo was clear. He intended to re-employ the workforce and to that end he took energetic steps to make this possible. ...

45. ...These steps were taken as part of a plan to restart production with the previous workforce. During this period there is no question that Belandra was usually an employer. On the approach suggested by Mr Parry, Belandra had recently been an employer and, so far as Belandra's plans were concerned, reemployment was in prospect.
46. Then the situation changed. From September 2001, no longer was re-employment in prospect. The reason was that Belandra had altered its plans and decided not to re-employ the workforce. If Belandra then ceased to be an employer, that result came about as a consequence of its decision not to re-employ the workforce. ...

The analysis at [43] of *Belandra* was referred to and adopted by Tracey J in *Re Asmar (No 3)* (2012) 207 FCR 476 at [59] and [60] when determining whether a person is to be regarded as usually being an employee.

89 What then is the position here?

90 Mr Martorana was employed by Western Health as a Security Officer for about 13 years, between June 1992 and June 2005: see [60] above. After a secondment from Western Health, lasting about 3 months, Mr Martorana commenced a period of full time employment with the Branch, as an Area Organiser, on 13 June 2005: see [61] above. Mr Martorana undertook a certificate 4 in Unionism: see [61] above.

91 Mr Martorana was subjected to a traumatic experience during the Black Saturday bushfires. Mr Martorana was able to remain in the full time employ of the HSU for approximately a further 21 months. In around October 2010, a confidential agreement was entered into between Mr Martorana and the HSU, and Mr Martorana resigned from his employment. Since October 2010, Mr Martorana has not worked in any of the callings identified in the New Rules or at all: see [64] above.

92 Was Mr Martorana entitled to nominate? The conditions for membership are set out in Rule 3: see [17] above. Rule 3C (also extracted at [17] above) refers to persons as have been elected or appointed full time National Officers or Branch Officers or organisers of the HSU or any one of its branches. A careful reader will notice that Rule 3C is in different terms to

Rule 3A and does not extend to persons *usually* employed or appointed to those offices. At the time of his nominations, Mr Martorana had not been elected or appointed as a full time National Officer or Branch Officer or organiser of the HSU or any one of its branches. Rule 3C does not assist him.

93 In this matter, Rule 3A is the only rule specifying callings in which Mr Martorana was potentially *usually employed*. Mr Martorana has not worked in any of the callings identified in the New Rules, or at all, since October 2010.

94 At the time he lodged his nominations, was Mr Martorana *usually employed* in one of the callings in Rule 3A? That is a question of fact: see [88] above. The circumstances concerning Mr Martorana include that:

- (1) Mr Martorana has not worked, nor sought to be employed, since he resigned his employment with the HSU in October 2010;
- (2) Mr Martorana has not worked in any of the callings set out in Rule 3A for over 9 years (since June 2005);
- (3) Mr Martorana has not sought to be employed in any of the callings set out in Rule 3A for over 9 years (since June 2005);
- (4) There is evidence from his treating general practitioner of a serious illness which has previously affected his ability to be employed.

95 What then were Mr Martorana's stated intentions? Mr Martorana stated that from October 2010 (when he resigned) his intention was to return to work when possible, but that for most of the time, a return to work has not been possible. He told the Court that it is only relatively recently that he has found himself in a position where he is prepared and able to re-enter the workforce and that it is his intention to resume work in the industry if he is unsuccessful in the Election. Mr Martorana said he had not made any other job applications recently because he has been focused on getting elected to the position with the HSU.

96 The HSU submitted that Mr Martorana's asserted medical condition did not prevent him from working for the HSU in a full-time position (for the 21 months after the Black Saturday Bushfires), that there is no direct or properly admissible evidence from a medical practitioner either as to his condition or as to the incapacitating effects of the condition and, further, to the extent that his purported condition does not fully incapacitate him for work there is no evidence of any application by him for any employment.

97 This Inquiry must determine whether an irregularity has happened on the balance of probabilities: s 206(2) of the FWRO Act. The rules of evidence do not apply to this Inquiry: s 205(3)(b) of the FWRO Act.

98 There is no dispute that Mr Martorana suffered from a medical condition. However, despite Mr Martorana and his general practitioner giving sworn evidence, there was a lack of evidence about Mr Martorana's condition or as to the incapacitating effects of the condition. Further, although Mr Martorana stated that from October 2010 his intention was to return to work when possible and that for most of the time, a return to work had not been possible, the material (or lack of material before the Court) raises questions about those stated intentions.

99 It must be recalled that under the settlement agreement (see [69] above), Mr Martorana received \$240,000 payable by way of fortnightly instalments over a two year period. Next, on Mr Martorana's own evidence, there were periods of time when he was able to return to work. Unfortunately, how long those periods were and whether the work he was able to return to was within any one of the callings in Rule 3A and, no less importantly, what steps he took during those periods to gain employment, was not addressed.

100 In all the circumstances, I am not persuaded that Mr Martorana was, at the time he lodged his nominations in August 2014, "usually employed" in any one of the callings in the New Rules. Section 171A of the FWRO Act has operated to terminate his membership. Mr Martorana was not eligible to stand for the positions of Branch Secretary and National Council Delegate because he was not and is not a member of the HSU.

101 Mr Martorana's nominations which he lodged on 4 August 2014 should have been rejected. He was not a member of the HSU and does not satisfy the eligibility requirements under Rule 23A(e) of the New Rules (see [24] above) to nominate for election to the offices of Branch Secretary and National Council Delegate. The Court is satisfied that an irregularity has happened in relation to the Election.

102 As noted earlier, the Court must not declare any step taken in relation to an election to be void unless the Court is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have happened or may happen, the result of the Election may be affected, by irregularities: s 206(5) of the FWRO Act. In my view, it is appropriate to declare that the Returning Officer's acceptance of the nominations lodged by Mr Martorana is void: s 206(4)(a) of the FWRO Act. The result of

the Election may be affected by an irregularity if the Court did not make that declaration because it would permit Mr Martorana to stand for election to the offices of Branch Secretary and National Council Delegate when he was not entitled to nominate for those offices.

### **OTHER ISSUES ON DISPOSITION AND ORDERS**

103 Ms Govan and Mr Martorana were part of the “Martorana Team”: see [34] above. The nominations by that team are listed as part of Annexure A.

104 A team nomination must nominate a candidate for each position for which nominations have been called: Rule 23A(f)(iv)(c) set out at [26] above. As a result of each declaration made under s 206(4) of the FWRO Act (see [84] and [102] above), the “Martorana Team” nomination fails to comply with the Rules.

105 What then is to happen in relation to the Election? It is appropriate that directions be made under s 206(4)(c)(i) for the uncompleted steps in the Election to be taken. Each irregularity is limited both in its operation and its effect. In these circumstances, it is neither appropriate nor necessary to declare the Election void and to require all steps in relation to the Election to be taken again.

106 It is also appropriate that a further direction be given under ss 206(4)(c)(i) and / or (d), that the Returning Officer shall, before rejecting the nomination of the “Martorana Team”, notify the other members of that team of the irregularities and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity. This may include filling the nominations for the positions of Branch Secretary, Branch Assistant Secretary and National Council Delegates left vacant by those declarations.

107 For those reasons, the following declarations, orders and directions will be made:

- (1) Pursuant to s 206(4)(a) of the FWRO Act, the Returning Officer’s acceptance of the nominations lodged by each of Ms Govan and Mr Martorana is void;
- (2) Paragraph 2 of the orders made by North J on 8 September 2014 be set aside;
- (3) Pursuant to s 206(4)(c)(i) of the FWRO Act, the General Manager of the Fair Work Commission is to make arrangements for the uncompleted steps in the Election to be taken;

- (4) Pursuant to ss 206(4)(c)(i) and / or (d) of the FWRO Act, the Returning Officer shall notify the other members of the “Martorana Team” of the declaration in paragraph 1 and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity;
- (5) Liberty to apply on 48 hours’ written notice to all interested parties.

I certify that the preceding one hundred and seven (107) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gordon.

Associate:

Dated: 21 October 2014

**ANNEXURE A**

**BALLOT PAPER**  
**HEALTH SERVICES UNION - VICTORIA No. 1 BRANCH**



The ballot paper must be completed by you, the voter personally.  
 Do not put any mark or writing on the ballot paper by which you can be identified.

You may vote in one of two ways, either above the line or below the line. **DO NOT VOTE ABOVE AND BELOW THE LINE**

**Voting above the Line**

To vote for a team, you must place a cross  in the team box. This will indicate a vote for every candidate listed below the line in the column for that team.

**Voting below the line**

To vote for any individual or team candidates, you must mark your votes by placing a cross  in the box opposite the names of the candidates for whom you wish to vote. Do not vote for more than the number of candidates required for each position.

EITHER ABOVE THE LINE		<input type="checkbox"/> DIANA ASMAR TEAM	<input type="checkbox"/> JAMIE MARTORANA TEAM
OR BELOW THE LINE	INDIVIDUAL CANDIDATES	DIANA ASMAR TEAM	JAMIE MARTORANA TEAM
Branch President (1)	<input type="checkbox"/> BOULTON Timothy <input type="checkbox"/> GREGOR Denise	<input type="checkbox"/> BARCLAY Rhonda	<input type="checkbox"/> McINTOSH Dee
Branch Senior Vice President (1)		<input type="checkbox"/> ATKINSON Lee	<input type="checkbox"/> DICKSON Winston
Branch Junior Vice President (1)		<input type="checkbox"/> JACKS Sherida Leanne	<input type="checkbox"/> GOVAN Daniel Norman
Branch Secretary (1)	<input type="checkbox"/> DOYLE Karen <input type="checkbox"/> LEECH Malcolm <input type="checkbox"/> MAIN Melanie <input type="checkbox"/> THOMAS Babu <input type="checkbox"/> DOYLE June <input type="checkbox"/> LWIN Aida <input type="checkbox"/> HAMILTON Janice <input type="checkbox"/> MAYLANDER Marianne <input type="checkbox"/> IVES Raymond <input type="checkbox"/> McGINLEY Janet <input type="checkbox"/> GRAY Bernadette <input type="checkbox"/> JACKSON Andrew B <input type="checkbox"/> NUGUID Sivi <input type="checkbox"/> ST LOUIS Jacques <input type="checkbox"/> HORBURY Pamela <input type="checkbox"/> TAU Kame Lee <input type="checkbox"/> HERNANDEZ Elsa <input type="checkbox"/> DANTANAROYANA Gunaseeli <input type="checkbox"/> COSMI Leno <input type="checkbox"/> MOUSER Eleanor <input type="checkbox"/> LAZAR Mulakken Issac <input type="checkbox"/> EL-HAGE Diana <input type="checkbox"/> AYRES Robyn	<input type="checkbox"/> ASMAR Diana	<input type="checkbox"/> MARTORANA Jamie
Branch Assistant Secretary (1)	<input type="checkbox"/> HICKS Damlen	<input type="checkbox"/> EDEN David	<input type="checkbox"/> GOVAN Jayne
Branch Trustees (2)		<input type="checkbox"/> HARGREAVES Andrew <input type="checkbox"/> STONE Susan	<input type="checkbox"/> NENADOVIC Milica <input type="checkbox"/> PERRI Anastasia

COURT USE ONLY



<p>Ordinary Members of Branch Committee (8)</p>		<p><input type="checkbox"/> SMITH Lance Edward  <input type="checkbox"/> MITCHELL Velda  <input type="checkbox"/> FISCHER Caroline  <input type="checkbox"/> KATSIS Nick  <input type="checkbox"/> MEDLEY Peter  <input type="checkbox"/> ALIMI-ARSLAN Nurije  <input type="checkbox"/> TONKIN Sarah  <input type="checkbox"/> FISHER Lisa</p>	<p><input type="checkbox"/> LEIU Sone  <input type="checkbox"/> NAIDOO Ronald  <input type="checkbox"/> HOGG Clive  <input type="checkbox"/> PHILLIPS Roland  <input type="checkbox"/> KAIGG Rebecca  <input type="checkbox"/> APOSTOPOULOS Labrini  <input type="checkbox"/> BENSON Sharon  <input type="checkbox"/> McCORMACK Sue</p>
<p>National Council Delegates (10)</p>	<p><input type="checkbox"/> BOULTON Timothy</p>	<p><input type="checkbox"/> ASMAR Diana  <input type="checkbox"/> VASILIADIS Koula  <input type="checkbox"/> MITCHELL Steven  <input type="checkbox"/> AUSTIN Graeme  <input type="checkbox"/> ROWLEY Timothy  <input type="checkbox"/> HEY Brett  <input type="checkbox"/> CROSS Dennis  <input type="checkbox"/> CALVITTO John  <input type="checkbox"/> ROTHERHAM Maria  <input type="checkbox"/> EDEN David</p>	<p><input type="checkbox"/> McCORMACK Sue  <input type="checkbox"/> GOVAN Daniel Norman  <input type="checkbox"/> DICKSON Winston  <input type="checkbox"/> KERR Philip Adrian  <input type="checkbox"/> MARTORANA Jamie  <input type="checkbox"/> GOVAN Jayne  <input type="checkbox"/> LEIU Sone  <input type="checkbox"/> HOGG Clive  <input type="checkbox"/> McINTOSH Dee  <input type="checkbox"/> NAIDOO Ronald</p>

After marking your vote:

- Place the ballot paper in the DECLARATION ENVELOPE, seal it and sign your name on the back
- Place that envelope in the Reply Paid envelope
- Post the Reply Paid envelope so that it reaches the addressee not later than 5:00pm on Friday 10 October 2014.

Jeff Webb – Returning Officer  
AEC Melbourne



# FEDERAL COURT OF AUSTRALIA

## **Asmar, in the matter of an election for office in the Victoria No 1 Branch of the Health Services Union (No 2) [2014] FCA 1113**

Citation: Asmar, in the matter of an election for office in the Victoria No 1 Branch of the Health Services Union (No 2) [2014] FCA 1113

Parties: **DIANA ASMAR, JAYNE GOVAN, JAMIE MARTORANA, AUSTRALIAN ELECTORAL COMMISSION and HEALTH SERVICES UNION**

File number: VID 522 of 2014

Judge: **GORDON J**

Date of judgment: 21 October 2014

Catchwords: **INDUSTRIAL LAW** – Inquiry into election in registered organisation – alleged irregularity in accepting nominations – rules of organisation – whether person employed or usually employed within the industry – whether person member of registered organisation having been struck from register of members

Legislation: *Evidence Act 1995* (Cth)  
*Fair Work (Registered Organisations) Act 2009* (Cth)

Cases cited: *Australasian Meat Industry Employees' Union v Belandra Pty Ltd* (2003) 126 IR 165  
*Mcjannett v Bulloch* [2012] FCA 1233  
*Re Asmar (No 3)* (2012) 207 FCR 476  
*Re Howard; Re Slaters, Tilers & Roofing Industry Union (Vic.)* (1983) 4 IR 95

Date of hearing: 13 October 2014

Date of last submissions: 14 October 2014

Place: Melbourne

Division: FAIR WORK DIVISION

Category: Catchwords

Number of paragraphs: 107

Counsel for the Applicant: Mr MR Champion

Solicitor for the Applicant: Slater and Gordon Limited

Solicitor for the  
Candidates: Mr M Addison of Maddison & Associates

Solicitor for the Returning  
Officer on behalf of the  
Australian Electoral  
Commission: Mr R McClure of Australian Government Solicitor

Counsel for the Health  
Services Union: Mr E White

Solicitor for the Health  
Services Union: Holding Redlich

**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
FAIR WORK DIVISION**

**VID 522 of 2014**

**IN THE MATTER OF AN ELECTION FOR OFFICE IN THE VICTORIA NO 1  
BRANCH OF THE HEALTH SERVICES UNION**

**DIANA ASMAR  
Applicant**

**JUDGE: GORDON J  
DATE OF ORDER: 21 OCTOBER 2014  
WHERE MADE: MELBOURNE**

**THE COURT DECLARES THAT:**

1. Pursuant to s 206(4)(a) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**), the acceptance by the Returning Officer of the Australian Electoral Commission of the nominations lodged by each of Ms Jayne Govan and Mr Jamie Martorana in the Health Services Union Scheduled Election 2014 Victoria No 1 Branch (**Election**) is void.

**AND THE COURT ORDERS THAT:**

2. Paragraph 2 of the orders made by North J on 8 September 2014 be set aside.
3. Pursuant to s 206(4)(c)(i) of the FWRO Act, the General Manager of the Fair Work Commission is to make arrangements for the uncompleted steps in the Election to be taken.
4. Pursuant to ss 206(4)(c)(i) and / or (d) of the FWRO Act, the Returning Officer of the Australian Electoral Commission shall notify the other members listed under the “Jamie Martorana Team” in Annexure A to this Order of the declaration in paragraph 1 and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity.
5. Liberty to apply on 48 hours’ written notice to all interested parties.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011* (Cth).

**ANNEXURE A**

**BALLOT PAPER**  
HEALTH SERVICES UNION - VICTORIA No. 1 BRANCH



The ballot paper must be completed by you, the voter personally.  
Do not put any mark or writing on the ballot paper by which you can be identified.

You may vote in one of two ways, either above the line or below the line. **DO NOT VOTE ABOVE AND BELOW THE LINE**

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To vote for a team, you must place a cross  in the team box. This will indicate a vote for every candidate listed below the line in the column for that team.

**Voting below the line**

To vote for any individual or team candidates, you must mark your votes by placing a cross  in the box opposite the names of the candidates for whom you wish to vote. Do not vote for more than the number of candidates required for each position.

EITHER ABOVE THE LINE		<input type="checkbox"/> DIANA ASMAR TEAM	<input type="checkbox"/> JAMIE MARTORANA TEAM
OR BELOW THE LINE	INDIVIDUAL CANDIDATES	DIANA ASMAR TEAM	JAMIE MARTORANA TEAM
Branch President (1)	<input type="checkbox"/> BOULTON Timothy <input type="checkbox"/> GREGOR Denise	<input type="checkbox"/> BARCLAY Rhonda	<input type="checkbox"/> McINTOSH Dee
Branch Senior Vice President (1)		<input type="checkbox"/> ATKINSON Lee	<input type="checkbox"/> DICKSON Winston
Branch Junior Vice President (1)		<input type="checkbox"/> JACKS Sherida Leanne	<input type="checkbox"/> GOVAN Daniel Norman
Branch Secretary (1)	<input type="checkbox"/> DOYLE Karen <input type="checkbox"/> LEECH Malcolm <input type="checkbox"/> MAIN Melanie <input type="checkbox"/> THOMAS Babu <input type="checkbox"/> DOYLE June <input type="checkbox"/> LWIN AInda <input type="checkbox"/> HAMILTON Janice <input type="checkbox"/> MAYLANDER Marianne <input type="checkbox"/> IVES Raymond <input type="checkbox"/> McGINLEY Janet <input type="checkbox"/> GRAY Bernadette <input type="checkbox"/> JACKSON Andrew B <input type="checkbox"/> NUGUID Sivi <input type="checkbox"/> ST LOUIS Jacques <input type="checkbox"/> HORBURY Pamela <input type="checkbox"/> TAU Kame Lee <input type="checkbox"/> HERNANDEZ Elsa <input type="checkbox"/> DANTANAROYANA Gunaseeli <input type="checkbox"/> COSMI Leno <input type="checkbox"/> MOUSER Eleanor <input type="checkbox"/> LAZAR Mulakken Issac <input type="checkbox"/> EL-HAGE Diana <input type="checkbox"/> AYRES Robyn	<input type="checkbox"/> ASMAR Diana	<input type="checkbox"/> MARTORANA Jamie
Branch Assistant Secretary (1)	<input type="checkbox"/> HICKS Damlan	<input type="checkbox"/> EDEN David	<input type="checkbox"/> GOVAN Jayne
Branch Trustees (2)		<input type="checkbox"/> HARGREAVES Andrew <input type="checkbox"/> STONE Susan	<input type="checkbox"/> NENADOVIC Milica <input type="checkbox"/> PERRI Anastasia

COURT USE ONLY

<p>Ordinary Members of Branch Committee (8)</p>		<input type="checkbox"/> SMITH Lance Edward <input type="checkbox"/> MITCHELL Velda <input type="checkbox"/> FISCHER Caroline <input type="checkbox"/> KATSIS Nick <input type="checkbox"/> MEDLEY Peter <input type="checkbox"/> ALIM-ARSLAN Nurije <input type="checkbox"/> TONKIN Sarah <input type="checkbox"/> FISHER Lisa	<input type="checkbox"/> LEIU Sone <input type="checkbox"/> NAIDOO Ronald <input type="checkbox"/> HOGG Clive <input type="checkbox"/> PHILLIPS Roland <input type="checkbox"/> KAIGG Rebecca <input type="checkbox"/> APOSTOPOULOS Labrini <input type="checkbox"/> BENSON Sharon <input type="checkbox"/> McCORMACK Sue
<p>National Council Delegates (10)</p>	<input type="checkbox"/> BOULTON Timothy	<input type="checkbox"/> ASMAR Diana <input type="checkbox"/> VASILIADIS Koula <input type="checkbox"/> MITCHELL Steven <input type="checkbox"/> AUSTIN Graeme <input type="checkbox"/> ROWLEY Timothy <input type="checkbox"/> HEY Brett <input type="checkbox"/> CROSS Dennis <input type="checkbox"/> CALVITTO John <input type="checkbox"/> ROTHERHAM Maria <input type="checkbox"/> EDEN David	<input type="checkbox"/> McCORMACK Sue <input type="checkbox"/> GOVAN Daniel Norman <input type="checkbox"/> DICKSON Winston <input type="checkbox"/> KERR Philip Adrian <input type="checkbox"/> MARTORANA Jamie <input type="checkbox"/> GOVAN Jayne <input type="checkbox"/> LEIU Sone <input type="checkbox"/> HOGG Clive <input type="checkbox"/> McINTOSH Dee <input type="checkbox"/> NAIDOO Ronald

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Jeff Webb – Returning Officer  
 AEC Melbourne



**IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY  
FAIR WORK DIVISION**

**VID 522 of 2014**

**IN THE MATTER OF AN ELECTION FOR OFFICE IN THE VICTORIA NO 1  
BRANCH OF THE HEALTH SERVICES UNION**

**DIANA ASMAR  
Applicant**

**JUDGE: GORDON J  
DATE: 21 OCTOBER 2014  
PLACE: MELBOURNE**

**REASONS FOR JUDGMENT**

**INTRODUCTION**

1 Pursuant to s 200(1) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**), particular people can apply to the Court for an inquiry into a claim that there has been an irregularity in relation to an election for an office in a branch of an organisation registered under the FWRO. On such an inquiry, the Court is to inquire into and determine the question whether an irregularity had happened in relation to that election: s 206(1) of the FWRO Act. The Court is not bound by the rules of evidence: s 205(3)(b) of the FWRO Act.

2 The Applicant, **Ms Asmar**, made application for an inquiry (the **Inquiry**) into alleged irregularities in respect of the Health Services Union (**HSU**) Scheduled Election 2014 Victoria No 1 Branch (**Election**). Ms Asmar is the current Branch Secretary of the Victoria No 1 Branch of the HSU. The HSU is sometimes referred to as the Health Workers Union.

3 The alleged irregularity was described by Ms Asmar as follows:

The decision of the [Australian Electoral Commission (**AEC**)] Returning Officer, ... determining that:

- (a) The nomination of Jamie Martorana [**Mr Martorana**] to the office of Branch Secretary should be accepted; and
- (b) The nomination of Jayne Govan [**Ms Govan**] to the office of Branch Assistant Secretary should be accepted;

is wrong on the grounds that in respect of:

- (c) Mr Martorana on the grounds that he is not eligible to stand as a candidate for the office of Branch Secretary and National Council [D]elegate because he is not eligible for membership of the [HSU] because he is not employed in the industry (within the meaning of rule 3 of the Rules) and not usually employed in the industry; and
- (d) Ms Govan on the grounds that she is not entitled to stand as a candidate because she is not a member of the [HSU] and has been struck from the Register of Members on 30 June 2014 having not made her membership contributions since 19 August 2013.

4 On 5 September 2014, when the Originating Application for inquiry relating to the Election was filed, Ms Asmar applied for interim orders under s 204 of the FWRO Act. On 8 September 2014 North J made orders, amongst others, that:

- 1. The [HSU], the Returning Officer and candidates in the elections referred to in paragraph 2 be notified of the Inquiry by letter from the solicitors for the Applicant
  - (a) informing them of the time and place fixed;
  - (b) annexing copies of the Application and this Order;
  - (c) informing them of affidavit material filed by the applicant available upon request.
- 2. Until the completion of this proceeding in relation to the elections for the positions of Branch Secretary, Branch Assistant Secretary and National Council Delegate in the Health Services Union Victoria No 1 Branch (the Branch), or until further orders of the Court, the Returning Officer shall not take any further steps in the conduct of the elections for the offices of the Branch President, Branch Secretary, Branch Senior Vice President, Branch Junior Vice President, Branch Assistant Secretary, Branch Trustee, Ordinary Member of the Branch Committee or National Council Delegate in the Branch.

The Inquiry was listed for hearing by North J on a date to be fixed.

5 The Inquiry was subsequently heard on 13 October 2014. At that hearing, each of Ms Asmar, Mr Martorana, Ms Govan, the AEC and the HSU were represented.

6 These reasons will consider the relevant legislative context, the facts and then turn to consider the position of Ms Govan and then Mr Martorana.



## LEGISLATIVE CONTEXT

### Inquiry

7 As noted earlier, particular people can apply to the Court for an inquiry into a claim that there has been an irregularity in relation to an election for an office in a branch of an organisation registered under the FWRO: s 200(1) of the FWRO Act. On such an inquiry, the Court is to inquire into and determine the question whether an irregularity had happened in relation to that election: s 206(1) of the FWRO Act.

8 “Irregularity” in relation to an election or ballot is defined in s 6(1) of the FWRO Act to include, among other matters, “a breach of the rules of an organisation or branch of an organisation”.

### The HSU

9 The HSU is an association of employees and a registered organisation under the FWRO Act. The HSU is comprised of a National Organisation, and eight branches, established under the Rules of the HSU. The Victoria No 1 Branch is one of those branches (the **Branch**).

### Need for rules and their content

10 Pursuant to s 140 of the FWRO Act, the HSU must have rules, including rules which address the matters specified in s 141 of the FWRO Act. One of the matters which the rules must provide for is “the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members” of the HSU: s 141(1)(b)(vii).

11 Section 142 sets out general requirements for the rules which include that the rules:

(a) must not be contrary to, or fail to make a provision required by this Act, the Fair Work Act, a modern award or an enterprise agreement, or otherwise be contrary to law; and

...

(c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to Parliament’s intention in enacting this Act (see section 5) and the objects of this Act and the Fair Work Act, are oppressive, unreasonable or unjust; and

(d) must not discriminate between applicants for membership, or members, of the organisation on the basis of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

12 Further, the rules of the HSU must provide for election of the holder of each office (s 143 of the FWRO Act) including rules in relation to the manner in which persons may become candidates for election and the conduct of the elections.

13 The HSU's rules have been amended over time. Two sets of the HSU's rules are relevant. One set of rules came into force from 1 January 2014 (the **Previous Rules**). **New Rules** came into force from 5 June 2014.

14 Some of the relevant events in this Inquiry occurred pursuant to or under the Previous Rules while others occurred pursuant to or under the New Rules.

15 Under the Previous Rules, rules 8(f)(v) and (vi) relevantly provided:

- (f) Notwithstanding anything contained elsewhere in these Rules:
  - ...
- (v) Where a member's payment of an instalment has not been received by the Branch by the date on which it was due, the Branch Secretary shall notify that member:-
  - A. the Branch has not received that member's instalment payment;
  - B. of the consequences to the member of the failure to pay that instalment as provided by this Rule; and
  - C. of the amount of the balance of the member's annual contribution owing for the year to which that contribution relates.
- (vi) A member notified in accordance with paragraph (v) above shall pay the instalment within 21 days from the date of the written notice from the Branch Secretary. A member who fails to pay that instalment within those 21 days shall cease to be entitled to pay the membership contribution by instalment and shall within a further 7 days from those 21 days be liable to pay the balance of that member's contribution for the relevant year.

The letter Ms Asmar sent to Ms Govan on 1 May 2014 (see [54] below) was sent pursuant to rule 8(f)(v).

16 Rule 10 of the Previous Rules dealt with a member's financial status, and relevantly stated:

- (a) A member owing contributions, fines, fees or levies equivalent to an amount in excess of 13 weeks contributions shall be deemed to be unfinancial.
- (b) An unfinancial member shall not be entitled -
  - (i) to any of the rights and privileges of membership;

- (ii) to nominate for or hold any office or in any way participate in any ballot or election in the [HSU] or any branch of the [HSU];
  - (iii) to attend or speak or vote at any meeting of the [HSU] or branch of the [HSU].
- (c) Any member exempted pursuant to Rule 8(e) of these Rules from payment either in whole or in part of any contribution, fee or levy shall, for the purposes of these Rules, retain continuity of membership and be deemed financial but shall not, during the period of exemption, be eligible to nominate for or hold any office in the [HSU] or any branch of the [HSU].

17 The New Rules are relevant to events after 5 June 2014, including the Election. Rule 3, entitled “Conditions of Eligibility for Membership” relevantly provides, for example:

The [HSU] shall consist of an unlimited number of persons -

A. *employed or usually employed -*

(a) throughout Australia in or about or in connection with the carrying on of all hospitals, benevolent homes, dispensaries, asylums, mental hospitals, sanatoriums, rest homes, convalescent homes, medical schools, laboratories, colleges, industrial and other homes, charitable institutions, ambulance work, all classes of nursing, public or private;

...

B. employed or usually employed -

...

C. such other persons, whether or not employees in the industries of the [HSU] as have been elected or appointed full time National Officers or Branch Officers or organisers of the [HSU] or any Branch thereof and admitted as members of the [HSU]. For the purposes of this Clause C of this Rule, the full-time Officers of the [HSU] and of any Branch thereof shall be the holders of any of the offices of National Officers or Branch Officers where the duties of such office are of a full-time nature; and,

...

(Emphasis added.)

18 Rule 6 entitled “Admission to Membership” includes Rule 6(g)(v) which relevantly provides:

(g) On receipt of the application for membership:

...

(v) where the applicant has previously been a member of the [HSU] and owes a debt to the [HSU], the Branch Secretary shall either accept the application unconditionally, or accept it on the condition that the applicant shall first pay the whole or part of the debt owed, or

otherwise refer the matter to the Branch Committee of Management.

19 Rule 10 addresses “Termination of Membership”. The rule relevantly states:

...

Termination because the member ceases to be eligible

- (i) Membership terminates automatically when the member ceases to be eligible to be a member of the [HSU] unless the person is a National or Branch life member, in which case the person shall continue to be a National or Branch life member.
- (j) A person who is a member of the [HSU] because the person is eligible for membership by virtue of rule 3C... shall, unless otherwise eligible to become or remain a member of the [HSU], automatically cease to be a member of the [HSU] when he or she ceases to hold the office or position referred to in that rule.

Termination as the result of purging the register

...

- (l) Each Branch Secretary shall, from time to time, review the register of the Branch’s members and identify the names of members of the Branch who have been unfinancial for more than three months. The Branch Secretary shall write to each such member to his or her last address shown on the register and give the member one month’s written notice of the intention to strike his or her name off the register.
- (m) If the member does not become financial within a month of the letter being sent, the member’s name shall be purged from the register of members. The member shall cease to be a member when his or her name is purged from the register.

20 Quite apart from the operation of Rule 10, reference should also be made to s 171A of the FWRO Act which relevantly has the effect that a person’s membership of the HSU automatically ceases when the person is not, or is no longer, an employee or an officer. “Employee” has its “ordinary meaning and includes a person who is usually such an employee”: s 6 of the FWRO Act.

21 Next, Rule 11 addresses “Union Dues”. Rule 11(h) relevantly provides that a member was entitled to pay HSU dues by any one or more of the following methods – payroll deductions, direct debit, charge or credit card, cheque, cash or any other method approved by the Branch Committee of Management. Rule 11(k) addresses non-payment of HSU dues in the following terms:

Where a member's payment of [HSU] dues has not been received by the Branch within one month of the date on which it is due, the Branch Secretary shall notify the member:

- (i) The dues have not been received;
- (ii) The amount of the balance of the member's dues owing;
- (iii) That if the member does not pay the dues owing within three months of the due date then member shall be unfinancial. (sic)

22 "Financial and Unfinancial Members" are addressed in Rule 12. It relevantly provides:

- (a) Where a member's payment of [HSU] dues has not been received by the Branch within three months of the date on which it is due, the member shall be unfinancial. ...
  - (b) An unfinancial member shall not be entitled -
    - (i) to any of the rights and privileges of membership;
    - (ii) to nominate for or hold any office in the [HSU] or any Branch;
    - (iii) to participate in any ballot or election in the [HSU] or any Branch;
    - (iv) to attend, speak at or vote in any meeting of the [HSU] or Branch.
  - (c) When the Branch Committee of Management has decided to waive a member's annual contribution or any levy, the member:
    - (i) shall retain continuity of membership and be deemed financial for the period covered by the waiver;
- ...

23 "Elections" are addressed in Rule 23. The conduct of Branch elections are addressed in Rule 23A(d). Rule 23A(d)(vii) relevantly provides that when conducting elections and ballots of the HSU:

The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event that he or she finds a defect in any nomination, the Returning Officer shall before rejecting the nomination notify the person concerned of the defect, and, where it is practicable to do so, give the person the opportunity of remedying the defect where practicable within seven days of being notified.

24 Qualifications for office are relevantly set out in Rule 23A(e):

- (i) Nominations for any position of paid Branch Officer shall have been a continuously financial member of the [HSU] for not less than twelve months

immediate (sic) preceding his or her nomination and shall be a financial member of the [HSU] at the date of his or her nomination.

- (ii) Nominations for any position other than that of paid Branch Officer shall have been a continuously financial member of the [HSU] for not less than three months immediately preceding his or her nomination and shall be a financial member of the [HSU] at the date of his or her nomination.

25 The positions of Branch Secretary and Branch Assistant Secretary are paid Branch Officer positions and therefore a nominee must have continuously been a financial member of the HSU for not less than 12 months immediately preceding the nomination and must be a financial member of the HSU at the date of the nomination: Rule 23A(e)(i). The position of National Council Delegate is not a paid Branch Officer position and therefore requires continuous financial membership for not less than three months: Rule 23A(e)(ii).

26 Team Nominations are governed by Rule 23A(f) as follows:

Notwithstanding sub rule (d) of this rule, candidates in an election of:

- (i) Officers of a Branch;
- (ii) Ordinary members of a Branch Committee;
- ...
- (iv) Branch delegates to the National Council:

may, subject to the following conditions, nominate as members of a “team nomination”:-

- a. Each candidate being nominated as a member of a team nomination must signify his or her acceptance of such nomination by signing the nomination to the Returning Officer.
- b. *No member of a team nomination may nominate or be nominated as a member of another “team nomination” or as an individual candidate.*
- c. A “Team” nomination must nominate a candidate (or the required number of candidates) for each position for which nominations have been called whereupon each candidate will be considered to have nominated for each position concerned.

...

- f. The Returning Officer shall ensure that the ballot paper makes provision for the recording of a vote for each member of a team nomination by way of marking one box at the top of the list of names of members of that team (a “team box”). The Returning Officer shall also ensure that the ballot paper contains clear instructions to the effect that a member voting may vote individually for candidates, including members of a team nomination, or,

alternatively, vote for each member of a team by marking the team box.

- g. Once a candidate has nominated for a team nomination he or she cannot withdraw unless with the consent of all the members of that team. Where there is consent for a candidate to withdraw, the team nomination form may be amended to provide for a replacement nominee.

(Emphasis added.)

## **FACTS**

27 A statement of agreed facts was prepared and signed on behalf of Ms Asmar, Mr Martorana, Ms Govan, the AEC and the HSU for the purposes of s 191 of the *Evidence Act 1995* (Cth) as well as a Supplementary Agreed Document Tender (collectively the **SOAF**). The following summary of facts is primarily extracted from the SOAF. If the fact or facts are not sourced from the SOAF, the reasons identify the source.

### **HSU Election**

28 Rule 23A(d)(ii) of the New Rules provides for the opening of nominations on 1 June and closing on 14 June.

29 Pursuant to s 189(3) of the FWRO Act, by decision of a delegate dated 27 June 2014 and also an amended decision dated 17 July 2014, the General Manager of the Fair Work Commission arranged for the conduct of the Election for offices in the Branch (including with respect to the offices of Branch Secretary, Branch Assistant Secretary and National Council Delegates).

30 As compliance with the particular timetable provided for under the New Rules was not possible, the Returning Officer determined a revised timetable, pursuant to s 193(1)(b)(ii) of the FWRO Act, as follows:

- (1) 15 July 2014 – Close of Roll for the Branch;
- (2) 22 July 2014 – Nominations open;
- (3) 4 August 2014 at 5pm – Nominations close;
- (4) 4 August 2014 at 5pm – Candidate withdrawal period ended;
- (5) 9 September 2014 – Ballot opens;
- (6) 10 October 2014 at 5pm – Ballot closes.

31 On 4 August 2014, the Returning Officer sent a Nominations report to the Branch Secretary and requested that she certify as to the financial status and eligibility of all candidates and nominators.

32 On 8 August 2014, the Returning Officer received the Branch Secretary's certification report. That report included statements to the effect that Mr Martorana (candidate for Branch Secretary) and Ms Govan (candidate for Branch Assistant Secretary) were not eligible to stand for office.

33 On 8 August 2014, the Returning Officer wrote to Mr Martorana and to Ms Govan, and also to candidates relying on either Mr Martorana or Ms Govan as nominators, notifying them of the defects stated in the Secretary's report and requesting that they respond by 15 August 2014.

34 On 15 August 2014, the Returning Officer received responses and documents from Mr Martorana and Ms Govan in support of their nominations as candidates as part of the "Martorana Team" nomination. The Returning Officer then accepted the nominations as valid under the New Rules.

35 On 1 September 2014, the Returning Officer conducted a draw for positions on the ballot paper. A ballot paper was prepared by the Returning Officer and would have been distributed to electors but for the interim order made on 8 September 2014. A copy of that ballot paper is attached as Annexure A to these reasons. The ballot paper identifies all of the candidates whose nominations were accepted by the Returning Officer for inclusion in the ballot for election to office in the Branch. The ballot paper takes the form of a table. On the vertical axis, the different offices subject to election are identified. On the horizontal axis, there are three columns. The first column lists the names of candidates who have nominated as individuals. The second column lists the names of persons who have nominated by way of a "team nomination" for the "Asmar Team". The third column lists the names of persons who have nominated by way of a "team nomination" for the "Martorana Team".

### **Ms Govan**

36 Between 29 January 2013 and 12 July 2013, Ms Govan was employed as an organiser in the Branch. This was Ms Govan's second period of employment as a branch organiser.

37 An issue in the inquiry is whether Ms Govan was a member of the HSU when she lodged her nominations.



38 Records of payments of HSU dues by members are maintained in the Branch's membership database. A relevant extract from the Branch's membership database was in evidence.

39 On 11 July 2013, the membership database records contain a record as to Ms Govan that "... *the amount of \$544.68 has now been waived.*" Further, Ms Govan provided credit card details so that dues could be taken by the organisation on an ongoing basis.

40 The membership database records that on 22 July 2013, 5 August 2013 and 19 August 2013, fortnightly payments of membership dues each of \$21.15 was received from Ms Govan.

41 The membership database also records that on 5 August 2013, the Branch Committee held a meeting where the membership of Ms Govan was discussed. Ms Asmar noted that the process for requesting a membership waiver (being the waiver recorded in paragraph [39] above) had not been followed by Ms Govan. A motion was carried that Ms Asmar write to Ms Govan and explain "that the process for every member is that they must write to request the Secretary to waive membership fees and that the [Branch Committee] will then make a decision; and that therefore the records on [the membership database] in relation to [Ms Govan's] fees be changed back to what they were before [Ms Govan] went to see the Membership Officer". For reasons that were not clear, the membership database was only updated to reflect this meeting on 10 September 2013. Ms Asmar gave evidence at the hearing that she wrote to Ms Govan straight after the meeting on 5 August 2013. Ms Govan denied that Ms Asmar wrote to her.

42 The membership database records that on 3 September 2013, a credit card payment of \$21.15 was recorded as received from Ms Govan, but on 4 September 2013, the payment was recorded as reversed with the narration "05 - Do Not Honour". Similarly, payments from Ms Govan of \$21.15 made on 17 September, 1 October and 15 October 2013 were recorded as reversed the following day with the narration "05 - Do Not Honour".

43 On 17 October 2013, the solicitor for Ms Govan, Mr Addison, wrote to the solicitors for the HSU. In part, Mr Addison's letter reads as follows:

.... In 2012 our client changed banks resulting in a changed credit card number which in turn caused a lack of transfer of funds to the [HSU] resulting in our members' dues not being paid. As a result Ms Govan spoke to the membership department in August 2012 and reached agreement on a process to regain her financial status.

The process that was agreed did not occur and as a result further discussions were

entered into in July 2013 when it became apparent that the agreed outcome had not occurred. At that time the question of her financial status was resolved by agreement with the [HSU]. Ms Govan from that point on made sure that the [HSU] had her correct credit card details and was from that point paying \$21.15 per fortnight contributions. Any outstanding dues were by agreement waived by the [HSU].

We are instructed that your client has now unilaterally altered that agreement and in addition is refusing to deduct the union membership fees from Ms Govan's credit card thus putting our client in the position of being un-financial ....

44 The membership database records that credit card payments from Ms Govan of \$21.15 made on 29 October and 12 November 2013 were again reversed the following day with the narration "05 - Do Not Honour". Ms Antoun, an employee of the HSU who has administrative and membership duties, gave evidence at the hearing that on 14 November 2013 she called Ms Govan and left her a voicemail asking her to return the call. Ms Antoun's evidence was that she then changed Ms Govan's membership from a direct debit membership to a membership where statements or tax invoices were sent, as was the practice that would be followed for all members after several payments were declined. Ms Govan denied that Ms Antoun left her a voice message. The membership database records that the first invoice after the change was issued on 1 January 2014. Ms Govan denied receiving that invoice.

45 On 15 January 2014, the Branch's solicitors responded to Mr Addison's letter. In part, the letter read:

.... If your client wishes to regain her financial membership of the [HSU], she should either make a payment to the Branch of \$339.98 which is the total amount in arrears or make an application in writing to the Branch Committee to have all or part of the arrears waived. To then remain financial Ms Govan will need to pay her next quarterly invoice ...

46 Ms Govan gave evidence at the hearing that she did not become aware of this letter until May 2014.

47 The membership database records that a further invoice was issued on 1 April 2014. At the hearing, Ms Govan denied receiving that invoice.

48 On 3 April 2014, Ms Govan sent an email to the HSU. She requested a statement of outstanding dues.

49 At about 4.28 pm on Thursday afternoon, 10 April 2014, Ms Govan attended at the HSU's office. Ms McIntosh was with Ms Govan. What transpired at the HSU's offices is in dispute. Ms McIntosh swore an affidavit in this proceeding but was not required for cross-

examination. Evidence was given by Ms Govan, Ms Antoun and Mr Katsis. Mr Katsis was a Lead Organiser at the Branch. According to some of the witnesses, Mr Cameron Granger was part of the discussions with Ms Govan and Ms McIntosh. Mr Granger did not give evidence.

50 The evidence of Ms Antoun was that Ms Govan asked if she could speak to the membership manager because she had issues with her membership. Ms Antoun rang Ms Di Pierro, the membership manager. Ms Di Pierro told her that she was working and she would try to finish and come see Ms Govan. Ms Antoun waited some time and then went upstairs, and Mr Katsis returned with her. Ms Govan, Ms McIntosh and Mr Katsis all had a discussion, but Ms Antoun did not hear it and Mr Katsis did not tell her what it was about.

51 The evidence of Ms McIntosh was that upon entering the building they immediately went to the receptionist who was Ms Antoun. Both Ms Govan and Ms McIntosh advised Ms Antoun that they were there to pay Ms Govan's fees. Ms Antoun asked them to wait while she called Ms Di Pierro in membership. After several minutes Ms Antoun hung up and told them she could not take Ms Govan's money. No reason was given. Ms Govan and Ms McIntosh found this to be unacceptable at which point Ms McIntosh asked Ms Antoun to ask someone, who had the authority to take the money, to come downstairs and speak to them. Ms Antoun picked up the phone and spoke to someone and then told Ms Govan and Ms McIntosh to take a seat and someone would be down shortly. Approximately 15-20 minutes later, Mr Katsis and Mr Granger came down to speak to the two women. When Ms Govan asked Mr Katsis about paying her membership, he told her that he would need to discuss it with senior management and would get back to her in the appropriate time. Ms Govan then politely asked for her response to be communicated to her within seven days. Mr Katsis smirked, looked at Mr Granger and then back at Ms Govan and said "I'll talk with senior management".

52 Ms Govan's evidence was that she spoke with Ms Antoun and told her that she was there to get the outstanding amount and pay her membership. Ms Antoun told Ms Govan that she could not do that and would call Ms Di Pierro. Ms Antoun then called Ms Di Pierro. Ms Govan and Ms McIntosh waited in the reception area for 10 to 15 minutes until Mr Katsis came down with Mr Granger. Ms Govan did not recall whether Mr Katsis asked her if she knew how much was outstanding on her membership dues, but she recalled that she wanted to know how much was outstanding and she wanted to pay her fees. Ms Govan said that, in

going into the office, she had no purpose other than to pay her fees. Ms Govan told Mr Katsis that she did not know how much was outstanding. Mr Katsis told Ms Govan that he would have to speak to senior officials. The meeting with Mr Katsis ended on the basis that he would pass on her enquiry about her membership. Ms Govan asked for a prompt response, within seven days.

53 Mr Katsis' evidence was that Ms Govan did not say that she was there to pay the union fees. He accepted that Ms Govan mentioned that she wanted to sort the matter out with regards to her membership, and that as she had been out of work, she had fallen behind. Mr Katsis' evidence was that he asked Ms Govan how much money was outstanding. He said this was usually the first question that he tended to ask of members. Mr Katsis was cross examined about his statement in his affidavit that he told Ms Govan that there was no one available in the office that could look at the computer system and work out how much was outstanding. His oral evidence was that statement was based on the fact that had told Ms Govan that he would put the question of how much was owing to the hierarchy. He accepted that he did not ask Ms Antoun to look on the computer and tell him how much was outstanding. His explanation for that was he had been asked as a senior to go down to speak to Ms Govan and Ms McIntosh because presumably there was an issue that nobody could rectify. He accepted that he had the capacity to check the database but said that did not have the capacity to determine the exact figure. His evidence was that Ms Di Pierro had not been available because she was attending to some deadlines.

54 On 1 May 2014, Ms Asmar wrote to Ms Govan about her arrears in payment of membership dues. That letter was sent pursuant to rule 8(f)(v) of the Previous Rules: see [15] above. In part, the letter read:

Your total outstanding dues stand at \$562.32 as of 30 April 2014

....

To regain financial membership of the [HSU] you are required to:

- [P]ay your outstanding dues;
- Provide details of your employment and your employer;
- Advise whether you wish to alter your membership classification; and
- Advise how you wish to pay your dues, that is, with what frequency.

If you are seeking a reduction in your total outstanding dues, you can ask the Branch Committee to have all or part of the arrears waived; advice you also received in the letter of 15 January.

Furthermore, as you have noted, you have not made a membership payment since

19 August 2013. This equates to a period in excess of thirty-six weeks since you have made a membership payment.

....

Consequently, I hereby provide you notice that unless the matter of your outstanding dues is remedied in full by 31 May 2014 you will be struck from the register of members, and your [HSU] membership terminated.

55 Ms Govan confirmed that she received this letter by post. In May and June 2014, Ms Govan did not respond to the letter dated 1 May 2014. Ms Govan did not pay the arrears notified to her by that letter. Ms Govan gave evidence at the hearing that she did not pay those dues immediately as she was in and out of the Royal Children's Hospital with her son. She accepted that it would have been open to her to immediately pay her outstanding dues on receipt of this letter. Ms Govan also accepted that she was on notice that her name would be struck from the register of members if she did not pay her outstanding dues by 31 May 2014, and that this letter told her what she needed to do to regain financial membership. Ms Govan gave evidence to the effect that she thought that the HSU already had the details required by the second and third dot points in the letter.

56 On 30 June 2014, Ms Asmar, as the Branch Secretary, purged Ms Govan's name from the register of members.

57 For reasons that are not clear, the membership database records that a further invoice was issued to Ms Govan on 1 July 2014. By letter dated 14 July 2014, Ms Asmar wrote to Ms Govan that:

I refer you to my previous letter, dated May 1 .... as we are yet to hear from you or yet to receive any payment, I am now obliged under Section 10 of [the HSU] rules to cancel your membership, and hereby give you notice of that cancellation. ....

58 On 4 August 2014, Ms Govan lodged her nominations for Branch Assistant Secretary and National Council Delegate with the Returning Officer.

59 On 14 August 2014, Mr Daniel Govan, Ms Govan's brother, telephoned the HSU and spoke to Ms Antoun. Mr Govan asked to make a payment of outstanding dues on behalf of Ms Govan. He was informed that no payments could be accepted on behalf of a person who was not a member of the HSU. He was informed that if Ms Govan wished to rejoin the HSU, she could make an application to the Branch Committee of Management.

**Mr Martorana**

60 Mr Martorana was employed by Western Health as a Security Officer for about 13 years, between June 1992 and June 2005.

61 On 13 June 2005, after a secondment from Western Health, lasting about 3 months, Mr Martorana commenced a period of full time employment with the Branch, as an Area Organiser. The Branch sponsored Mr Martorana to undertake a certificate 4 in Unionism which he completed in 9 months in addition to carrying out his normal work for the Branch.

62 In February 2009, Mr Martorana was subjected to a traumatic experience during the “Black Saturday” bushfires. The Black Saturday bushfires occurred on 7 February 2009.

63 Although Mr Martorana commenced his employment as an Area Organiser, during his employment he served in an elected capacity as a Branch Assistant Secretary.

64 Until on or about 20 October 2010, Mr Martorana remained in the full time employment of the HSU. Effective on or about 20 October 2010, Mr Martorana resigned from his employment. Since 20 October 2010, Mr Martorana has not worked in any of the callings identified in the HSU’s membership rules, or at all.

65 On 4 August 2014, Mr Martorana nominated for election to the office of Branch Secretary of the Branch.

66 On 12 August 2014, Dr Anthony Diamantaras, a general practitioner, issued a medical certificate in the following terms:

I have been treating Mr Martorana for over 5 years for severe depression and anxiety. He has endured multiple severe stressors including losing his home in the Black Saturday fires and facing near certain death in the same fires.

As a result of this and severe work related stressors he resigned from work in October 2010. Immediately following his resignation his mother unexpectedly died. Mr Martorana has not been in pain [sic] employment since. Both I and Mr Martorana have expressed a desire for him to recommence work but to this point in time this has not been possible.

67 Mr Martorana gave evidence and was cross examined at the hearing. Mr Martorana gave evidence that he took two weeks off work immediately following the Black Saturday bushfires, and returned to work for about the next two weeks, and then took two further weeks off. It was his understanding that this time off was taken as sick leave. Mr Martorana also took four days of sick leave from 28 September 2010 to 1 October 2010. Other than

those specific time periods, Mr Martorana continued to perform his duties until his resignation.

68 Minutes from meetings of the HSU Council/HSU East Council indicated that at around October 2010 there was a proposed restructure of allocation of areas of responsibility to certain positions within HSU East, and Mr Martorana did not agree with the proposed structure. The minutes recorded that the General Secretary had engaged in “sensible discussions” with Mr Martorana, and “would continue to negotiate” with him. The evidence indicates that the HSU East Branch was a precursor branch which demerged into separate branches including the Victoria No 1 Branch.

69 Mr Martorana gave evidence that he resigned following those negotiations and with the agreement of the HSU. At the time of his resignation, he was Branch Assistant Secretary of the Branch, which is an elected position. He received compensation of \$240,000 which was paid in weekly instalments over the course of 2 years under terms set out in a settlement agreement. Mr Martorana gave evidence that he was not happy about leaving the HSU, but he felt that he had no option but to leave.

70 Mr Martorana has not been in paid employment since October 2010. He gave evidence that it was his intention to return to work when possible, but that for most of the time, a return to work has not been possible. It is only relatively recently that he has found himself in a position where he is prepared and able to re-enter the workforce. It is his intention to resume work in the industry either as a health sector employee or as Branch Secretary. He has been focused on getting elected to the HSU position and has not made any other job applications.

71 On 9 October 2014, Dr Diamantaras issued a medical certificate stating “Mr Jamie Martorana is fit to return to full time work. He has capacity to perform any duties for which he is qualified or experienced to do”. Dr Diamantaras also filed an affidavit in these proceedings. He was not cross examined. Dr Diamantaras’ evidence outlined the state of Mr Martorana’s health over the last five years and stated that “the condition is one which is improving and I am of the view that Mr Martorana is now fit to return to work”.

## **ANALYSIS**

### **Ms Govan**

72 Ms Asmar contends that Ms Govan was not a member of the HSU at the time she nominated for office and for that reason her nominations were invalid. Ms Govan had been a member

but her name had been purged from the register of members because of her failure to pay membership dues: see [19] and [56] above.

73 The question which arises is whether Ms Govan was unfinancial at the time she lodged her nominations.

74 Ms Govan contends she was not unfinancial. Ms Govan's contention was founded on an allegation that a deliberate strategy was engaged in by Ms Asmar (and presumably other HSU officials) to ensure that Ms Govan was unfinancial or not a member of the HSU so to prevent her from contesting the election. In support of that contention, Ms Govan relies upon the facts set out at [36]-[59] above and *Re Howard; Re Slaters, Tilers & Roofing Industry Union (Vic.)* (1983) 4 IR 95; *McJannett v Bulloch* [2012] FCA 1233 at [229] and *Re Asmar (No 3)* (2012) 207 FCR 476 at [49]-[51].

75 In *Re Asmar (No 3)* (2012) 207 FCR 476 at [49]-[51], Tracey J stated:

49. ... In *Re Howard; Re Slaters, Tiling and Roofing Industry Union (Vic.)* (1983) 4 IR 95 Keely J dealt with a case in which a person who had sought to maintain his financial status as a member of a Union had failed to do so because the secretary had refused to accept his subscriptions. His Honour held that, in such circumstances, the member was not to be treated as being unfinancial. He declined ... to accept a construction of the Rules which resulted "in a member being deemed to be unfinancial where ... *he has offered his union dues to the secretary at the union office and the secretary has refused to accept payment.*" His Honour so held in a case where the Union Rules did not contain an express obligation on officials to accept contributions tendered by members or potential members.

50. In *McJannett v Bulloch* [2012] FCA 1233 Barker J also dealt with a case in which an applicant for union membership alleged that union officials had acted to prevent him from becoming financial in order to prevent him from contesting union elections. His Honour (at [228]) accepted that the breach of an implied obligation of a union to accept the contributions of a person entitled to be a member of that union could constitute an irregularity for the purposes of the Act. His Honour continued at [229] that:

"In my view, if it could be established that there was any deliberate strategy undertaken by or on behalf of the Union or an elected officer, such as the Secretary, at all material times, to prevent the applicant being financial ... then there would be evidence that suggests a breach of the Rules of the Union in relation to the payment of contributions."

51. I would also observe that, in *Re Slaters*, Keely J said that, were the union's rules properly to be construed as causing *a member who had done all that was required*, under the rules, to make contributions to be regarded as being unfinancial because an official had refused to accept payment, the rules would have contravened the then s 140(1)(c) of the *Conciliation and*



*Arbitration Act 1904* (Cth), (see now s 142(1)(c) of the [FWRO] Act), because such a rule would impose upon members of the organisation conditions, obligations and restrictions, which, having regard to the objects of the Act, would be oppressive, unreasonable or unjust. This was the case as, if taken literally, such a rule would permit Union officials to prevent members from participating in those aspects of Union affairs which were reserved for financial members by refusing to receive their subscriptions.

(Emphasis added.)

76 The question in the present case concerning Ms Govan *may* be put in these terms – did one or more of the HSU officials refuse to accept payment of Ms Govan’s union dues, or otherwise act to prevent her from becoming financial, in order to prevent her from contesting union elections even though Ms Govan did all that was required of her under the rules to make contributions of her union dues?

77 Having regard to all the circumstances set out at [36]-[59] above, the answer to that question is “no”. The answer is “no” because although some of the steps taken by the HSU officials may be described as being less than helpful (see, in particular, at [49]-[53] above), it cannot be said that Ms Govan did all that was required of her under the rules to make contributions of her HSU dues or that the HSU acted to prevent her becoming financial.

78 From at least August 2013, Ms Govan and the HSU were in dispute as to the quantum of her outstanding membership dues. By 15 January 2014, the position had crystallised to the point that the Branch’s solicitors informed Ms Govan’s solicitor that:

.... If your client wishes to regain her financial membership of the [HSU], she should either make a payment to the Branch of \$339.98 which is the total amount in arrears or make an application in writing to the Branch Committee to have all or part of the arrears waived. To then remain financial Ms Govan will need to pay her next quarterly invoice ...

Ms Govan took neither step. Ms Govan’s evidence was that she did not become aware of the existence of this letter until May 2014: see [46] above. There was no indication that the HSU were responsible in any way for that occurring.

79 Next, on 3 April 2014, Ms Govan sent an email to the HSU requesting a statement of outstanding dues: see [48] above. She received no immediate response. So, at about 4.28 pm on 10 April 2014, Ms Govan attended at the HSU’s office: see [49] above. As I have noted, on that day the actions of the HSU staff, at the very least, were less than helpful.

80 However, by 1 May 2014, Ms Govan had her answer. She was sent a letter by Ms Asmar answering the very question she had asked – the quantum of arrears of her membership dues. The letter informed her that as at 30 April 2014, Ms Govan’s total outstanding membership dues were \$562.32: see [54] above. That letter was sent pursuant to rule 8(f)(v) of the Previous Rules: see [15] above. Significantly, the letter contained other important information. It listed the four steps Ms Govan was required to take to regain financial membership of the HSU: see [54] above. Finally, the letter notified Ms Govan that unless the matter of outstanding fees was remedied in full by 31 May 2014, she would be struck from the register of members and her membership terminated.

81 Ms Govan took no step in response to that letter. In May and June 2014, Ms Govan did not respond to the letter. Ms Govan did not pay the arrears notified to her by the letter. Ms Govan’s evidence at the hearing was that she had a son in the Royal Children’s Hospital and that was her priority. That is completely understandable. However, the HSU was not responsible for Ms Govan’s failure to respond to that letter.

82 On 30 June 2014, Ms Asmar (as the Branch Secretary) purged Ms Govan’s name from the register of members. On 14 July 2014, Ms Asmar again wrote to Ms Govan, referred to the letter of 1 May 2014, told Ms Govan that the HSU had not received payment and that under Rule 10 of the New Rules (see [19] above), her membership had been cancelled. Again, Ms Govan took no step in June, July or August 2014 to remedy the position. Indeed, Ms Govan last paid subscription fees on 19 August 2013 when \$21.25 was paid by credit card: see [40] above. As a consequence, at 30 June 2014, Ms Govan had been unfinancial for more than three months: New Rule 12 extracted at [22] above. In fact, Ms Govan had been unfinancial since at least January 2014 (the date on which the Previous Rules came into force): see Previous Rule 10 extracted at [16] above; New Rule 12 extracted at [22] above. Ms Govan had not undertaken any of the steps listed in the letter of 1 May 2014 by the time she lodged her nominations on 4 August 2014.

83 In all the circumstances, Ms Govan’s nominations which she lodged on 4 August 2014 should have been rejected. She was not a member of the HSU and, in any event, she was not a member of the HSU with a period of financial continuity sufficient to satisfy the eligibility requirements under rule 23A(e) of the New Rules (see [24] above) to nominate for election to the offices of Branch Assistant Secretary and National Council Delegate. The Court is satisfied that an irregularity occurred in relation to the Election.

84 The Court must not declare any step taken in relation to an election to be void unless the Court is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have happened or may happen, the result of the election may be affected, by irregularities: s 206(5) of the FWRO Act. In my view, it is appropriate to declare that the Returning Officer's acceptance of the nominations lodged by Ms Govan is void: s 206(4)(a) of the FWRO Act. The result of the Election may be affected by an irregularity if the Court did not make that declaration because it would permit Ms Govan to stand for election to the offices of Branch Assistant Secretary and National Council Delegate when she was not entitled to nominate for those offices.

85 What is to now happen in relation to the Election will be addressed later in these reasons.

**Mr Martorana**

86 Ms Asmar contends that at the time Mr Martorana nominated for election to offices in the HSU he was not a member of the HSU because, at the time he nominated, he was *not* "employed or usually employed" in one of the callings identified in Rule 3 of the New Rules: see [17] above.

87 Membership is a necessary (but not sufficient) criterion for eligibility to nominate: see [24] above. There is no suggestion that Mr Martorana was employed at the time he nominated: see [64] above. The question is whether, when he nominated, he was *usually employed* in one of the callings identified in Rule 3 of the New Rules.

88 As noted earlier, "employee" is defined in s 6 of the FWRO Act to have its ordinary meaning "and includes a person who is usually such an employee". The phrases "usually employed" and the "usual occupation is that of employee," were considered by North J in *Australasian Meat Industry Employees' Union v Belandra Pty Ltd* (2003) 126 IR 165 at [43]-[46]:

43. Whether a person is usually an employer is a question of fact to be determined in the light of all the circumstances in each case. There is no formula appropriate in all cases which can be used to answer the question. As to a past employment relationship, it may be relevant to know how long ago the person ceased to be an actual employer or to understand why the person ceased to be an actual employer. As to future employment, it may be relevant to know when such employment is to commence or resume, and the circumstances of any delay in commencing or resuming employment.

44. The unusual circumstances of the present case demonstrate how difficult it would be to reduce the inquiry to some generally applicable formula. In the present case, the inability of Belandra to conduct operations and to employ people resulted from the occurrence of the fire. The cessation of employment

was forced upon Belandra because the fire destroyed the premises in which the work was done. If it had not been for the fire, Belandra would have continued to employ its workforce to operate the slaughter floor at Brooklyn. Significantly, however, immediately after the fire Belandra intended to re-employ the workforce. That was the reason Belandra delayed payment of the severance entitlements, as it was entitled to do. The evidence of Mr Catalfamo was clear. He intended to re-employ the workforce and to that end he took energetic steps to make this possible. ...

45. ...These steps were taken as part of a plan to restart production with the previous workforce. During this period there is no question that Belandra was usually an employer. On the approach suggested by Mr Parry, Belandra had recently been an employer and, so far as Belandra's plans were concerned, reemployment was in prospect.
46. Then the situation changed. From September 2001, no longer was re-employment in prospect. The reason was that Belandra had altered its plans and decided not to re-employ the workforce. If Belandra then ceased to be an employer, that result came about as a consequence of its decision not to re-employ the workforce. ...

The analysis at [43] of *Belandra* was referred to and adopted by Tracey J in *Re Asmar (No 3)* (2012) 207 FCR 476 at [59] and [60] when determining whether a person is to be regarded as usually being an employee.

89 What then is the position here?

90 Mr Martorana was employed by Western Health as a Security Officer for about 13 years, between June 1992 and June 2005: see [60] above. After a secondment from Western Health, lasting about 3 months, Mr Martorana commenced a period of full time employment with the Branch, as an Area Organiser, on 13 June 2005: see [61] above. Mr Martorana undertook a certificate 4 in Unionism: see [61] above.

91 Mr Martorana was subjected to a traumatic experience during the Black Saturday bushfires. Mr Martorana was able to remain in the full time employ of the HSU for approximately a further 21 months. In around October 2010, a confidential agreement was entered into between Mr Martorana and the HSU, and Mr Martorana resigned from his employment. Since October 2010, Mr Martorana has not worked in any of the callings identified in the New Rules or at all: see [64] above.

92 Was Mr Martorana entitled to nominate? The conditions for membership are set out in Rule 3: see [17] above. Rule 3C (also extracted at [17] above) refers to persons as have been elected or appointed full time National Officers or Branch Officers or organisers of the HSU or any one of its branches. A careful reader will notice that Rule 3C is in different terms to

Rule 3A and does not extend to persons *usually* employed or appointed to those offices. At the time of his nominations, Mr Martorana had not been elected or appointed as a full time National Officer or Branch Officer or organiser of the HSU or any one of its branches. Rule 3C does not assist him.

93 In this matter, Rule 3A is the only rule specifying callings in which Mr Martorana was potentially *usually employed*. Mr Martorana has not worked in any of the callings identified in the New Rules, or at all, since October 2010.

94 At the time he lodged his nominations, was Mr Martorana *usually employed* in one of the callings in Rule 3A? That is a question of fact: see [88] above. The circumstances concerning Mr Martorana include that:

- (1) Mr Martorana has not worked, nor sought to be employed, since he resigned his employment with the HSU in October 2010;
- (2) Mr Martorana has not worked in any of the callings set out in Rule 3A for over 9 years (since June 2005);
- (3) Mr Martorana has not sought to be employed in any of the callings set out in Rule 3A for over 9 years (since June 2005);
- (4) There is evidence from his treating general practitioner of a serious illness which has previously affected his ability to be employed.

95 What then were Mr Martorana's stated intentions? Mr Martorana stated that from October 2010 (when he resigned) his intention was to return to work when possible, but that for most of the time, a return to work has not been possible. He told the Court that it is only relatively recently that he has found himself in a position where he is prepared and able to re-enter the workforce and that it is his intention to resume work in the industry if he is unsuccessful in the Election. Mr Martorana said he had not made any other job applications recently because he has been focused on getting elected to the position with the HSU.

96 The HSU submitted that Mr Martorana's asserted medical condition did not prevent him from working for the HSU in a full-time position (for the 21 months after the Black Saturday Bushfires), that there is no direct or properly admissible evidence from a medical practitioner either as to his condition or as to the incapacitating effects of the condition and, further, to the extent that his purported condition does not fully incapacitate him for work there is no evidence of any application by him for any employment.

97 This Inquiry must determine whether an irregularity has happened on the balance of probabilities: s 206(2) of the FWRO Act. The rules of evidence do not apply to this Inquiry: s 205(3)(b) of the FWRO Act.

98 There is no dispute that Mr Martorana suffered from a medical condition. However, despite Mr Martorana and his general practitioner giving sworn evidence, there was a lack of evidence about Mr Martorana's condition or as to the incapacitating effects of the condition. Further, although Mr Martorana stated that from October 2010 his intention was to return to work when possible and that for most of the time, a return to work had not been possible, the material (or lack of material before the Court) raises questions about those stated intentions.

99 It must be recalled that under the settlement agreement (see [69] above), Mr Martorana received \$240,000 payable by way of fortnightly instalments over a two year period. Next, on Mr Martorana's own evidence, there were periods of time when he was able to return to work. Unfortunately, how long those periods were and whether the work he was able to return to was within any one of the callings in Rule 3A and, no less importantly, what steps he took during those periods to gain employment, was not addressed.

100 In all the circumstances, I am not persuaded that Mr Martorana was, at the time he lodged his nominations in August 2014, "usually employed" in any one of the callings in the New Rules. Section 171A of the FWRO Act has operated to terminate his membership. Mr Martorana was not eligible to stand for the positions of Branch Secretary and National Council Delegate because he was not and is not a member of the HSU.

101 Mr Martorana's nominations which he lodged on 4 August 2014 should have been rejected. He was not a member of the HSU and does not satisfy the eligibility requirements under Rule 23A(e) of the New Rules (see [24] above) to nominate for election to the offices of Branch Secretary and National Council Delegate. The Court is satisfied that an irregularity has happened in relation to the Election.

102 As noted earlier, the Court must not declare any step taken in relation to an election to be void unless the Court is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have happened or may happen, the result of the Election may be affected, by irregularities: s 206(5) of the FWRO Act. In my view, it is appropriate to declare that the Returning Officer's acceptance of the nominations lodged by Mr Martorana is void: s 206(4)(a) of the FWRO Act. The result of

the Election may be affected by an irregularity if the Court did not make that declaration because it would permit Mr Martorana to stand for election to the offices of Branch Secretary and National Council Delegate when he was not entitled to nominate for those offices.

### **OTHER ISSUES ON DISPOSITION AND ORDERS**

103 Ms Govan and Mr Martorana were part of the “Martorana Team”: see [34] above. The nominations by that team are listed as part of Annexure A.

104 A team nomination must nominate a candidate for each position for which nominations have been called: Rule 23A(f)(iv)(c) set out at [26] above. As a result of each declaration made under s 206(4) of the FWRO Act (see [84] and [102] above), the “Martorana Team” nomination fails to comply with the Rules.

105 What then is to happen in relation to the Election? It is appropriate that directions be made under s 206(4)(c)(i) for the uncompleted steps in the Election to be taken. Each irregularity is limited both in its operation and its effect. In these circumstances, it is neither appropriate nor necessary to declare the Election void and to require all steps in relation to the Election to be taken again.

106 It is also appropriate that a further direction be given under ss 206(4)(c)(i) and / or (d), that the Returning Officer shall, before rejecting the nomination of the “Martorana Team”, notify the other members of that team of the irregularities and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity. This may include filling the nominations for the positions of Branch Secretary, Branch Assistant Secretary and National Council Delegates left vacant by those declarations.

107 For those reasons, the following declarations, orders and directions will be made:

- (1) Pursuant to s 206(4)(a) of the FWRO Act, the Returning Officer’s acceptance of the nominations lodged by each of Ms Govan and Mr Martorana is void;
- (2) Paragraph 2 of the orders made by North J on 8 September 2014 be set aside;
- (3) Pursuant to s 206(4)(c)(i) of the FWRO Act, the General Manager of the Fair Work Commission is to make arrangements for the uncompleted steps in the Election to be taken;

- (4) Pursuant to ss 206(4)(c)(i) and / or (d) of the FWRO Act, the Returning Officer shall notify the other members of the “Martorana Team” of the declaration in paragraph 1 and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity;
- (5) Liberty to apply on 48 hours’ written notice to all interested parties.

I certify that the preceding one hundred and seven (107) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Gordon.

Associate:

Dated: 21 October 2014



**ANNEXURE A**

**BALLOT PAPER**  
**HEALTH SERVICES UNION - VICTORIA No. 1 BRANCH**



The ballot paper must be completed by you, the voter personally.  
 Do not put any mark or writing on the ballot paper by which you can be identified.

You may vote in one of two ways, either above the line or below the line. **DO NOT VOTE ABOVE AND BELOW THE LINE**

**Voting above the Line**

To vote for a team, you must place a cross  in the team box. This will indicate a vote for every candidate listed below the line in the column for that team.

**Voting below the line**

To vote for any individual or team candidates, you must mark your votes by placing a cross  in the box opposite the names of the candidates for whom you wish to vote. Do not vote for more than the number of candidates required for each position.

EITHER ABOVE THE LINE		<input type="checkbox"/> DIANA ASMAR TEAM	<input type="checkbox"/> JAMIE MARTORANA TEAM
OR BELOW THE LINE	INDIVIDUAL CANDIDATES	DIANA ASMAR TEAM	JAMIE MARTORANA TEAM
Branch President (1)	<input type="checkbox"/> BOULTON Timothy <input type="checkbox"/> GREGOR Denise	<input type="checkbox"/> BARCLAY Rhonda	<input type="checkbox"/> McINTOSH Dee
Branch Senior Vice President (1)		<input type="checkbox"/> ATKINSON Lee	<input type="checkbox"/> DICKSON Winston
Branch Junior Vice President (1)		<input type="checkbox"/> JACKS Sherida Leanne	<input type="checkbox"/> GOVAN Daniel Norman
Branch Secretary (1)	<input type="checkbox"/> DOYLE Karen <input type="checkbox"/> LEECH Malcolm <input type="checkbox"/> MAIN Melanie <input type="checkbox"/> THOMAS Babu <input type="checkbox"/> DOYLE June <input type="checkbox"/> LWIN Aida <input type="checkbox"/> HAMILTON Janice <input type="checkbox"/> MAYLANDER Marianne <input type="checkbox"/> IVES Raymond <input type="checkbox"/> McGINLEY Janet <input type="checkbox"/> GRAY Bernadette <input type="checkbox"/> JACKSON Andrew B <input type="checkbox"/> NUGUID Sivi <input type="checkbox"/> ST LOUIS Jacques <input type="checkbox"/> HORBURY Pamela <input type="checkbox"/> TAU Kame Lee <input type="checkbox"/> HERNANDEZ Elsa <input type="checkbox"/> DANTANAROYANA Gunaseeli <input type="checkbox"/> COSMI Leno <input type="checkbox"/> MOUSER Eleanor <input type="checkbox"/> LAZAR Mulakken Issac <input type="checkbox"/> EL-HAGE Diana <input type="checkbox"/> AYRES Robyn	<input type="checkbox"/> ASMAR Diana	<input type="checkbox"/> MARTORANA Jamie
Branch Assistant Secretary (1)	<input type="checkbox"/> HICKS Damlen	<input type="checkbox"/> EDEN David	<input type="checkbox"/> GOVAN Jayne
Branch Trustees (2)		<input type="checkbox"/> HARGREAVES Andrew <input type="checkbox"/> STONE Susan	<input type="checkbox"/> NENADOVIC Milica <input type="checkbox"/> PERRI Anastasia

COURT USE ONLY

<p>Ordinary Members of Branch Committee (8)</p>		<input type="checkbox"/> SMITH Lance Edward <input type="checkbox"/> MITCHELL Velda <input type="checkbox"/> FISCHER Caroline <input type="checkbox"/> KATSIS Nick <input type="checkbox"/> MEDLEY Peter <input type="checkbox"/> ALIMI-ARSLAN Nurije <input type="checkbox"/> TONKIN Sarah <input type="checkbox"/> FISHER Lisa	<input type="checkbox"/> LEIU Sone <input type="checkbox"/> NAIDOO Ronald <input type="checkbox"/> HOGG Clive <input type="checkbox"/> PHILLIPS Roland <input type="checkbox"/> KAIGG Rebecca <input type="checkbox"/> APOSTOPOULOS Labrini <input type="checkbox"/> BENSON Sharon <input type="checkbox"/> McCORMACK Sue
<p>National Council Delegates (10)</p>	<input type="checkbox"/> BOULTON Timothy	<input type="checkbox"/> ASMAR Diana <input type="checkbox"/> VASILIADIS Koula <input type="checkbox"/> MITCHELL Steven <input type="checkbox"/> AUSTIN Graeme <input type="checkbox"/> ROWLEY Timothy <input type="checkbox"/> HEY Brett <input type="checkbox"/> CROSS Dennis <input type="checkbox"/> CALVITTO John <input type="checkbox"/> ROTHERHAM Maria <input type="checkbox"/> EDEN David	<input type="checkbox"/> McCORMACK Sue <input type="checkbox"/> GOVAN Daniel Norman <input type="checkbox"/> DICKSON Winston <input type="checkbox"/> KERR Philip Adrian <input type="checkbox"/> MARTORANA Jamie <input type="checkbox"/> GOVAN Jayne <input type="checkbox"/> LEIU Sone <input type="checkbox"/> HOGG Clive <input type="checkbox"/> McINTOSH Dee <input type="checkbox"/> NAIDOO Ronald

After marking your vote:

- Place the ballot paper in the DECLARATION ENVELOPE, seal it and sign your name on the back
- Place that envelope in the Reply Paid envelope
- Post the Reply Paid envelope so that it reaches the addressee not later than 5:00pm on Friday 10 October 2014.

Jeff Webb – Returning Officer  
 AEC Melbourne





Australia's National Workplace  
Relations Tribunal

24 October 2014

Bernadette O'Neill  
General Manager

Mr Paul Davis  
Acting Director Industrial Commercial Elections  
Australian Electoral Commission

By email: [paul.davis@aec.gov.au](mailto:paul.davis@aec.gov.au)

Dear Mr Davis

**Health Services Union, Victoria No.1 Branch**  
**Arrangement for conduct of election**  
**ss.189, 207 *Fair Work (Registered Organisations) Act 2009***  
**(E2014/115)**

Under section 207 of the *Fair Work (Registered Organisations) Act 2009* I request that arrangements be made for the uncompleted steps in the abovementioned election to be taken.

The process to be followed by the Returning Officer is set out in the orders of her Honour Justice Gordon of the Federal Court of Australia, Victoria District Registry (No. VID 522 of 2014), dated 21 October 2014.

I enclose orders of her Honour Justice Gordon dated 21 October 2014 for your information.

Yours sincerely

Bernadette O'Neill  
General Manager

Enc.



Federal Court of Australia  
District Registry: Victoria  
Division: Fair Work

No: VID522/2014

**IN THE MATTER OF AN ELECTION FOR OFFICE IN THE VICTORIA NO 1  
BRANCH OF THE HEALTH SERVICES UNION**

**DIANA ASMAR**  
Applicant

**ORDER**

**JUDGE:** JUSTICE GORDON

**DATE OF ORDER:** 21 October 2014

**WHERE MADE:** Melbourne

**THE COURT DECLARES THAT:**

1. Pursuant to s 206(4)(a) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (**FWRO Act**), the acceptance by the Returning Officer of the Australian Electoral Commission of the nominations lodged by each of Ms Jayne Govan and Mr Jamie Martorana in the Health Services Union Scheduled Election 2014 Victoria No 1 Branch (**Election**) is void.

**AND THE COURT ORDERS THAT:**

2. Paragraph 2 of the orders made by North J on 8 September 2014 be set aside.
3. Pursuant to s 206(4)(c)(i) of the FWRO Act, the General Manager of the Fair Work Commission is to make arrangements for the uncompleted steps in the Election to be taken.
4. Pursuant to ss 206(4)(c)(i) and / or (d) of the FWRO Act, the Returning Officer of the Australian Electoral Commission shall notify the other members listed under the “Jamie Martorana Team” in Annexure A to this Order of the declaration in



paragraph 1 and give each of those members the opportunity of remedying the irregularity where practicable within seven days of being notified of that irregularity.

5. Liberty to apply on 48 hours' written notice to all interested parties.

Date that entry is stamped: 21 October 2014

*Wendell Soden*  
Registrar



## ANNEXURE A

### BALLOT PAPER HEALTH SERVICES UNION - VICTORIA No. 1 BRANCH



The ballot paper must be completed by you, the voter personally.  
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To vote for a team, you must place a cross  in the team box. This will indicate a vote for every candidate listed below the line in the column for that team.

**Voting below the line**

To vote for any individual or team candidates, you must mark your votes by placing a cross  in the box opposite the names of the candidates for whom you wish to vote. Do not vote for more than the number of candidates required for each position.

EITHER ABOVE THE LINE		<input type="checkbox"/> DIANA ASMAR TEAM	<input type="checkbox"/> JAMIE MARTORANA TEAM
OR BELOW THE LINE	INDIVIDUAL CANDIDATES	DIANA ASMAR TEAM	JAMIE MARTORANA TEAM
Branch President (1)	<input type="checkbox"/> BOULTON Timothy <input type="checkbox"/> GREGOR Denise	<input type="checkbox"/> BARCLAY Rhonda	<input type="checkbox"/> McINTOSH Dee
Branch Senior Vice President (1)		<input type="checkbox"/> ATKINSON Lee	<input type="checkbox"/> DICKSON Winston
Branch Junior Vice President (1)		<input type="checkbox"/> JACKS Sherida Leanne	<input type="checkbox"/> GOVAN Dantel Norman
Branch Secretary (1)	<input type="checkbox"/> DOYLE Karen <input type="checkbox"/> LEECH Malcolm <input type="checkbox"/> MAIN Melanie <input type="checkbox"/> THOMAS Babu <input type="checkbox"/> DOYLE June <input type="checkbox"/> LWIN Alnda <input type="checkbox"/> HAMILTON Janice <input type="checkbox"/> MAYLANDER Marianne <input type="checkbox"/> IVES Raymond <input type="checkbox"/> McGINLEY Janet <input type="checkbox"/> GRAY Bernadette <input type="checkbox"/> JACKSON Andrew B <input type="checkbox"/> NUGUID Silvi <input type="checkbox"/> ST LOUIS Jacques <input type="checkbox"/> HORBURY Pamela <input type="checkbox"/> TAU Kame Lee <input type="checkbox"/> HERNANDEZ Elsa <input type="checkbox"/> DANTANAROYANA Gunaseell <input type="checkbox"/> COSMI Leno <input type="checkbox"/> MOUSER Eleanor <input type="checkbox"/> LAZAR Mulakken Issac <input type="checkbox"/> EL-HAGE Diana <input type="checkbox"/> AYRES Robyn	<input type="checkbox"/> ASMAR Diana	<input type="checkbox"/> MARTORANA Jamie
Branch Assistant Secretary (1)	<input type="checkbox"/> HICKS Damlen	<input type="checkbox"/> EDEN David	<input type="checkbox"/> GOVAN Jayne
Branch Trustees (2)		<input type="checkbox"/> HARGREAVES Andrew <input type="checkbox"/> STONE Susan	<input type="checkbox"/> NENADOVIC Milica <input type="checkbox"/> PERRI Anastasia

COURT USE ONLY



Ordinary Members of Branch Committee (8)		<input type="checkbox"/> SMITH Lance Edward <input type="checkbox"/> MITCHELL Velda <input type="checkbox"/> FISCHER Caroline <input type="checkbox"/> KATSIS Nick <input type="checkbox"/> MEDLEY Peter <input type="checkbox"/> ALIMI-ARSLAN Nuriye <input type="checkbox"/> TONKIN Sarah <input type="checkbox"/> FISHER Lisa	<input type="checkbox"/> LEIU Sone <input type="checkbox"/> NAIDOO Ronald <input type="checkbox"/> HOGG Clive <input type="checkbox"/> PHILLIPS Roland <input type="checkbox"/> KAIGG Rebecca <input type="checkbox"/> APOSTOPOULOS Labrini <input type="checkbox"/> BENSON Sharon <input type="checkbox"/> McCORMACK Sue
National Council Delegates (10)	<input type="checkbox"/> BOULTON Timothy	<input type="checkbox"/> ASMAR Diana <input type="checkbox"/> VASILADIS Koula <input type="checkbox"/> MITCHELL Steven <input type="checkbox"/> AUSTIN Graeme <input type="checkbox"/> ROWLEY Timothy <input type="checkbox"/> HEY Brett <input type="checkbox"/> CROSS Dennis <input type="checkbox"/> CALVITTO John <input type="checkbox"/> ROTHERHAM Maria <input type="checkbox"/> EDEN David	<input type="checkbox"/> McCORMACK Sue <input type="checkbox"/> GOVAN Daniel Norman <input type="checkbox"/> DICKSON Winston <input type="checkbox"/> KERR Philip Adrian <input type="checkbox"/> MARTORANA Jamie <input type="checkbox"/> GOVAN Jayne <input type="checkbox"/> LEIU Sone <input type="checkbox"/> HOGG Clive <input type="checkbox"/> McINTOSH Dee <input type="checkbox"/> NAIDOO Ronald

After marking your vote:

- Place the ballot paper in the DECLARATION ENVELOPE, seal it and sign your name on the back
- Place that envelope in the Reply Paid envelope
- Post the Reply Paid envelope so that it reaches the addressee not later than 5:00pm on Friday 10 October 2014.

Jeff Webb – Returning Officer  
AEC Melbourne





Australia's National Workplace  
Relations Tribunal

24 October 2014

Bernadette O'Neill  
General Manager

Ms Diana Asmar  
Branch Secretary  
Victoria No. 1 Branch  
Health Services Union

By email: [diana.asmar@hsu.org.au](mailto:diana.asmar@hsu.org.au)

Dear Ms Asmar

**Health Services Union, Victoria No. 1 Branch - Arrangement for conduct of election**

I have made arrangements under section 207 of the *Fair Work (Registered Organizations) Act 2009* for the uncompleted steps in the abovementioned election to be taken.

The arrangements arise from an order of her Honour Justice Gordon of the Federal Court of Australia, Victoria District Registry (No. VID 522 of 2014), dated 21 October 2014.

Yours sincerely

Bernadette O'Neill  
General Manager



**AEC****Australian Electoral Commission**

Fair Work (Registered Organisations) Act 2009

**RETURNING OFFICER - POST ELECTION REPORT****Client:** Health Services Union - Tasmania Branch**Contact details:** Tim Jacobson  
Branch Secretary  
Health Services Union  
11 Clare Street  
New Town TAS 7008**Email:** tim@hacsutas.net.au  
**Tel:** 0419 331 936**FWC contact officer:** Mark Elliott**Email:** orgs@fwc.gov.au  
**Tel:** (03) 8661 7899**ELECTIONS COVERED IN THIS REPORT****Election Decision No/s:** E2014/115**Election:** Health Services Union  
Tasmania Branch Elections**Returning Officer:** Michael Horwood**RULES****Rules used for elections Rule ID:** 051V: Incorporates alterations of 31/05/2014 [R2013/500]  
and 05/06/2014 [R2014/58 & R2014/75]**Rules difficult to apply/interpret:****Model Rule reference (if any):****Legal precedents considered:****Action taken under section 193 of  
RAO Schedule:****ROLL OF VOTERS**

<b>Total number of voters on the roll</b>	<b>7882</b>	
Number of apparent workplace addresses	47	0.6%
Number of non-current addresses	14	0.2%

**OTHER MATTERS PERTAINING TO ROLL OF VOTERS**

**ALLEGATIONS OF IRREGULARITIES RECEIVED**

There were no written complaints or allegations of irregularities.

**ATTACHMENTS**

A Uncontested Declaration

A handwritten signature in black ink, appearing to read 'me', with a small mark above the 'm'.

Michael Horwood  
Returning Officer

2 September 2014

# Health Services Union Tasmania Branch Elections

## Declaration of Results for Uncontested Offices

E2014/115

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.

### Tasmania Branch

#### Branch Secretary

Candidates

JACOBSON, Tim

#### Branch Assistant Secretary

Candidates

MOORE, Robbie

#### Branch President

Candidates

RICHMOND, Judy

#### Branch Senior Vice-President

Candidates

RICHARDSON, John

#### Branch Junior Vice-President

Candidates

WEBB, Chris

#### Branch Trustee (2)

Candidates

GORRINGE, Leigh

MOORE, Peter

#### Ordinary member of the Branch Committee (9)

Candidates

BROCK, Pamela

CHALLIS, Andrew

COOMBS, Michael

HANSSON, Christine

MCHENRY, Marlene

PESCHAR, Pru

PROSSER, Audrey

RUSH, Lynn-Maree

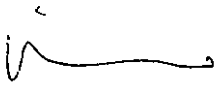
SHEARER, Carolyn

**Branch delegate to National Council (8)**

Candidates

COOMBS, Michael  
GORRINGE, Leigh  
HANSSON, Christine  
MOORE, Peter  
MOORE, Robbie  
RICHARDSON, John  
RICHMOND, Judy  
WEBB, Chris

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



Michael Horwood  
Returning Officer

14 August 2014



PO Box 1140, Beenleigh Qld 4207

**Reference:** AQ4BM

Dear Candidate,

**Health Services Union  
Scheduled Qld Branch Election  
E2014/115**

I refer to the arrangements for me to conduct an election for various positions in your Organisation.

I now advise that a ballot was not necessary and the declaration of the uncontested offices is attached.

The election is now complete.

Yours sincerely



Graham Smith  
Returning Officer

20 Aug 2014

**Health Services Union**  
**Scheduled Qld Branch Election E2014/115**

**Declaration of Results for Uncontested Offices**

**E2014/115**

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.

**Queensland Branch**

**Branch President**

Candidates

BAKER, Kelly

**Branch Senior Vice-President**

Candidates

CHILCOTT, Kieran Bradley

**Branch Junior Vice-President**

Candidates

WALKER, Caleb

**Branch Secretary**

Candidates

MILMAN, Jonathan

**Branch Assistant Secretary**

Candidates

BOYES, Anita

**Branch Trustee (2)**

Candidates

BARNEY, Christine  
PAI, Lorna

**Ordinary Member of Branch Committee (5)**

Candidates

CONLON, Darren  
FISHER, Mischa Mari  
LEWIS, Denise Anne  
ORCHER, Aileen  
SOPPA, Kim

**National Council Delegates**

Candidates

MILMAN, Jonathan

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



Graham Smith  
Returning Officer

20 August 2014

**- Health Services Union  
Branch Election SA/NT E2014/115**

**Declaration of Results for Uncontested Offices**

**E2014/115**

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.

**South Australian Branch**

**Branch President**

Candidates

HEWITT, Tony

**Branch Senior Vice-President**

Candidates

SONZA, Bruno

**Branch Junior Vice-President**

Candidates

NEWMAN, Anthony

**Branch Secretary**

Candidates

NAVAS, Jorge

**Branch Assistant Secretary**

Candidates

DI SANTO, Tom



**Branch Trustee (2)**

Candidates

IANNELLA, Riccardo  
PANES, Mark

**Ordinary Member of Branch Committee (5)**

Candidates

ALSTIN, Sandra  
DRYSDALE, John  
DUMMIN, Lesley  
HRISTOPOULOS, John  
SAMPSON, Karryn

**Branch Delegate to National Council**

Candidates

NAVAS, Jorge

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



Barry Barons  
Returning Officer

7 August 2014



**Reference:** T14/75

Mr Tim Jacobson  
Branch Secretary  
Health Services Union  
11 Clare Street  
New Town TAS 7008

Dear Mr Jacobson,

**Health Services Union  
Tasmania Branch Elections  
E2014/115**

The declaration of the election for the uncontested offices is attached. No ballots were required.

The election is now complete.

Yours sincerely



Michael Horwood  
Returning Officer

14 August 2014

cc all candidates

# Health Services Union Tasmania Branch Elections

## Declaration of Results for Uncontested Offices

E2014/115

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.

### Tasmania Branch

#### Branch Secretary

Candidates

JACOBSON, Tim

#### Branch Assistant Secretary

Candidates

MOORE, Robbie

#### Branch President

Candidates

RICHMOND, Judy

#### Branch Senior Vice-President

Candidates

RICHARDSON, John

#### Branch Junior Vice-President

Candidates

WEBB, Chris

#### Branch Trustee (2)

Candidates

GORRINGE, Leigh  
MOORE, Peter

#### Ordinary member of the Branch Committee (9)

Candidates

BROCK, Pamela  
CHALLIS, Andrew  
COOMBS, Michael  
HANSSON, Christine  
MCHENRY, Marlene  
PESCHAR, Pru  
PROSSER, Audrey  
RUSH, Lynn-Maree  
SHEARER, Carolyn

**Branch delegate to National Council (8)**

Candidates

COOMBS, Michael  
GORRINGE, Leigh  
HANSSON, Christine  
MOORE, Peter  
MOORE, Robbie  
RICHARDSON, John  
RICHMOND, Judy  
WEBB, Chris

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



Michael Horwood  
Returning Officer

14 August 2014



# CORRECTION DECISION

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

**Health Services Union**  
(E2014/115)

MR ENRIGHT

MELBOURNE, 17 JULY 2014

*Arrangement for conduct of election.*

[1] The decision issued by the Fair Work Commission on 27 June 2014 [[2014] FWCD 4155, PR552323] is corrected as follows:

At paragraph [4] under the heading Victoria No 1 Branch, delete “Ordinary Branch Committee Members (5)” and insert in lieu “Ordinary Branch Committee Members (8)”.



DELEGATE OF THE GENERAL MANAGER

Printed by authority of the Commonwealth Government Printer

<Price code A, PR553238>

Suite 1, Level 3, 377 Sussex Street, Sydney NSW 2000  
PO Box 20349, World Square NSW 2000  
t. (02) 8203 6066 | f. (02) 8203 6060  
hsu@hsu.net.au | www.hsu.net.au  
ABN 68 243 768 561



16 July 2014

**Mark Elliott**

Regulatory and Compliance Branch  
Fair Work Commission

By email: [mark.elliott@fwc.gov.au](mailto:mark.elliott@fwc.gov.au)

Dear Mr Elliott

I have previously lodged a Notice and Statement of Prescribed Information for an Election in late June 2014. Since that date, I have found an error in the information supplied to the Fair Work Commission. The error relates to the number of Ordinary Members of the Branch Committee for the Victoria Number 1 Branch. The number of Ordinary Members of the Branch Committee for the Victoria Number 1 Branch to be elected should be eight (8) and not five (5) as previously advised.

I hope this does not cause too much inconvenience.

Yours sincerely

A handwritten signature in black ink, appearing to read "Chris Brown". The signature is stylized with large loops and a long horizontal stroke at the end.

**Chris Brown**

Senior National Assistant Secretary  
(Acting National Secretary)

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



# DECISION

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

## **Health Services Union** (E2014/115)

MR ENRIGHT

MELBOURNE, 27 JUNE 2014

*Arrangement for conduct of election.*

[1] On 31 March 2014 the Health Services Union (the Union) lodged with the Fair Work Commission the prescribed information in relation to an election for offices in each of its branches.

[2] On 30 April 2014 further information was submitted in relation to the notification.

[3] After examining the notification, the Regulatory Compliance Branch of the Fair Work Commission discussed certain aspects of the prescribed information with the Union. Following that discussion, further prescribed information was lodged on 25 June 2014 and 26 June 2014.

[4] The prescribed information lodged in June 2014 replaced that lodged by the Union in March 2014. It requested that arrangements be made for the conduct of an election for the following offices:

### **Victoria No 1 Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (5)

National Council Delegates (10)

**Victoria No. 2 Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (8)

National Council Delegates (8)

**Victoria No 3 Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (5)

National Council Delegates (4)

**Victoria No 4 Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President (Psychologist)

Branch Secretary

Branch Assistant Secretary



Trustee (Psychologist)

Trustee (MSAV)

Committee Member (Psychologist)

Committee Member (Pharmacist) (2)

Committee Member (MSAV) (3)

National Council Delegates (3)

**Tasmania Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (9)

National Council Delegates (8)

**South Australia/Northern Territory Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (5)

National Council Delegates (1)

**Queensland Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (5)

National Council Delegates (1)

**Western Australia Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Branch Committee Members (7)

National Council Delegates (6)

**New South Wales Branch**

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary-Treasurer

Ordinary Branch Committee Members (5)

Branch Councillors (25) being:

- (21), of which at least (1) but not more than (2) are drawn from hospitals or health services in each of the following local health districts:

Sydney LHD  
South Western Sydney LHD  
South Eastern Sydney LHD  
Illawarra Shoalhaven LHD  
Western Sydney LHD  
Nepean Blue Mountain LHD  
Northern Sydney LHD  
Central Coast LHD  
Hunter New England LHD  
Murrumbidgee LHD  
Southern NSW LHD  
Western NSW LHD  
Far West LHD  
Mid North Coast LHD  
Northern NSW LHD

provided that one (1) Councillor shall come from the Health Managers Sub-Branches,

- (1) Branch Councillor from a Private Hospital,
- (1) Branch Councillor from a non public sector aged care facility,
- (1) Branch Councillor from the NSW Ambulance Services, and
- (1) Branch Councillor from the Australian Capital Territory

National Council Delegates (20)

[5] 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

<Price code C, PR552323>

**ELLIOTT, Mark**

---

**From:** ELLIOTT, Mark  
**Sent:** Friday, 27 June 2014 11:40 AM  
**To:** 'rhys.richards@aec.gov.au'  
**Subject:** FWC Memo for AEC - E2014/115 - Application/Notification by Health Services Union  
**Attachments:** ORG\_CPY\_AEC.pdf; 18C5F25FC0E9241B7E883D88660E928033592\_docx.pdf

Please find attached correspondence regarding the matter **E2014/115 - Application/Notification by Health Services Union**

This correspondence was sent automatically from the Fair Work Commission.



# Copy of Signed Decision

**Title of Matter:** Application/Notification by Health Services Union  
**Section:** s.189(1) RO Act - Notification of elections for office  
**Subject:** s.189(1) RO Act - Notification of elections for office  
**Matter Number(s):** E2014/115

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 rules can be accessed via the [website](#).

**Contact:** Mr Chris Brown 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 Mark Elliott through [orgs@fwc.gov.au](mailto:orgs@fwc.gov.au).

**27 JUNE 2014**

## ELLIOTT, Mark

---

**From:** ELLIOTT, Mark  
**Sent:** Thursday, 26 June 2014 4:52 PM  
**To:** 'rhys.richards@aec.gov.au'  
**Subject:** E2014/115 - HSU - variaiton of 25/6/14 PI (now includes truees for Vic No. 1 Branch  
**Attachments:** 20140627\_revisionVicNo1\_informationLtr.pdf; 20140626 - election prescribed information declaration.pdf

Good afternoon Rhys,

Please find attached further prescribed information in relation to the abovementioned matter. It amends the PI sent yesterday by including 2 Trustees for the Vic No. 1 Branch – those offices were omitted in yesterday's material.

A decision will now be put before the Delegate and will hopefully issue shortly.

---

**From:** Leigh Svendsen [<mailto:leighs@hsu.net.au>]  
**Sent:** Thursday, 26 June 2014 4:38 PM  
**To:** ELLIOTT, Mark  
**Cc:** Chris Brown; Mark McLeay  
**Subject:** Variation to Statement of Prescribed Information

Dear Mr Elliott

Further to our discussions this afternoon please find a letter from our Acting National Secretary rectifying the information concerning Victoria Branch No 1 and a new copy of Attachment 1 provided yesterday.

Please contact me if you have any further questions

Regards Leigh Svendsen



**Leigh Svendsen | National Industrial Officer**  
Suite 1, Level 3, 377 Sussex St, Sydney, NSW, 2000  
PO Box 20349, World Square, NSW, 2002  
ABN 68 243 768 561  
p 02 8203 6066 f 02 8203 6060 m 0418 538 989  
e [leighs@hsu.net.au](mailto:leighs@hsu.net.au) w [www.hsu.net.au](http://www.hsu.net.au)

HSU National acknowledges the Traditional Owners and Elders past and present across Australia. We acknowledge the Gadigal people of the Eora Nation, the Traditional Owners of the lands on which our office is located.

This message and any attachments are for the intended recipient and may contain confidential or privileged information. Only the intended recipient may access, use, copy or deliver it. If you have received this email in error, please reply to us immediately and delete the email and any attachments. Please advise immediately if you or your employer do not consent to the use of email for messages of this kind. Protecting your personal information is important to us. Our [Privacy Statement](#) explains how we collect, use, share and hold your personal information.



# Attachment 1

---

## Officers of the Health Services Union

Office	Number of positions	Voting System
National President	1	Collegiate
National Senior Vice- President	1	Collegiate
National Junior Vice-President		Collegiate
National Trustee	2	Collegiate
National Secretary	1	Collegiate
National Assistant Secretary	1	Collegiate

### Note

- ❖ The number of members of the Union as at 31 December 2013 was 69061.
- ❖ The National Officers of the Union are determined by rules of the Union. Currently, Rule 14 governs the composition of National Officers.

## New South Wales Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary/Treasurer	1	Direct Vote
Ordinary Member of the Branch Committee	5	Direct Vote
Member of the Branch Council	25	Direct Vote
Branch delegate to National Council	20	Direct Vote

### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 30332.
- ❖ The decision, [2012] FWAD 6936 determined the size and composition of the New South Wales Branch Council and was reflected in the rules of the Union published in the rule book dated 20 November 2012 (R2012/204). The decision reflected the Scheme approved by the Federal Court of Australia on 21 June 2012. The rules have subsequently been reordered and now Rule 43(b) governs the composition of the New South Wales Branch Council. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Queensland Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct Vote
Ordinary Member of the Branch Committee	5	Direct Vote
Branch delegate to National Council	1	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 29.
- ❖ The composition of the Branch Officers and Branch Committee was determined by an Order of Jessop J in matter VID1375/2013 in the Federal Court of Australia. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### South Australia/Northern Territory Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct Vote
Ordinary Member of the Branch Committee	5	Direct Vote
Branch delegate to National Council	1	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 871.
- ❖ The Branch elections in 2006 and again in 2010 were conducted for five (5) ordinary members of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Tasmania Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct Vote
Ordinary Member of the Branch Committee	9	Direct Vote
Branch delegate to National Council	8	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 7921.
- ❖ The decision of the Delegate in [2014] FWCD 3587 saw the Tasmania Number 2 Branch being abolished and members transferred into the newly named Tasmania Branch. The former Tasmania Number 1 Branch resolved the composition of the Branch Committee at a Special Meeting on XXXXXXXXXX.

### Victoria No 1 Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustees	2	Direct Vote
Ordinary Member of the Branch Committee	5	Direct Vote
Branch delegate to National Council	10	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 11086
- ❖ The decision, [2012] FWAD 6936 determined the size and composition of the Branch Committee and was reflected in the rules of the Union published in the rule book dated 20 November 2012 (R2012/204). The decision reflected the Scheme approved by the Federal Court of Australia on 21 June 2012. The rules have subsequently been reordered and now Rule 41 governs the composition of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Victoria No 2 Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct Vote
Ordinary Member of the Branch Committee	8	Direct Vote
Branch delegate to National Council	8	Direct Vote

#### Note

- ❖ The Branch elections in 2006 and again in 2010 were conducted for eight (8) ordinary members of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.
- ❖ The number of members of the Branch as at 31 December 2013 was 7024.

### Victoria No 3 Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct Vote
Ordinary Member of the Branch Committee	5	Direct Vote
Branch delegate to National Council	4	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 3206.
- ❖ The decision, [2012] FWAD 6936 determined the size and composition of the Branch Committee and was reflected in the rules of the Union published in the rule book dated 20 November 2012 (R2012/204). The decision reflected the Scheme approved by the Federal Court of Australia on 21 June 2012. The rules have subsequently been reordered and now Rule 41 governs the composition of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Victoria No 4 Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee (Psychologist)	1	Direct Vote
Branch Trustee (MSAV)	1	Direct Vote
Ordinary Member of Branch Committee (Pharmacist)	2	Direct Vote
Ordinary Member of Branch Committee (Psychologist)	1	Direct Vote
Ordinary Member of the Branch Committee (MSAV)	3	Direct Vote
Branch delegate to National Council	3	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 2876
- ❖ The decision [2014] FWCD 3587 of the Delegate in in matter R2014/58 saw the composition of the Branch Committee and Officers of the Branch change. The rules have subsequently been reordered and now Rule 38A governs the composition of the Branch Committee.

### Western Australia Branch

Office	Number of positions	Voting System
Branch President	1	Direct Vote
Branch Senior Vice- President	1	Direct Vote
Branch Junior Vice President	1	Direct Vote
Branch Secretary	1	Direct Vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct Vote
Ordinary Member of the Branch Committee	7	Direct Vote
Branch delegate to National Council	6	Direct Vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 5687.
- ❖ The Union's rules (then rule 46C - TRANSITIONAL RULE - WESTERN AUSTRALIA NO. 3 BRANCH) and a rule book published on 17 January 2001 determined the composition of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

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Thursday, June 26, 2014

**Bernadette O'Neil**

General Manager  
Fair Work Commission  
11 Exhibition St  
**MELBOURNE Vic 3000**

By email: [mark.elliott@fwc.gov.au](mailto:mark.elliott@fwc.gov.au)

Dear Ms O'Neill,

**Application pursuant to section 189(1) of the Fair Work (Registered Organisations) Act 2009  
Notice and Statement of Prescribed Information for an Election**

Yesterday I provided the prescribed information for the conduct of elections under s189(1).

The information provided in relation to Victoria No 1 Branch was incorrect in that it omitted the two Branch Trustees positions. The information should have read as follows:

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustees	2	Direct Vote
Ordinary Member of the Branch Committee	5	Direct vote
Branch delegate to National Council	10	Direct vote

I have attached an updated copy of the completed prescribed information Attachment 1. Please contact Leigh Svendsen in our Sydney office on 02 8203 6066 or 0418 538 989 if you have any enquires in relation to this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Brown', with a stylized, cursive script.

**Chris Brown**  
National Assistant Secretary  
[Acting National Secretary]

## ELLIOTT, Mark

---

**From:** Leigh Svendsen [leighs@hsu.net.au]  
**Sent:** Thursday, 26 June 2014 4:38 PM  
**To:** ELLIOTT, Mark  
**Cc:** Chris Brown; Mark McLeay  
**Subject:** Variation to Statement of Prescribed Information  
**Attachments:** 20140627\_revisionVicNo1\_informationLtr.pdf; 20140626 - election prescribed information declaration.pdf

Dear Mr Elliott

Further to our discussions this afternoon please find a letter from our Acting National Secretary rectifying the information concerning Victoria Branch No 1 and a new copy of Attachment 1 provided yesterday.

Please contact me if you have any further questions

Regards Leigh Svendsen



**Leigh Svendsen | National Industrial Officer**

Suite 1, Level 3, 377 Sussex St, Sydney, NSW, 2000

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e [leighs@hsu.net.au](mailto:leighs@hsu.net.au) w [www.hsu.net.au](http://www.hsu.net.au)

HSU National acknowledges the Traditional Owners and Elders past and present across Australia. We acknowledge the Gadigal people of the Eora Nation, the Traditional Owners of the lands on which our office is located.

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25 June 2014

**Bernadette O'Neill**

General Manager  
Fair Work Commission  
By email: orgs@fwc.gov.au

Dear General Manager

**Revised**

**Application pursuant to section 189(1) of the Fair Work (Registered Organisations) Act 2009**

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

I, Chris Brown, being the Senior National Assistant Secretary of the Health Services Union, make the following statement:

I am the Senior National Assistant Secretary of the Health Services Union. I am currently the Acting National Secretary.

I am authorised to lodge the following prescribed information concerning forthcoming elections in the New South Wales Branch, South Australia/Northern Territory Branch, Tasmania Branch, Victoria No 1 Branch, Victoria No 2 Branch, Victoria No 3 Branch, Victoria No 4 Branch, Queensland Branch and Western Australia Branch of the Health Services Union.

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

I have previously lodged a Notice and Statement of Prescribed Information for an Election dated 31 March 2014. Since that date, the Fair Work Commission has certified new rules for the Health Services Union which incorporates alterations of 31/05/2014 (R2013/500) and 05/06/2014 (R2014/58 & R2014/75)]. This Notice and Statement of prescribed Information for an Election reflects these rules and should replace my earlier Notice and Statement dated 31 March 2014.

The prescribed information required under Regulation 138 for the purposes of section 189(1) of the Act is as follows:

1. The name of each office or position for which an election is required is set out in Attachment 1. Materials referred to in Attachment 1 are included in:
  - i. Attachment 2 – [2012]FWAD6936
  - ii. Attachment 3 – HSU rule book incorporating alterations of 23 November 2012 (R2012/204)
  - iii. Attachment 4 – VID1375/2013 Order of Jessop J
  - iv. Attachment 5 – PR972468 Arrangement for conduct of election
  - v. Attachment 6 – PR997468 Arrangement for conduct of election
  - vi. Attachment 7 – [2104]FWCD3587
  - vii. Attachment 8 – Resolution of Tasmania Number 1 Branch Special General Meeting
2. The reason for the election is that the term of the office or position has expired or is due to expire in the normal course of events (and a new office has been created).
3. The number of offices or positions for which an election is required is detailed in Attachment 1 which also includes information as to the number of members of each Branch as at 31 December 2013.

Rule 23A(a) provides for the election of:

- i. Officers of a Branch
- ii. Ordinary members of a Branch Committee
- iii. Councillors of the New South Wales Branch Council; and
- iv. Branch delegates to National Council

Rule 15(a)(ii) provides for the number of Branch delegates to National Council to be elected.

4. The electorate for the positions is detailed in Attachment 1 as are the number of members of the relevant Branch.
5. The rules of the Union specify nominations for positions that are subject to the direct voting system shall open on 1 June 2014 with the closing date of the nominations being 14 June 2014.
6. The day on which the roll of voters for the ballot shall close shall be on the seventh day prior to the opening of nominations.
7. The kind of voting system to be used in the conduct of the ballot shall be as described in the tables in Attachment 1.

A separate application for elections for Officers of the organisation in 2014 has already been lodged.

Please contact Mark McLeay in our Sydney office on 02 8203 6066 if you have any enquires in relation to these matters.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Brown', with a small dot at the end of the line.

**Chris Brown**

Senior National Assistant Secretary

(Acting National Secretary)

**Attachment 1**  
**Summary of Branch Offices**

---

### New South Wales Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary/Treasurer	1	Direct Vote
Ordinary Member of the Branch Committee	5	Direct vote
Member of the Branch Council	25	Direct vote
Branch delegate to National Council	20	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 30332.
- ❖ The decision, [2012] FWAD 6936 determined the size and composition of the New South Wales Branch Council and was reflected in the rules of the Union published in the rule book dated 20 November 2012 (R2012/204). The decision reflected the Scheme approved by the Federal Court of Australia on 21 June 2012. The rules have subsequently been reordered and now Rule 43(b) governs the composition of the New South Wales Branch Council. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Queensland Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct vote
Ordinary Member of the Branch Committee	5	Direct vote
Branch delegate to National Council	1	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 29.
- ❖ The composition of the Branch Officers and Branch Committee was determined by an Order of Jessop J in matter VID1375/2013 in the Federal Court of Australia on 6 March 2014. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### South Australia/Northern Territory Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct vote
Ordinary Member of the Branch Committee	5	Direct vote
Branch delegate to National Council	1	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 871.
- ❖ The Branch elections in 2006 (*PR972468 - Arrangement for conduct of election*) and again in 2010 (*PR997468 - Arrangement for conduct of election*) were conducted for five (5) ordinary members of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Tasmania Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct vote
Ordinary Member of the Branch Committee	9	Direct vote
Branch delegate to National Council	8	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 7921.
- ❖ The decision of the Delegate in [2014] FWCD 3587 saw the Tasmania Number 2 Branch being abolished and members transferred into the newly named Tasmania Branch. A Special General Meeting of the former Tasmania Number 1 Branch resolved to increase the size of the Branch Committee from eight (8) to nine (9) on 31 March 2014.

### Victoria No 1 Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Ordinary Member of the Branch Committee	5	Direct vote
Branch delegate to National Council	10	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 11086
- ❖ The decision, [2012] FWAD 6936 determined the size and composition of the Branch Committee and was reflected in the rules of the Union published in the rule book dated 20 November 2012 (R2012/204). The decision reflected the Scheme approved by the Federal Court of Australia on 21 June 2012. The rules have subsequently been reordered and now Rule 41 governs the composition of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Victoria No 2 Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct vote
Ordinary Member of the Branch Committee	8	Direct vote
Branch delegate to National Council	8	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 7024.
- ❖ The Branch elections in 2006 (*PR972468 - Arrangement for conduct of election*) and again in 2010 (*PR997468 - Arrangement for conduct of election*) were conducted for eight (8) ordinary members of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Victoria No 3 Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct vote
Ordinary Member of the Branch Committee	5	Direct vote
Branch delegate to National Council	4	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 3206.
- ❖ The decision, [2012] FWAD 6936 determined the size and composition of the Branch Committee and was reflected in the rules of the Union published in the rule book dated 20 November 2012 (R2012/204). The decision reflected the Scheme approved by the Federal Court of Australia on 21 June 2012. The rules have subsequently been reordered and now Rule 41 governs the composition of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

### Victoria No 4 Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct vote
Branch Trustee (Psychologist)	1	Direct vote
Branch Trustee (MSAV)	1	Direct vote
Ordinary Member of Branch Committee (Pharmacist)	2	Direct vote
Ordinary Member of Branch Committee (Psychologist)	1	Direct vote
Ordinary Member of the Branch Committee (MSAV)	3	Direct vote
Branch delegate to National Council	3	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 2876
- ❖ The decision [2014] FWCD 3587 of the Delegate in matter R2014/58 saw the composition of the Branch Committee and Officers of the Branch change. The rules



have subsequently been reordered and now Rule 38A governs the composition of the Branch Committee.

#### Western Australia Branch

Office	Number of positions	Voting System
Branch President	1	Direct vote
Branch Senior Vice- President	1	Direct vote
Branch Junior Vice President	1	Direct vote
Branch Secretary	1	Direct vote
Branch Assistant Secretary	1	Direct Vote
Branch Trustee	2	Direct vote
Ordinary Member of the Branch Committee	7	Direct vote
Branch delegate to National Council	6	Direct vote

#### Note

- ❖ The number of members of the Branch as at 31 December 2013 was 5687.
- ❖ The Branch elections in 2006 (*PR972468 - Arrangement for conduct of election*) and again in 2010 (*PR997468 - Arrangement for conduct of election*) were conducted for seven (7) ordinary members of the Branch Committee. Subsequently, the Branch has not determined to vary the composition of Branch Committee.

**Attachment 2**  
**[2012] FWAD 6936**

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FAIR WORK  
AUSTRALIA

## DECISION

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

### **Health Services Union**

(R2012/135)

AILS A CARRUTHERS

MELBOURNE, 21 AUGUST 2012

#### *Alteration of other rules of organisation.*

[1] On 14 August 2012 the Administrator of the East Branch of the Health Services Union (HSU), the Honourable Michael Moore, lodged with Fair Work Australia (FWA) a notice and declaration setting out particulars of alterations to the rules of the HSU.

[2] Particulars of the proposed alterations are set out in Annexure A to this decision and principally concern the demerger of the East Branch of HSU to reconstitute the New South Wales (NSW), Victoria No. 1 and Victoria No. 3 Branches of the HSU as they existed prior to their merger on 24 May 2010. Subject to changes which are discussed in detail throughout this decision, the purpose of the proposed alterations is to reinstate the HSU rules in so far as they provided for the NSW, Victoria No. 1 and Victoria No. 3 Branches as at 12 November 2009, being the last date upon which alterations to the rules were certified prior to merger of the three Branches.<sup>1</sup> The HSU rules as at 12 November 2009 are referred to in this decision as “the 2009 rules”.

[3] For reasons that will become apparent later in this decision, on 14 August 2012 the Administrator, through Slater & Gordon, provided FWA with a list of those proposed rule alterations which, while departing from the 2009 rules, in the Administrator’s opinion strengthen the financial accountability and good governance of the reconstituted NSW, Victoria No. 1 and Victoria No. 3 Branches and/or are alterations which are necessary or appropriate to ensure that the demerged branches will continue to be representative of and accountable to their members, will continue to operate effectively, will continue to encourage members to participate in their affairs and will continue to encourage their democratic functioning and control.

[4] On 15 August 2012 FWA emailed to Slater & Gordon a document comparing those rule alterations which had been identified as departing from the 2009 rules by Slater & Gordon and by FWA and, for those rules which had been identified by FWA but not specifically noted by Slater & Gordon, FWA’s assessment of the nature of the departure from the 2009 rules. The document also identified typographical, formal and clerical errors and made comment regarding the terms of four of the proposed rules. The document that was emailed by FWA to Slater & Gordon on 15 August 2012 is Annexure B to this decision.

[5] On 15 August 2012 Slater & Gordon provided FWA with further information

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<sup>1</sup> See the decision of Delegate Nassios on 12 November 2009 in [2009] FWAD 1028.

regarding the Administrator's proposal not to reinstate the offices of elected Organisers who, in the 2009 rules, were non voting members of the Union Council in the NSW Branch. This information is set out in paragraph [44] below.

[6] On 16 August 2012 Slater & Gordon responded to FWA's correspondence of 15 August 2012. Details of this response are set out at paragraph [31] below.

[7] On 19 August 2012 FWA wrote to the Administrator advising him that, while it was not contrary to the requirements of the RO Act, the proposed rules do not provide for a quorum at meetings of the NSW Branch Council.

[8] On 20 August 2012 the Administrator made further alterations to the HSU rules to provide for a quorum for meetings of NSW Branch Council in new rule 53(g). In further correspondence of the same date, the Administrator agreed to the correction of a typographical, clerical or formal error in the heading in new rule 84.

## Background

[9] HSU is a registered organisation of employees under the *Fair Work (Registered Organisations) Act 2009* (RO Act). The East Branch of HSU (East Branch) was created by the merger of the NSW, Victoria No. 1 and Victoria No. 3 Branches of the HSU on 24 May 2010.<sup>2</sup>

[10] An industrial organisation of employees which was formerly known as "Health Services Union" is also registered under the *Industrial Relations Act 1996* (NSW). The name of the state-registered organisation was changed to "HSU-East" on 30 July 2010. After a further change, the name of the state-registered organisation was changed to "HSUeast" on 16 June 2011.<sup>3</sup>

[11] While the HSU, of which East Branch is a constituent part, and HSUeast are separate legal entities,<sup>4</sup> there is a close association between East Branch and HSUeast. They share a substantially similar membership, with the result that officers who are elected in East Branch from time to time are taken to have been validly elected to the corresponding office in HSUeast without the need for a separate election.<sup>5</sup> Similarly, periods of membership of East Branch in accordance with the HSU rules are deemed to be periods of membership of HSUeast.<sup>6</sup>

[12] The current rule alterations were lodged following a decision of Justice Flick in the Federal Court of Australia dated 21 June 2012 in *Brown & Ors v Health Services Union & Ors*<sup>7</sup> and *HSU East v NSW Minister for Finance and Services & Ors*.<sup>8</sup> The decision dealt

<sup>2</sup> See the decision of Delegate Nassios on 24 May 2010 [2010] FWAD 3897 certifying alterations to the rules of the HSU under section 159 of the *Fair Work (Registered Organisations) Act 2009*.

<sup>3</sup> On 9 December 2010 the name was changed to "HSU east". On 16 June 2011 the name was changed to "HSUeast".

<sup>4</sup> The Health Services Union is a body corporate under section 27 of the *Fair Work (Registered Organisations) Act 2009* (Cth). HSUeast is a body corporate under section 222 of the *Industrial Relations Act 1996* (NSW).

<sup>5</sup> See Rule 18A of the HSUeast registered rules.

<sup>6</sup> Rule 6(6) of the HSUeast registered rules.

<sup>7</sup> NSD621/2012

<sup>8</sup> NSD735/2012

with two applications that were before the Court, and which were heard together, concerning both East Branch and HSUEast. Justice Flick issued orders dated 21 June 2012 in both proceedings, amongst other things, declaring under section 323(1) of the RO Act that East Branch has ceased to function effectively and that there are no effective means under the rules of the organisation by which it can be enabled to function effectively. An order to the same effect was also made with respect to HSUEast under section 290B of the *Industrial Relations Act 1996* (NSW).

[13] The order of 21 June 2012 approved a Scheme under subsection 323(2) of the RO Act in relation to East Branch<sup>9</sup> which was set out in Appendix A to the Order. In addition, the Order appointed the Honourable Michael Francis Moore as administrator of both East Branch and HSUEast. Justice Flick's order of 21 June 2012 was varied by an order dated 29 June 2012 which substituted a new Scheme dated 29 June 2012 (the Scheme).

[14] Under paragraph 2.1 of the Scheme, all elected offices in East Branch are declared by the Court to be vacant. Paragraph 5.1 provides that the Administrator "shall have and exercise such powers and duties of the Union Council (being the HSU East Branch Committee), the HSU East Branch Officers and the HSU East Branch Executive Committee as are conferred on those bodies by the Rules and the [RO] Act." The Scheme further provides that the Administrator shall:

- "15.1 alter the Rules of the HSU, so as to reinstate them to the form they were in immediately before the Merger Date, in so far as they provided for the NSW Branch, the Victoria No.1 Branch and the Victoria No.3 Branch;
- 15.2 if required, in the opinion of the Administrator, strengthen the financial accountability and good governance of the NSW Branch, the Victoria No.1 Branch and the Victoria No.3 Branch; and
- 15.3 lodge with Fair Work Australia, particulars of alterations and seek the certification of General Manager of Fair Work Australia under section 159 of the [RO] Act."

[15] The "Merger Date" which is referred to in paragraph 15.1 of the Scheme is defined in the Scheme as 24 May 2010, being the date on which alterations to the HSU rules were certified to create East Branch. As set out at paragraph [2] above, the effect of paragraph 15.1 is to require the Administrator to alter the HSU rules so as to reinstate them to the rules as at 12 November 2009 in so far as they provided for the NSW, Victoria No. 1 and Victoria No. 3 Branches.

[16] In addition, paragraph 23 of the Scheme provides as follows:

"If in the opinion of the Administrator it is necessary or appropriate to do so, the Administrator shall alter the Rules and the NSW Union Rules so as to ensure that after the Amendment Date the NSW Union and the demerged Branches will continue to be representative of and accountable to their members, will continue to be able to operate effectively, will continue to encourage members to participate in the affairs of the NSW Union and the demerged Branches to which they belong, and will continue to

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<sup>9</sup> The Scheme also applies to HSUEast under section 290B(8) of the *Industrial Relations Act 1996* (NSW)

encourage the democratic functioning and control of the NSW Union and the demerged Branches and take such steps as are necessary to obtain certification under the Act or consent under the IR Act as the case may be.”

[17] The “Amendment Date” which is referred to in paragraph 23 of the Scheme is defined in paragraph 16 of the Scheme as being the date of certification of the alterations referred to in paragraph 15 of the Scheme. The “Rules” are defined as meaning “the Rules of the HSU”, as distinct from the “NSW Union Rules” which are defined as the rules of the state industrial organisation registered under the *Industrial Relations Act 1996* (NSW) (that is, HSUEast).

### **Rule altering procedure**

[18] Sub-rule 49(d) of the HSU rules provides that each branch may make rules from time to time for its own internal management and may therefore add to, amend, rescind or alter any of the HSU rules in so far as they relate to the internal management of a branch through its Branch Committee of Management or by a special general meetings of its members. Sub-rule 49(e) requires that, where any rules are made by a branch pursuant to rule 49(d), they shall be forwarded to the National Secretary who shall forthwith apply for their certification.

[19] An alteration to the rules of a registered organisation does not take effect, however, unless particulars of the alteration have been lodged with FWA and the General Manager has certified under section 159 of the RO Act that, in his or her opinion, the alterations comply with, and are not contrary to, the RO Act, the *Fair Work Act 2009*, modern awards and enterprise agreements, are not otherwise contrary to law and have been made under the rules of the organisation. When making an application to alter its rules, an organisation must lodge with FWA a notice setting out particulars of the alterations in accordance with regulation 126 of the *Fair Work (Registered Organisations) Regulations 2009* (the RO Regulations). Regulation 126(2) states that:

“The notice must contain a declaration, signed by an officer of the organisation authorised to sign the declaration, stating:

- (a) that the alteration was made in accordance with the rules of the organisation; and
- (b) the action taken under those rules to make the alteration; and
- (c) that the particulars set out in the notice are true and correct to the best of the knowledge and belief of the signatory.”

[20] Regulation 12 of the RO Regulations prescribes circumstances in which an officer of an organisation is “authorised to sign” a declaration:

“(1) An officer<sup>10</sup> of an association, organisation, branch, constituent part or reporting

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<sup>10</sup> “Officer” is defined in section 6 of the RO Act as meaning, in relation to an organisation or branch of an organisation, “a person who holds an office in the organisation or branch”. “Office” is defined in subsection 9(1) as meaning, amongst other things, the office of president, vice president, secretary or assistant secretary of the organisation or branch or the office of a voting member of a collective body that has power in relation to management of the affairs of the organisation

unit is authorised to make, sign or lodge any document (however described) under the Act or these Regulations if the officer is authorised to do so:

- (a) by the association, organisation, branch, constituent part or reporting unit; or
- (b) by the rules of the organisation, branch, constituent part or reporting unit.”

[21] The General Manager is empowered by regulation 178 of the RO Regulations to exempt a person from compliance with a procedural requirement under the RO Regulations if the General Manager is satisfied that there are “special circumstances”.

[22] A notice of particulars of the alterations was lodged electronically with FWA under cover of a letter from Slater & Gordon on behalf of the Administrator on 14 August 2012 seeking certification of alterations under section 159 of the RO Act. The application sought that compliance with regulation 126(2) of the RO Regulations be waived in accordance with regulation 178 “in circumstances where there is no relevant officer of the organisation authorised to sign the declaration.” It was also noted that “the alterations are not ones made in accordance with the Rules of the organisation but are made in accordance with the Scheme.”

[23] Under the terms of the Scheme, the Administrator has and exercises such powers and duties of the East Branch Committee and East Branch officers “as are conferred ... by the Rules and the Act”.<sup>11</sup> Further, as set out at paragraph [14] above, the Scheme requires the Administrator to alter the rules of the HSU so as to reinstate the NSW, Victoria No. 1 and Victoria No. 3 Branches, to lodge particulars of those alterations with FWA and to seek certification of those alterations by the General Manager of FWA under section 159 of the RO Act.

[24] In the special circumstances that are before me and which are reflected in the Scheme, I exempt the Administrator from compliance with the procedural requirements of regulation 126(2) of the RO Regulations that are set out in paragraph [19] above. It follows that I do not need to be satisfied that the alterations were made in accordance with sub-rules 49(d) and (e) of the HSU rules or that the Administrator was authorised by East Branch or by the HSU rules to sign the declaration contained in the notice that was lodged on 14 August 2012.

#### **Reinstatement of the 2009 rules**

[25] Paragraph 15 of the Scheme, which is set out at paragraph [14] above, requires the Administrator to reinstate the HSU rules “to the form they were in immediately before the Merger Date, in so far as they provided for the NSW Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch”. As set out at paragraph [15] above, the relevant rules for this purpose are those that were certified on 12 November 2009.

[26] This is not, however, the end of the Administrator’s task with respect to the 2009 rules. Paragraph 15.2 also states that the Administrator shall, if required in the opinion of the

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or branch.

<sup>11</sup> See paragraph 5 of the Scheme.

Administrator, “strengthen the financial accountability and good governance of the NSW Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch”. In addition, as set out at paragraphs [16] and [17] above, paragraph 23 of the Scheme provides that the Administrator shall alter the HSU rules if, in his opinion, it is necessary or appropriate to do so in order to ensure that the demerged Branches will continue to be representative of and accountable to their members, will continue to be able to operate effectively, will continue to encourage members to participate in the affairs of the demerged Branches to which they belong, and will continue to encourage the democratic functioning and control of the demerged Branches. The Administrator is required by paragraph 23 of the Scheme to “take such steps as are necessary to obtain certification” under the RO Act of alterations to the HSU rules for this purpose.

[27] As a result, I must be satisfied, firstly, that the rule alterations reinstate the 2009 rules in so far as they provided for the NSW, Victoria No. 1 and Victoria No. 3 Branches and, secondly, that the Administrator has formed the opinion that any departure of the proposed rules from the 2009 rules is required, necessary or appropriate for the reasons specified in paragraphs 15.2 and/or paragraph 23 of the Scheme.

[28] I must, however, also be satisfied of a third matter, namely that the proposed alterations meet the requirements of section 142 of the RO Act, including that they are not contrary to, or fail to make a provision required by, the RO Act, the *Fair Work Act 2009*, a modern award or an enterprise agreement and are not otherwise contrary to law.<sup>12</sup> I must also be satisfied that the proposed rules do not impose on members “conditions, obligations or restrictions” that are “oppressive, unreasonable or unjust” having regard to Parliament’s intention in enacting the RO Act and to the objects of the RO Act and the *Fair Work Act 2009*.<sup>13</sup>

[29] Parliament’s intentions in enacting the RO Act are set out in section 5 and include, most relevantly, to:

- “(a) ensure that employer and employee organisations registered under the RO Act are representative of and accountable to their members, and are able to operate effectively;
- (b) encourage members to participate in the affairs of organisations to which they belong;
- (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and
- (d) provide for the democratic functioning and control of organisations.”

[30] I have examined the proposed rules in order to be satisfied that they reinstate the 2009 rules in so far as they provided for the NSW, Victoria No. 1 and Victoria No. 3 Branches. This has necessarily required me to identify departures of the proposed rules from the 2009 rules. Correspondence from Slater & Gordon on behalf of the Administrator dated 14 August 2012 lists those proposed rules that depart from the 2009 rules and notes that “Otherwise the

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<sup>12</sup> Paragraph 142(1)(a).

<sup>13</sup> Paragraph 142(1)(c).



Rule alterations either accommodate paragraph 15.1 of the Scheme<sup>14</sup> or are consequential”.

[31] In order to be satisfied that all of the departures from the 2009 rules had been identified, and that the Administrator was of the requisite opinion under paragraphs 15.2 and/or 23 of the Scheme, FWA sent the document that is Annexure B to this decision to Slater & Gordon on 15 August 2012. In their response of 16 August 2012, Slater & Gordon confirmed FWA’s commentary in column 3 of the first table of Annexure B that the departures from the 2009 rules are in the main consequential subject to the following:

- New rule 57 seeks as a matter of good governance to align the rule with that which applies to the other Branches of the HSU. Further, the words of the 2009 rules have not been reinstated as they do not allow the voter at the ballot to identify the Senior Vice-President or the Junior Vice-President that he/she is voting for as the seniority of the candidates will be unknown to the voter. As such, this departure, in the opinion of the Administrator, falls within the parameters of paragraphs 15.2 and/or 23 of the Scheme.
- New rule 78 is a departure from the 2009 rules. It has, however, been retained in the opinion of the Administrator as it ensures that full time paid officers do not “double dip” in respect of their remuneration. As such, the Administrator is of the opinion that this alteration falls squarely within paragraph 15.2 of the Scheme.
- New rule 89, being a transitional rule, results from the demerger of the East Branch under paragraphs 16 and 17 of the Scheme. Such a rule is necessary in the opinion of the Administrator particularly having regard to paragraph 23 of the Scheme.
- The alterations to the numbering of the Rules are consequential upon the alterations that have been made in compliance with the Scheme. As such, they are necessary in the opinion of the Administrator for the purposes set out in paragraphs 15.2 and/or 23 of the Scheme.

[32] On the basis of Slater & Gordon’s letters of 14 and 16 August 2012, I am satisfied that the proposed rule alterations reinstate the 2009 rules in so far as they provided for the NSW, Victoria No. 1 and Victoria No. 3 Branches of the HSU and that the Administrator has formed the requisite opinion under paragraphs 15.2 and/or 23 of the Scheme regarding any departures of the proposed alterations from the 2009 rules.

**Are any of the departures from the 2009 rules “oppressive, unreasonable or unjust”?**

[33] I must consider whether the requirements of section 142 of the RO Act have been met and, in particular, whether the proposed rules impose on members “conditions, obligations or restrictions” that are “oppressive, unreasonable or unjust” having regard to Parliament’s intention in enacting the RO Act and to the objects of the RO Act and the *Fair Work Act 2009*.

#### **Branch Committee and Branch Council in New South Wales - new rules 52 and 53**

[34] Part C of the HSU Rules sets out rules of common application (“common rules”) for

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<sup>14</sup> That is, they reinstate the 2009 rules without variation.

all branches of the HSU. Some rules within Part C, however, are expressed to apply only to a particular branch or branches.

[35] The 2009 rules contained a number of common rules regarding Branch committees of management. Sub-rule 49(a) stated that the government, management and control of the affairs of each branch shall be vested in a Branch Committee. Rule 51 provided that each Branch Committee shall consist of the Officers of the Branch and not less than five and not more than 15 ordinary members as the Branch may determine from time to time.

[36] The 2009 rules also, however, contained specific rules relating to the Branch Committee in NSW. Sub-rule 49(a) provided that the Branch Committee in NSW shall be called the "Union Council". The NSW Branch officers, who were set out in sub-rule 50(b), were the President, two Vice-Presidents, the Secretary (who shall be called the General Secretary-Treasurer) and the Assistant Secretary. Under rule 51A, the composition of the Union Council in NSW differed from the composition of other Branch Committees. The Union Council consisted of:

- the President;
- two Vice-Presidents;
- 24 Councillors; and
- "paid officers of the Union being the General Secretary-Treasurer, one Assistant Secretary and Organisers. Apart from the General Secretary-Treasurer and the Assistant Secretary, the paid Officers of the Union are non voting members of Union Council."

[37] A number of common rules of the 2009 rules dealt with matters concerning Branch Committees. Rule 52 concerned the powers and duties of Branch Committees, rule 53 provided for meetings of Branch Committees and sub-rule 64(a)(ii) provided for the quorum of Branch Committee meetings. While it was differently named and constituted from other Branch Committees, the Union Council in NSW was nevertheless the Branch Committee under the 2009 rules and operated, like all other Branch Committees, in accordance with rules 52, 53 and 64(a)(ii) of the 2009 rules.

[38] The proposed rules provide for a Branch Committee in the NSW Branch which appears on its face to be more akin to Committees in other Branches of the HSU. Not only is it known as the "Branch Committee", but its membership is broadly similar to other Branch Committees. The NSW Branch Committee consists of the Branch President, Branch Senior Vice-President, Branch Junior Vice-President, Branch Secretary, Branch Assistant Secretary-Treasurer and five ordinary members.<sup>15</sup> As in the 2009 rules, the NSW Branch Committee exercises the same powers and duties of day-to-day management as other Branch Committees.<sup>16</sup> The NSW Branch Committee must meet at least monthly.<sup>17</sup>

[39] Proposed new rule 53, however, creates a new collective body<sup>18</sup> in the NSW Branch

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<sup>15</sup> New sub-rule 52(a). While the New South Wales Branch Committee does not have any trustees (unlike all other Branches except the Victoria No. 1 Branch), this reflects the 2009 rules.

<sup>16</sup> With the exception of the powers in new sub-rules 54(e) and (f), which are exercised by the NSW Branch Council.

<sup>17</sup> New sub-rule 54(c). The New South Wales Branch Committee is required under the proposed rules to meet more frequently than other Branch Committees, which are required to meet "at least quarterly" under new rule 55.

<sup>18</sup> See the definition of "collective body" in section 6 of the RO Act.

which is known as the “New South Wales Branch Council”. The Branch Council, which is the supreme governing body of the Branch, will meet annually.<sup>19</sup> It consists of the Branch Officers and 25 Councillors.<sup>20</sup> The powers of Branch Council are set out in new sub-rule 53(f) and include watching the interests of the Branch, fixing the remuneration and terms and conditions of employment of Branch officers and employees, suspending or removing officers from office and reviewing decisions of the Branch Committee.

[40] The effect of new rules 52 and 53 is to change the name and composition of the NSW Branch Committee (although not, with limited exceptions, the powers)<sup>21</sup> and to create a new collective body in NSW called the Branch Council. A significant departure from the 2009 rules, however, is that the proposed rules no longer provide for paid Organisers to be members, albeit non voting members, of a collective body of the NSW Branch.

[41] The 2009 rules provided for the election of Organisers in the NSW Branch.<sup>22</sup> The powers and duties of Organisers were set out in rule 58A:

“An Organiser or Organisers in the NSW Branch shall be subject to the authority and control of the Union Council and to the immediate supervision and direction of the General Secretary-Treasurer. Subject to the foregoing, he/she or they shall use his/her or their best endeavours to promote the interests of the Branch and its members, and to assist the General Secretary-Treasurer in the performance of his/her duties, and in the absence of the General Secretary-Treasurer, the Assistant Secretary or such other paid elected official as the Association Council so nominates would act in his/her stead.”

[42] As set out at paragraph [36] above, although they were elected under rule 51A of the 2009 rules, Organisers were non voting members of the NSW Branch Council.

[43] The rules that were certified on 24 May 2010 to create East Branch, however, did not provide for the election of Organisers in rule 29A nor did rule 51A include Organisers as members of East Branch Union Council. Under transitional provisions,<sup>23</sup> 20 Organisers in the NSW Branch (who were identified in the rules as holding an “honorary” office) became “General Representatives” from NSW on the East Branch Transitional Union Council. The General Representatives held office for a transitional period until the declaration of the ballot at the next scheduled elections. In addition, rule 58A of the 2009 rules concerning Organisers in the NSW Branch, which is set out at paragraph [41] above, was deleted from the rules that were certified on 24 May 2010.

[44] In their letter of 15 August 2012, Slater & Gordon advised that, having regard to paragraphs 15.2 and 15.3 of the Scheme, the Administrator has formed the opinion that it would be inappropriate for the offices of elected Organisers to be reinstated in the NSW Branch. The letter has provided the following further information:

“As you would appreciate, after the merger in 2010, organisers in the HSU East

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<sup>19</sup> New sub-rule 53(a).

<sup>20</sup> New sub-rule 53(b).

<sup>21</sup> The powers in new sub-rules 54(e) and (f) are exercised by the NSW Branch Council.

<sup>22</sup> See sub-rules 29A(a)(i)(d), 29A(d)(i) and (ii), 29A(g) and 73(d).

<sup>23</sup> See rule 48A of the rules that were certified on 24 May 2010.

Branch became employees and were unelected. As members they could nominate and be elected as General Representatives on Union Council. Whatever the reasons for changing the status of organisers from elected to appointed, at the time of the merger in 2010, there is no obvious reason why those considerations would no longer apply.

The New South Wales Branch was, prior to the merger date, the only Branch of the Union to have elected organisers. Apart from the obvious wastefulness of potentially having some twenty organisers attend Union Council on a regular basis without having voting rights, there are a number of other considerations which have militated against the restoration of elected organisers.

Firstly, there is legal uncertainty about the status of elected organisers. As a matter of governance, the position of organisers who are elected is unclear and unsatisfactory. Elected organisers effectively have a dual role, one as an elected organiser and one as an employee (see for example: *Roughan v Coulson & Ors* [1982] FCA 261). When organisers are elected, the extent that they may be subject to disciplinary and performance management processes which would ordinarily apply to employees is unclear.

On one view, elected organisers of the New South Wales Branch prior to the merger could only be removed from office under Rule 66 on the grounds of misappropriation of Union funds, substantial breach of the Rules of the Union, gross misbehavior or gross neglect of duty. As employees, however, they could be dismissed on a range of grounds including misconduct, incompetence or redundancy.

There is nothing in the Rules of the New South Wales Branch prior to the Merger that clarified this issue.

Further, and compounding the above problem, modern organisers are increasingly required to have a sophisticated skill set. Elections could have the result that members without adequate skills could be elected as organisers.

Increasingly over the last few decades, trade unions have for the practical reasons moved away from having elected organisers and have instead appointed organisers.

The approach of maintaining employed, rather than elected organisers, has the advantage of allowing for a selection process which recognizes the suitability of applicants for the role of organiser. It allows for clear definition of skills required, lines of accountability and supervision. It permits performance and disciplinary issues concerning organisers to be dealt with in a conventional way.

Another and a significant factor weighing in the consideration of the Administrator is that candidates for the office of elected organisers would normally contest an election as part of a de facto ticket. As such, elected organisers, having formed part of such a ticket, may regard themselves as politically aligned to, or dependent upon, the leadership of their ticket, and may work in a political way to garner support for that "team" between elections. This possibility has the capacity to interfere with the good governance of the reconstituted New South Wales Branch. It also has the capacity to entrench leadership in a way which compromises true democratic control by the membership. To the extent that the Administrator has had any feedback from the

membership on this proposal, it is in the main supportive of it.

Finally, there are very significant practical difficulties in restoring the election of organisers. The existing employed organisers may or may not seek election to office. In any event all employed positions would presumably have to be vacated so that newly elected organisers could take up their roles. At the very least, this may require giving notice of termination of employment to all currently employed organisers, if elected offices of organisers were to be restored. These employed organisers would then have entitlements on termination including redundancy pay. Some may further seek election to their former position.

Consequently, in the opinion of the Administrator, the potential problems created by the restoration of elected organisers are extremely substantial. He is of the opinion it would be inappropriate to restore this feature of the pre merger Rules to the reconstituted New South Wales Branch. In coming to this opinion, the Administrator has taken into account the views contained in chapter 10 of the Report of Messrs Temby and Robertson dated 3 July 2012.”

[45] I have considered whether the failure to reinstate elected Organisers in the NSW Branch contravenes section 142 of the RO Act by imposing “conditions, obligations or restrictions” that are “oppressive, unreasonable or unjust”.

[46] The expression “oppressive, unreasonable or unjust” as it appeared in section 140(1)(c) of the *Conciliation and Arbitration Act 1904* was considered by Deane J in *Municipal Officers’ Association of Australia v Lancaster*<sup>24</sup> (*Lancaster*). His Honour stated that, “To be oppressive, a condition, obligation or restriction must be burdensome, harsh and wrongful ... To be unreasonable, it must be immoderate and inappropriate. To be unjust, it must be contrary to right and justice and to ordinary standards of fair play...”

[47] I am also mindful of a number of decisions, including that of Deane J in *Lancaster*,<sup>25</sup> concerning the freedom of organisations to determine their own rules, internal structures and policies:

“The constraints and restrictions imposed, by positive and negative requirements of the Act and regulations, upon the freedom of the members of an organization to select, for themselves, the rules which they consider appropriate for their particular organization, are real and significant. It cannot, however, be too strongly stressed that, subject to those constraints and restrictions, the content of the rules of a registered organization is primarily a matter for the members... it is for the members, or those entrusted by the members in that regard, to decide the content of the rules.”

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<sup>24</sup> (1981) 54 FLR 129 at 165.

<sup>25</sup> *Ibid* at pages 164 - 165.

[48] In the same case,<sup>26</sup> their Honours Justices Evatt and Northrop quoted with approval the following extract from an earlier judgment they had given in *Wiseman v. Professional Radio and Electronics Institute of Australasia*:<sup>27</sup>

“The court is not at liberty to substitute its modes of thought for those of an organization. Subject to the provisions of the Act, an organization is free to determine its own internal structures; it is free to determine its own policies; it is free to pursue objects which it considers to be desirable; and it is free to decide what it considers to be in the best interests of its members or potential members... The court, in the exercise of the judicial powers conferred by s.140 of the Act, is not permitted to substitute what it considers to be desirable internal structures of an organization; what it considers to be desirable policies; what it considers to be desirable objects; and what it considers to be in the best interests of the members of the organization... subject to the provisions of the Act, an organization is free to determine its own internal structures.”

[49] In my view, the decision not to reinstate elected Organisers cannot be characterised as being akin to the abolition of an “office” that had existed in the 2009 rules. Despite the fact that rule 51A of the 2009 rules described the NSW Branch Organisers as being “officers”, in my view they did not fall within the definition of “officer” in the RO Act. An “officer” is defined in the RO Act as being a person “who holds an office”.<sup>28</sup> The term “office” is defined as “the office of a voting member of a collective body” that has power to manage the affairs of the Branch, determine policy and make and enforce rules.<sup>29</sup> The term “office” also means an office the holder of which is entitled, under the rules, to participate “directly” in such matters, even where that person is not a voting member of a collective body.<sup>30</sup> Under the 2009 rules, however, Organisers were not voting members of the NSW Branch Council under rule 51A nor were they entitled, under rule 58A,<sup>31</sup> to participate directly in management of the affairs of the Branch, the determination of policy or the making or enforcement of rules. The role of Organisers, as set out in rule 58A, was to work under the immediate supervision and direction of the General Secretary-Treasurer, to provide him or her with assistance and to promote the interests of the Branch.

[50] The effect of the decision not to reinstate elected Organisers is to remove from membership of a collective body of the NSW Branch a group of people who were not entitled to vote as members of that body in any event. The intentions of the RO Act, which are set out in paragraph [29] above, include providing for the democratic functioning and control of organisations. In my view, failure to reinstate non voting members to a collective body does not diminish the democratic functioning of that collective body. Rather, this departure from the 2009 rules could be said to meet another of Parliament’s intentions of encouraging the efficient management of organisations. Further, within the limits imposed by section 142 of the RO Act, it is ultimately for a registered organisation to determine its own rules and internal structures. The test that is set out by Deane J in *Lancaster* concerning the expression

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<sup>26</sup> Ibid at page 150.

<sup>27</sup> [1978] FCA 31.

<sup>28</sup> See section 6 of the RO Act.

<sup>29</sup> Paragraph 9(1)(b) of the RO Act.

<sup>30</sup> Paragraphs 9(1)(c) and (d) of the RO Act.

<sup>31</sup> See paragraph [41] above.

“oppressive, unreasonable and unjust” is a high one and I am not of the view that the failure to reinstate elected Organisers in all the circumstances meets that test.

### **Removal of team nominations in NSW, Victoria No. 1 and Victoria No. 3 Branches**

[51] Rule 29A(g) of the 2009 rules provided for “team nominations” in all HSU Branch elections. The proposed rules, however, include a provision that sub-rule 29A(f), as it is now numbered, regarding team nominations shall not apply to any election in the NSW, Victoria No. 1 and Victoria No. 3 Branches.

[52] I have considered whether this departure from the 2009 rules imposes conditions, obligations or restrictions which are harsh, oppressive or unjust. On the one hand, the proposed rule alteration means that the ability to nominate as a member of a team in a Branch election depends entirely upon the Branch to which a candidate belongs. A member of the Victoria No. 2 or Victoria No. 4 Branch can nominate for office as a member of a team while a member of the NSW, Victoria No. 1 or Victoria No. 3 Branch cannot. This distinction appears somewhat arbitrary. On the other hand, the RO Act does not require every Branch of an organisation to provide for the election of officers in exactly the same terms. By failing to provide for team nominations in the demerged Branches, the rules do not thereby contravene Division 2 of Part 2 of Chapter 5 of the RO Act concerning the requirements of rules relating to elections for office. Further, new rule 29A(d)(v) provides that candidates in the demerged Branches may provide a “candidate statement” containing brief information as to any group of candidates with whom the nominee for election is aligned. If a ballot is held, the returning officer must distribute candidate statements with ballot papers. While it does not allow for the simpler mechanism of voting by using a “team box”,<sup>32</sup> a candidate statement does nevertheless enable members of the demerged Branches to, in effect, make a de facto team nomination, even though it may take longer to fill in a ballot paper in accordance with a candidate statement than by voting using a team box. In my view, this lessens the apparently arbitrary nature of the distinction in this regard between the demerged Branches and the other Branches of the HSU.

[53] On balance, I am not of the view that the inapplication of the team nomination rule to elections in the NSW, Victoria No. 1 and Victoria No. 3 Branches imposes conditions, obligations or restrictions which are harsh, oppressive or unjust.

### **Special Branch Rules for demerged branches**

[54] New rules 81 to 87 only apply to the NSW, Victoria No. 1 and Victoria No. 3 Branches. Rule 83 requires each Branch to develop and implement internal control policies and procedures relating to expenditure of the Branch. Such policies and procedures must ensure that the Branch is conducted in accordance with the principles of good governance and accountability to members of the Branch. Each Branch is also required to develop and implement policies and procedures to ensure that the Branch is representative of, and accountable to, its members, will operate effectively, encourage members to participate in the affairs of their Branch and encourage the democratic functioning and control of the Branch.

[55] New rule 84 concerns disclosure of remuneration and non-cash benefits by Branch officers to the Branch Committee and the subsequent disclosure of such information to

<sup>32</sup> Such a mechanism is available under the team nomination provisions in sub-rule 29A(f).

members of the Branch. New rule 85 concerns disclosure of personal interests by Branch officers to the Branch Committee and the subsequent disclosure of such information to members of the Branch. New rule 86 concerns disclosure by the Branch to members of information regarding payments made to related parties of the Branch or to a declared person or body of the Branch.

[56] New rule 87 requires each officer of the demerged Branches to undertake approved training regarding financial duties.

[57] New rules 81 to 87 reflect new requirements that must be included in the rules of each registered organisation and branch once Part 2 of Schedule 1 to the *Fair Work (Registered Organisations) Amendment Act 2012* (the Amendment Act) has commenced. In particular, the new rules reflect what will be the requirements of paragraph 141(1)(ca),<sup>33</sup> Division 3A of Part 2 of Chapter 5<sup>34</sup> and Subdivision BB of Division 4 of Part 2 of Chapter 5<sup>35</sup> of the RO Act immediately after commencement of Part 2 of Schedule 1 to the Amendment Act.

[58] Part 2 of Schedule 1 to the Amendment Act will commence on a day to be fixed by Proclamation or 30 June 2013, whichever occurs first. Transitional provisions<sup>36</sup> allow registered organisations to make, and FWA to approve, “eligible alterations” to rules before those provisions commence. An “eligible alteration” is one where the only purpose of the alteration is to comply with paragraph 141(1)(ca), Division 3A of Part 2 of Chapter 5 and Subdivision BB of Division 4 of Part 2 of Chapter 5 of the RO Act immediately after commencement of the Amendment Act. The “transition period” during which eligible alterations can be certified by FWA began on 29 June 2012 and ends immediately before commencement of Part 2 of Schedule 1 to the Amendment Act.

[59] The application to alter the HSU rules was made during the transition period. Proposed new rules 81 to 87 would achieve compliance by the NSW Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch with paragraph 141(1)(ca), Division 3A of Part 2 of Chapter 5 and Subdivision BB of Division 4 of Part 2 of Chapter 5 of the RO Act immediately after commencement of the Amendment Act. The Administrator has stated, however, that in his opinion these rules fall within the terms of paragraphs 15.2 and/or 23 of the Scheme. In these circumstances, proposed new rules 81 to 87 do not constitute “eligible alterations” within the meaning of the Amendment Act, as compliance with the provisions of the RO Act is not the *only* purpose of the alterations. The alterations are also intended to meet the requirements of paragraphs 15.2 and/or 23 of the Scheme, including by strengthening the financial accountability and good governance of the demerged Branches in accordance with the Scheme. As a result, these rules will take effect on the date of certification in accordance with subsection 159(2) of the RO Act. I note, however, that rule 87, by its own terms, will not take effect until the commencement of Part 2 of Schedule 1 to the Amendment Act.

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<sup>33</sup> Rule 83.

<sup>34</sup> Rules 84 to 86.

<sup>35</sup> Rule 87.

<sup>36</sup> See Item 38 of the Amendment Act.



### **Branch policies and procedures - new sub-rules 83(d) and (e)**

[60] New sub-rule 83(d) provides that Branch policies and procedures which are adopted under rule 83 may only be altered, amended or revoked by a resolution of not less than 70% of all members of the Branch Committee (or, in the case of NSW Branch, the Branch Council). Where Branch policies and procedures have been altered, amended or revoked, such alteration, amendment or revocation may be rescinded by a plebiscite of the Branch in accordance with Rule 70, which provides for Branch plebiscites. A plebiscite of all members of the Branch may be held at the discretion of the Branch Committee or upon requisition in writing by no less than 5% of the financial members of a Branch. A plebiscite is passed under rule 70 by a simple majority of members voting.

[61] New sub-rule 83(e) further provides that rule 83 itself may only be altered, amended or revoked by a resolution passed by not less than 70% of all members of Branch Committee (or, in the case of NSW Branch, the Branch Council). Where rule 83 has been altered, amended or revoked, such alteration, amendment or revocation may be rescinded by a plebiscite of the Branch in accordance with Rule 70.

[62] New rule 52 provides that the NSW Branch Committee consists of 10 members in total, being the five officers<sup>37</sup> and five ordinary members. A quorum for a meeting of the NSW Branch Committee is six of the ten members.<sup>38</sup> If there were only sufficient members attending a meeting to make a quorum, then a simple majority of those members would require a vote in favour of a resolution by four of the six members. Under the terms of sub-rules 83(e) and (f), however, a minimum of seven members of the Branch Committee must vote in favour of a resolution to alter, amend or revoke the policies and procedures or rule 83 itself.

[63] New rule 53 also provides that the NSW Branch Council can alter, amend, rescind or add to rules affecting the NSW Branch.<sup>39</sup> There are 30 Members in total of NSW Branch Council, being five officers and 25 Councillors.<sup>40</sup> A quorum for a meeting of NSW Branch Council is 16,<sup>41</sup> with the result that a simple majority of nine members would need to vote in favour of a resolution regarding the general business of that body. Under their terms, however, sub-rules 83(d) and (e) would require a resolution to be passed by 21 members in order for a resolution to be carried by NSW Branch Council. This is a substantial difference, being more than double the number usually required.

[64] The size of the Branch Committee in the Victoria No. 1 Branch and the Victoria No. 3 Branch can vary under the rules.<sup>42</sup> For the purposes of elections in 2012, the Victoria No. 1 Branch will consist of 13 members in total, being five officers<sup>43</sup> and eight ordinary

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<sup>37</sup> Branch President, Branch Senior Vice-President, Branch Junior Vice President, Branch Secretary and Branch Assistant Secretary-Treasurer - see new sub-rule 52(a).

<sup>38</sup> New sub-rule 52(f).

<sup>39</sup> New sub-rule 53(f)(D).

<sup>40</sup> New sub-rule 53(b).

<sup>41</sup> New sub-rule 53(g).

<sup>42</sup> Under sub-rule 51(a), a Branch Committee shall consist of not less than five and not more than fifteen ordinary members.

<sup>43</sup> Branch President, Branch Senior Vice-President, Branch Junior Vice-President, Branch Secretary and Branch Assistant Secretary - see sub-rule 50(a).

members.<sup>44</sup> In the Victoria No. 3 Branch, the Branch Committee will consist of 12 members in total, being seven officers<sup>45</sup> and five ordinary members.<sup>46</sup> A quorum at a meeting of the Branch Committee of both the Victoria No. 1 and Victoria No. 3 Branches that are elected in 2012 would be seven,<sup>47</sup> meaning that a resolution could be passed in the ordinary course of events by a simple majority of four at a meeting of either Branch Committee. Under the terms of sub-rules 83(e) and (f), however, a minimum of 10 members of the Victoria No. 1 Branch Committee and nine members of the Victoria No. 3 Branch Committee must vote in favour of a resolution to alter, amend or revoke the policies and procedures or rule 83 itself.

[65] The analysis in paragraphs [62] to [64] above indicates that rules 83(d) and (e) require resolutions to be passed by a significantly larger number of members of the Branch Committee (or Branch Council in NSW) than would be required in the ordinary course of events in order to pass a resolution by a simple majority of a quorate meeting.

[66] The restrictions that are set out in new sub-rules 83(d) and (e), however, must be balanced against the power of the members of the demerged Branches to determine a matter by plebiscite of all Branch members under new rule 70. A decision that is made by plebiscite of members “shall be final and shall prevail over any contrary decision of the Branch Committee or the NSW Branch Council”.<sup>48</sup> A plebiscite of all members must be held if requested by a requisition in writing signed by not less than 5% of the financial members of the Branch. The plebiscite is conducted by a secret postal ballot and is passed by a simple majority of those members who have voted. It is therefore relatively easy for members of the demerged Branches to use the plebiscite provisions in new rule 70 to change the requirements of new rule 83.

[67] On balance, while new sub-rules 83(d) and (e) do require resolutions to be passed by a significantly larger number of members of the Branch Committee (or Branch Council in NSW) than would usually be required in order to pass a resolution by a simple majority of a quorate meeting, this is offset by the relatively easy mechanism that is available to members in conducting a plebiscite under new rule 70. Importantly, a decision of members that is made by plebiscite prevails over any contrary decision of a Branch Committee or of the NSW Branch Council. I am therefore not of the view that new sub-rules 83(d) and (e) impose upon members conditions, obligations or restrictions which are harsh, oppressive or unjust.

### **Typographical, clerical or formal errors**

[68] I have corrected the typographical, clerical or formal errors that are listed in the second table of Annexure B with the consent of the Administrator as indicated in the letter from Slater & Gordon dated 16 August 2012. The Administrator also agreed in the same correspondence to alter the proposed rules as indicated in the third table of Annexure B. In a letter dated 20 August 2012, the Administrator further agreed to the correction of a typographical, clerical or formal error in the heading of new rule 84.

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<sup>44</sup> See sub-rule 51(a).

<sup>45</sup> Branch President, Branch Senior Vice-President, Branch Junior Vice-President, Branch Secretary, Branch Assistant Secretary and two trustees - see sub-rule 50(a).

<sup>46</sup> See sub-rule 51(a).

<sup>47</sup> New sub-rule 68(a)(ii).

<sup>48</sup> New sub-rule 70(c).

[69] In my opinion, the alterations 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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**ANNEXURE A**  
**Rule Number**

**Nature of Alteration**

- |         |  |
|---------|--|
| Rule 10 | <ul style="list-style-type: none"><li>• Inserted a new sub-rule 10(g).</li></ul>   |
| Rule 29 | <ul style="list-style-type: none"><li>• Deleted words from current Rule 29 A (a)(ii);</li><li>• Renumbered current sub-rule 29 A (b)(iv) as (iii);</li><li>• Renumbered current sub-rule 29 A (a)(iii) as (iv);</li><li>• Deleted words from current sub-rule 29 A (b)(i);</li><li>• Deleted current sub-rule 29 A (b)(ii);</li><li>• Renumbered current sub-rule 29 A (b)(iii) as (ii);</li><li>• Deleted words from current sub-rule 29 A(iv);</li><li>• Inserted a new sub-rule 29 A (a)(iii);</li><li>• Inserted words at the end of current sub-rule 29 A (d)(i);</li><li>• Inserted words at the end of current sub-rule 29 A (d)(iii);</li><li>• Inserted a new sub-rule 29 A (d)(v);</li><li>• Renumbered current sub-rule 29 A (d)(v) as (vi);</li><li>• Renumbered current sub-rule 29 A (d)(vi) as (vii);</li><li>• Renumbered current sub-rule 29 A (d)(vii) as (viii);</li><li>• Renumbered current sub-rule 29 A (d)(viii) as (ix);</li><li>• Renumbered current sub-rule 29 A (d)(ix) as (x);</li><li>• Renumbered current sub-rule 29 A (d)(x) as (xi);</li><li>• Renumbered current sub-rule 29 A (d)(xi) as (xii);</li><li>• Renumbered current sub-rule 29 A (d)(xii) as (xiii);</li><li>• Renumbered current sub-rule 29 A (d)(xiii) as (xiv);</li></ul> |

Rule Number	Nature of Alteration
	<ul style="list-style-type: none"> <li>• Renumbered current sub-rule 29 A (d)(xiv) as (xv);</li> <li>• Renumbered current sub-rule 29 A (d)(xv) as (xvi);</li> <li>• Renumbered current sub-rule 29 A (d)(xvi) as (xvii);</li> <li>• Renumbered current sub-rule 29 A (d)(xvii) as (xviii);</li> <li>• Renumbered current sub-rule 29 A (d)(xviii) as (xix);</li> <li>• Renumbered current sub-rule 29 A (d)(xix) as (xx);</li> <li>• Renumbered current sub-rule 29 A (d)(xx) as (xxi);</li> <li>• Renumbered current sub-rule 29 A (d)(xxi) as (xxii);</li> <li>• Renumbered current sub-rule 29 A (d)(xxii) as (xxiii);</li> <li>• Renumbered current sub-rule 29 A (d)(xxiii) as (xxiv);</li> <li>• Inserted a new sub-rule 29 A(d)(xxv);</li> <li>• Deleted current sub-rule 29 A (d)(xxvi);</li> <li>• Renumbered current sub-rule 29 A (d)(xxv) as (xxvii);</li> <li>• Renumbered current sub-rule 29 A (d)(xxiv) as (xxvi);</li> <li>• Delete current sub-rule 29 A (d)(xxvi);</li> <li>• Deleted words from current sub-rule 29 A (e)(i);</li> <li>• Deleted words from current sub-rule 29 A (e)(ii);</li> <li>• Inserted words at the end of current sub-rule 29 A (e)(iii);</li> <li>• Inserted a new sub-rule 29 A (e)(iv);</li> <li>• Inserted words at the beginning of sub-rule 29 A (f);</li> <li>• Deleted words from current sub-rule 29 A (f)(ii); and</li> <li>• Deleted current sub-rule 29 A (h)(i) and inserted a new subrule 29 A (h)(i) in lieu thereof</li> </ul>
Rule 48	<ul style="list-style-type: none"> <li>• Deleted current Rule 48 and inserted a new Rule 48 in lieu thereof.</li> </ul>

<b>Rule Number</b>	<b>Nature of Alteration</b>
Rule 48B	<ul style="list-style-type: none"><li>• Deleted current Rule 48B.</li></ul>
Rule 49	<ul style="list-style-type: none"><li>• Deleted words from current sub-rule 49(a); and</li><li>• Deleted words from current sub-rule 49(e).</li></ul>
Rule 50	<ul style="list-style-type: none"><li>• Inserted words at the end of current sub-rule 50(a)</li><li>• Deleted current sub-rule 50(b) and inserted new sub-rule 50(b) in lieu thereof; and</li><li>• Inserted words at the end of current sub-rule 50(c).</li></ul>
Rule 51	<ul style="list-style-type: none"><li>• Inserted words at the end of current sub-rule 51(a); and</li><li>• Deleted current sub-rule 51(b).</li></ul>
Rule 51A	<ul style="list-style-type: none"><li>• Deleted current Rule 51A.</li></ul>
Rule 54	<ul style="list-style-type: none"><li>• Deleted current Rule 54.</li></ul>
52	<ul style="list-style-type: none"><li>• Renumbered current Rule 52 as Rule 54.</li></ul>
New Rule 52	<ul style="list-style-type: none"><li>• Inserted new Rule 52.</li></ul>
Rule 55	<ul style="list-style-type: none"><li>• Deleted current Rule 55.</li></ul>
Rule 53	<ul style="list-style-type: none"><li>• Renumbered current Rule 53 as Rule 55.</li></ul>
New Rule 53	<ul style="list-style-type: none"><li>• Inserted a new Rule 53</li></ul>
New Rule 56	<ul style="list-style-type: none"><li>• Inserted new Rule 56 in lieu of deleted rule 55.</li></ul>
Rule 57	<ul style="list-style-type: none"><li>• Deleted current sub-rule 57(o);</li><li>• Deleted current sub-rule 57(p);</li><li>• Inserted at the end of current Rule 57; and</li><li>• Renumbered current Rule 57 as Rule 58.</li></ul>

<b>Rule Number</b>	<b>Nature of Alteration</b>
Rule 56	<ul style="list-style-type: none"> <li>Deleted current Rule 56.</li> </ul>
New Rule 57	<ul style="list-style-type: none"> <li>Inserted new Rule 57 in lieu of deleted rule 56.</li> </ul>
Rule 58	<ul style="list-style-type: none"> <li>Deleted current Rule 58.</li> </ul>
Rule 59	<ul style="list-style-type: none"> <li>Deleted current Rule 59.</li> </ul>
Rule 60	<ul style="list-style-type: none"> <li>Deleted current Rule 60.</li> </ul>
Rule 61	<ul style="list-style-type: none"> <li>Deleted current Rule 61.</li> </ul>
Rule 62	<ul style="list-style-type: none"> <li>Renumbered current Rule 62 as Rule 59.</li> </ul>
New Rule 60	<ul style="list-style-type: none"> <li>Inserted new Rule 60.</li> </ul>
Rule 63	<ul style="list-style-type: none"> <li>Deleted current Rule 63.</li> </ul>
New Rule 61	<ul style="list-style-type: none"> <li>Inserted new Rule 61 in lieu of deleted rule 63.</li> </ul>
Rule 64	<ul style="list-style-type: none"> <li>Inserted words in current sub-rule 64(b);</li> <li>Deleted words from current sub-rule 64(c); and</li> <li>Renumbered current Rule 64 as Rule 62.</li> </ul>
Rule 65	<ul style="list-style-type: none"> <li>Delete current Rule 65.</li> </ul>
New Rule 63	<ul style="list-style-type: none"> <li>Inserted new Rule 63.</li> </ul>
Rule 66	<ul style="list-style-type: none"> <li>Delete current Rule 66.</li> </ul>
New Rule 64	<ul style="list-style-type: none"> <li>Inserted new Rule 64.</li> </ul>
Rule 67	<ul style="list-style-type: none"> <li>Delete current Rule 67.</li> </ul>
Rule 68	<ul style="list-style-type: none"> <li>Delete current Rule 68.</li> </ul>

<b>Rule Number</b>	<b>Nature of Alteration</b>
Rule 69	<ul style="list-style-type: none"><li>• Deleted current sub-rule 69(f) and insert a new 69(f) in lieu thereof;</li><li>• Deleted current sub-rule 69(g) and insert a new 69(g) in lieu thereof; and</li><li>• Renumbered Rule 69 as Rule 65.</li></ul>
Rule 70	<ul style="list-style-type: none"><li>• Renumbered Rule 70 as Rule 66.</li></ul>
New Rule 67	<ul style="list-style-type: none"><li>• Inserted new Rule 67.</li></ul>
Rule 71	<ul style="list-style-type: none"><li>• Renumbered Rule 71 as Rule 68.</li></ul>
Rule 72	<ul style="list-style-type: none"><li>• Inserted words in current Rule 72; and</li><li>• Renumbered Rule 72 as Rule 69.</li></ul>
Rule 73	<ul style="list-style-type: none"><li>• Deleted current sub-rule 73(a) and insert a new 73(a) in lieu thereof;</li><li>• Inserted words in current Rule 73(c); and</li><li>• Renumbered Rule 73 as Rule 70.</li></ul>
Rule 74	<ul style="list-style-type: none"><li>• Renumbered Rule 74 as Rule 71.</li></ul>
Rule 75	<ul style="list-style-type: none"><li>• Renumbered Rule 75 as Rule 72.</li></ul>
Rule 76	<ul style="list-style-type: none"><li>• Renumbered Rule 76 as Rule 73.</li></ul>
Rule 77	<ul style="list-style-type: none"><li>• Renumbered Rule 77 as Rule 74.</li></ul>
Rule 78	<ul style="list-style-type: none"><li>• Renumbered Rule 78 as Rule 75.</li></ul>
Rule 79	<ul style="list-style-type: none"><li>• Renumbered Rule 79 as Rule 76.</li></ul>



Rule Number	Nature of Alteration
Rule 80	<ul style="list-style-type: none"> <li>• Deleted current sub-rule 80(c)(iii);</li> <li>• Deleted current sub-rule 80(d) and insert a new sub-rule 80(d) in lieu thereof; and</li> <li>• Renumbered current Rule 80 as Rule 77.</li> </ul>
New Rule 78	<ul style="list-style-type: none"> <li>• Inserted new Rule 78.</li> </ul>
Rule 81	<ul style="list-style-type: none"> <li>• Renumbered Rule 81 as Rule 79.</li> </ul>
Rule 79	<ul style="list-style-type: none"> <li>• Renumbered Rule 82 as Rule 80.</li> </ul>
PART E	<ul style="list-style-type: none"> <li>• Deleted current heading “Part E – BRANCH RULES – HSU EAST BRANCH”</li> </ul>
Rule 83	<ul style="list-style-type: none"> <li>• Deleted current Rule 83.</li> </ul>
Rule 84	<ul style="list-style-type: none"> <li>• Deleted current Rule 84.</li> </ul>
New PART E	<ul style="list-style-type: none"> <li>• Inserted new Part E with heading: “PART E – SPECIAL BRANCH RULES – NEW SOUTH WALES, VICTORIA NO.1 AND VICTORIA NO.3 BRANCHES”.</li> <li>•</li> </ul>
New Rule 81	<ul style="list-style-type: none"> <li>• Inserted New Rule 81.</li> </ul>
New Rule 82	<ul style="list-style-type: none"> <li>• Inserted New Rule 82.</li> </ul>
New Rule 83	<ul style="list-style-type: none"> <li>• Inserted New Rule 83.</li> </ul>
New Rule 84	<ul style="list-style-type: none"> <li>• Inserted New Rule 84.</li> </ul>
New Rule 85	<ul style="list-style-type: none"> <li>• Inserted New Rule 85.</li> </ul>
New Rule 86	<ul style="list-style-type: none"> <li>• Inserted New Rule 86.</li> </ul>
New Rule 87	<ul style="list-style-type: none"> <li>• Inserted New Rule 87.</li> </ul>
New Rule 88	<ul style="list-style-type: none"> <li>• Inserted New Rule 88.</li> </ul>

Rule Number	Nature of Alteration
New Rule 89	<ul style="list-style-type: none"> <li>• Inserted New Rule 89.</li> </ul>

Annexure B

**Departures of HSU Rules lodged on 14 August 2012 from HSU rule book as at 12 November 2009**

Departures identified in correspondence from Slater & Gordon dated 14 August 2012	Departures identified by FWA	Nature of departure from November 2009 rules (where not already identified by Slater & Gordon)
Rule 10	Rule 10	
Rule 29	Rule 29	
Rule 48(k)	Rule 48(k)	
Rule 49(a)	Rule 49(a)	
Rule 50	Rule 50	
Rule 51	Rule 51	
New Rule 52	New Rule 52	
New Rule 53	New Rule 53	
	New Rule 56	Additional words in sub-rule 56(i) reflect creation of NSW Branch Council (consequential to new Rule 53).
	New Rule 57(b) and (c)	Additional words in sub-rules 57(b) and (new) 57(c) reflect creation of NSW Branch Council (consequential to new Rule 53)
	New Rule 57	The following words, which appeared in sub-rule 55(b) of the 2009 rulebook, have not been reinstated:  "In the New South Wales Branch the Senior Vice-President shall be the Vice-President possessing the greater service in that position. If both Vice-Presidents have held their position for the same length of time, the Senior Vice-President shall be the Vice-President with the greater service on the Association Council."
New Rule 58	New Rule 58	
New Rule 60	New Rule 60	
New Rule 61	New Rule 61	

Departures identified in correspondence from Slater & Gordon dated 14 August 2012	Departures identified by FWA	Nature of departure from November 2009 rules (where not already identified by Slater & Gordon)
	Old Rule 58A from 2009 Rulebook	Rule 58A of the HSU rulebook as at 12 November 2009 regarding Organisers in the New South Wales Branch has been deleted. This is consequential to the removal of elections for organisers in rule 29A(a).
New Rule 63	New Rule 63	
New Rule 64(e)	New Rule 64(e)	
	New Sub-rules 64(a), (d) & (f)	Additional words reflect creation of NSW Branch Council (consequential to new Rule 53)
	New Rule 65(f)	Additional words reflect creation of NSW Branch Council (consequential to new Rule 53)
New Rule 65(g)	New Rule 65(g)	
New Rule 67	New Rule 67	
	New Rule 69	Additional words reflect creation of NSW Branch Council (consequential to new Rule 53)
	New Rule 70(a) & (c)	Additional words reflect creation of NSW Branch Council (consequential to new Rule 53)
	New Rule 77(d)	The words "and, in the New South Wales Branch, Organiser." have been deleted from the end of new rule 77(d) (formerly rule 73(d) in the November 2009 rulebook).  This is consequential to the removal of elections for organisers in rule 29A(a).
	New Rule 78	This rule did not appear in the HSU rulebook as at 12 November 2009. It was first inserted into the HSU Rulebook on 4 April 2011 as rule 83 and operated with respect to the HSU East Branch.  Its application to the NSW Branch is a departure from the rules as at 12 November 2009.
New Rule 81	New Rule 81	
New Rule 82	New Rule 82	
New Rule 83	New Rule 83	
New Rule 84	New Rule 84	
New Rule 85	New Rule 85	

Departures identified in correspondence from Slater & Gordon dated 14 August 2012	Departures identified by FWA	Nature of departure from November 2009 rules (where not already identified by Slater & Gordon)
New Rule 86	New Rule 86	Note: email correspondence to FWA of 15 August 2012 confirms that the second reference to "New Rule 85" in the list set out in Slater & Gordon's letter of 14 August 2012 was a typographical error and should have been a reference to "New Rule 86".
New Rule 87	New Rule 87	
New Rule 88	New Rule 88	
	New Rule 89	This rule did not appear (and could not have appeared) in the HSU rulebook as at 12 November 2009. It is nevertheless a departure from the rulebook as at that date.
	Alterations to rule numbering throughout the rulebook	The numbering of rules within the rulebook has been "tidied", meaning that much of the numbering is a departure from the numbering as it appeared in the rulebook as at 12 November 2009.

**Typographical, formal and clerical errors identified by FWA**

Rule	Error
48(e)(ii)	Cross-reference to rule 48(d) should be a reference to rule 48(e).
New Rule 65(g)(iii)	Insert the word "to" between "entitled" and "attend" to read: "All members of the Branch shall be entitled to attend and vote."
New Rule 78 - heading	The heading of new rule 78 does not accurately reflect the title of the NSW registered union, which should be identified as "Health Services Union NSW", not as "Health Services Union".
New Rule 82(c)(i)	Insert the word "who" between "Branch" and "has" to read: "an officer of the Branch who has disclosed a material personal interest..."
New Rule 84(e)	Cross-reference to sub-rule (c)(ii)(A) should be a cross-reference to sub-rule (c)(iii)(A). Also refer to comments in the table below regarding the utility of this sub-rule.
New Rule 84(f)	Cross-reference to sub-rule (c)(ii)(B) should be a cross-reference to sub-rule (c)(iii)(B). Also refer to comments in the table below regarding the utility of this sub-rule.
New Rule 85(a)(ii)	Delete "of the officer" second time appearing to read: "a relative of the office has or acquires"

**Other errors and comments**

Rule	Error
50(b)	<p>As currently worded, this sub-rule appears to apply to every branch of the organisation, not just to the NSW, Victoria No.1 and Victoria No.3 branches.</p> <p>It is suggested that "In the New South Wales Branch and the Victoria No.1 Branch," be inserted at the beginning of the new text (ie. before "The offices of Branch Secretary ..." to read:</p> <p>"In the New South Wales Branch and the Victoria No.1 Branch, the offices of Branch Secretary ..."</p>
Rule 84(e)	<p>The purpose of this rule is not clear on its face. Its effect appears to do no more than repeat sub-rule 84(c)(iii)(A). It could be deleted on this basis.</p>
Rule 84(f)	<p>The purpose of this rule is not clear on its face. Its effect appears to do no more than repeat sub-rule 84(c)(iii)(B). It could be deleted on this basis.</p>
Rule 87	<p>This rule states that it will take effect "upon Proclamation of the commencement of Schedule 1 Part 2 ...".</p> <p>The words "the Proclamation of" should be deleted and replaced with "on" to avoid any problems associated with the possibility that the legislation is not proclaimed but rather commences on a date 12 months after the date of Royal Assent. The rule would then read:</p> <p>"This Rule shall take effect on the commencement of Schedule 1 Part 2..."</p>

## **Attachment 3**

**HSU rule book incorporating alterations of 20 November 2012 (R2012/204)**

---

[051V: Incorporates alterations of 20 November 2012 (R2012/204)]  
Replaces rulebook dated 21 August 2012

I CERTIFY under section 161 of the Fair Work (Registered Organisations) Act 2009  
that the pages herein numbered 1 to 88 both inclusive contain a true and  
correct copy of the registered rules of the Health Services Union.

General Manager of Fair Work Australia

# Rules of the HSU

## Contents

<b>PART A - NAME, OBJECTS, MEMBERSHIP.....</b>	<b>1</b>
1 - NAME.....	1
2 - INDUSTRY.....	1
3 - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP.....	7
4 - OBJECTS.....	16
5 - REGISTERED OFFICE.....	17
6 - ADMISSION TO MEMBERSHIP.....	17
7 - MEMBERSHIP AGENCY.....	18
8 - ANNUAL CONTRIBUTIONS.....	19
9 - LEVIES.....	21
10 - FINANCIALITY RULE.....	21
11 - TRANSFER OF MEMBERS.....	22
12 - LIFE MEMBERS.....	22
13 - TERMINATION OF MEMBERSHIP.....	23
14 - RE-ADMISSION TO MEMBERSHIP.....	24
15 - RECOVERY OF CONTRIBUTIONS ETC.....	24
16 - PURGING THE REGISTER.....	24
17 - MISCONDUCT OF MEMBERS AND UNION OMBUDSMAN.....	24
18 - RULE BOOK.....	25
<b>PART B - NATIONAL ORGANISATION.....</b>	<b>26</b>
19 - OFFICERS OF THE UNION.....	26
20 - NATIONAL COUNCIL.....	26
21 - POWERS AND DUTIES OF NATIONAL COUNCIL.....	27
22 - MEETINGS OF NATIONAL COUNCIL.....	28
23 - AGENDA FOR NATIONAL COUNCIL.....	28
24 - FARES AND EXPENSES.....	28
25 - MATTERS REQUIRING DECISION BETWEEN NATIONAL COUNCIL MEETINGS.....	28
26 - NATIONAL EXECUTIVE.....	29
27 - POWERS OF NATIONAL EXECUTIVE.....	30
28 - MEETINGS OF NATIONAL EXECUTIVE.....	30
29 - ELECTIONS.....	31
30 - NATIONAL PRESIDENT.....	42
31 - NATIONAL VICE-PRESIDENT.....	42
32 - NATIONAL SECRETARY.....	42
33 - NATIONAL ASSISTANT SECRETARIES.....	44
34 - TRUSTEES.....	44
35 - NATIONAL AUDITOR.....	44
35A - FINANCIAL REPORTING REQUIREMENTS.....	44
36 - NATIONAL FUNDS AND PROPERTY.....	45
37 - REMOVAL OF OFFICERS ETC.....	48
38 - NATIONAL INDUSTRIAL PROCEEDINGS.....	48
39 - SEAL.....	49
40 - INDUSTRIAL AGREEMENTS.....	49
41 - NATIONAL VOTING.....	50
42 - NATIONAL QUORUMS.....	50
43 - DISPUTES BETWEEN BRANCHES.....	50
44- RIGHTS OF BRANCHES.....	51
45 - NATIONAL PLEBISCITE.....	51
46 - FINANCE COMMITTEE.....	52
47 - STUDENT MEMBERS.....	52
<b>PART C - BRANCH ORGANISATION.....</b>	<b>52</b>
48 - BRANCHES.....	52
48A - VICTORIAN NUMBER 4 BRANCH TRANSITIONAL RULE.....	57



## Contents

49 - BRANCH MANAGEMENT .....	62
50 - BRANCH OFFICERS .....	62
51 - BRANCH COMMITTEE .....	63
52 - NEW SOUTH WALES BRANCH COMMITTEE .....	63
53 - NEW SOUTH WALES BRANCH COUNCIL .....	63
54 - POWERS AND DUTIES OF BRANCH COMMITTEE .....	65
55 - MEETINGS OF BRANCH COMMITTEE .....	65
56 - BRANCH PRESIDENT .....	66
57 - BRANCH VICE-PRESIDENTS .....	66
58 - BRANCH SECRETARY .....	66
59 - BRANCH ASSISTANT SECRETARY .....	67
60 - BRANCH ASSISTANT SECRETARY-TREASURER OF THE NEW SOUTH WALES BRANCH AND VICTORIA NO. 1 BRANCH .....	67
61 - BRANCH TRUSTEES .....	68
62 - BRANCH AUDITOR .....	68
63 - BRANCH FUNDS AND PROPERTY .....	69
64 - REMOVAL OF BRANCH OFFICERS ETC. ....	70
65 - BRANCH GENERAL MEETINGS .....	71
66 - WORKPLACE COMMITTEES (SUB BRANCHES) AND REPRESENTATIVES .....	72
67 - SUB-BRANCHES - NEW SOUTH WALES BRANCH .....	73
68 - BRANCH QUORUM .....	76
69 - BRANCH VOTING .....	77
70 - BRANCH PLEBISCITE .....	77
<b>PART D - GENERAL .....</b>	<b>77</b>
71 - INSPECTION OF BOOKS .....	77
72 - MEMBERS ENGAGED ON UNION BUSINESS .....	78
73 - DISSOLUTION .....	78
74 - AFFILIATION .....	78
75 - ALTERATIONS OF RULES .....	78
76 - NAME AND RESIDENCE .....	78
77 - DUAL OFFICES .....	79
78 - FULL TIME PAID OFFICERS - NEW SOUTH WALES BRANCH AND NEW SOUTH WALES STATE REGISTERED HEALTH SERVICES UNION NSW .....	79
79 - STANDING ORDERS AND RULES OF DEBATE .....	80
80 - ASSOCIATE MEMBER .....	80
<b>PART E - SPECIAL BRANCH RULES - NEW SOUTH WALES, VICTORIA NO.1 AND VICTORIA NO.3 BRANCHES .....</b>	<b>80</b>
81 - APPLICATION OF THIS PART .....	80
82 - DEFINITIONS .....	80
83 - BRANCH POLICIES AND PROCEDURES .....	81
84 - DISCLOSURE BY BRANCH OFFICERS OF REMUNERATION AND NON-CASH BENEFITS .....	82
85 - DISCLOSURE BY BRANCH OFFICERS OF PERSONAL INTEREST .....	83
86 - DISCLOSURE BY BRANCH OF PAYMENTS .....	83
87 - TRAINING OF OFFICERS OF BRANCHES .....	84
88 - AUDIT AND COMPLIANCE COMMITTEE .....	84
89 - TRANSITIONAL RULE - MEMBERSHIP .....	85
<b>PART F - SPECIAL BRANCH RULE - VICTORIA NO. 1 BRANCH .....</b>	<b>85</b>
90 - VICTORIA NO. 1 BRANCH PROPERTY .....	85

## PART A - NAME, OBJECTS, MEMBERSHIP

### 1 - NAME

The name of the organisation shall be "Health Services Union" (hereinafter referred to as "the Union").

### 2 - INDUSTRY

The industries in connection with which the Union is registered are the industries of -

- A. the employment of persons employed or usually employed -
- (a) throughout Australia in or about or in connection with the carrying on of all hospitals, benevolent homes, dispensaries, asylums, mental hospitals, sanatoriums, rest homes, convalescent homes, medical schools, laboratories, colleges, industrial and other homes, charitable institutions, ambulance work, all classes of nursing, public or private;
    - (i) except in the State of Western Australia persons employed by the Crown in Right of the State of Western Australia or any state instrumentality or in private hospitals or undertakings in the said State as (i) dental therapists and (ii) professional, clerical, technical and administrative employees in radiology and pathology clinics;
    - (ii) provided that in relation to persons employed in or about or in connection with the carrying on of all benevolent homes and convalescent homes the following shall be excluded from membership:-
      - 1. in the State of Queensland, ancillary staff (other than at Eventide Homes), dentists, radiographers and pharmaceutical chemists;
      - 2. in the State of Western Australia all enrolled nurses and all other staff excepting registered nursing staff and professional, administrative, clerical and technical staff;
      - 3. in the State of South Australia, all staff other than non-psychiatric nurses and enrolled nurses;
      - 4. in the Northern Territory, all staff other than registered nurses;
    - (iii) except in the State of Victoria dentists employed by a public hospital and dental therapists employed by the school dental service.
- and/or
- (aa) (1) In the State of Victoria in or about or in connection with the carrying on of all community health centres being declared community health centres under Section 45 of the Health Services Act 1988 or in receipt of funds in accordance with Section 20 of the Act but not including a person so employed as a registered medical practitioner unless such a person is eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided further that any person who is employed under the Victorian Public Service Act 1974 and who is located in a Community Health Centre shall be excluded from membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Also provided that persons engaged in social and/or welfare work other than social welfare work aides shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided that dentists employed by a community health centre, society or association in the State of Victoria shall not be eligible for membership.

- (2) In the State of Tasmania in or about or in connection with the carrying on of all community health centres being those conducted by the Tasmanian Department of Health Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule.
  - (3) In the Australian Capital Territory in or about or in connection with the carrying on of all community health centres being those conducted by the A.C.T. Department of Health and Community Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule. Also provided that persons engaged in professional social work shall not be eligible for membership of the Union unless such person is eligible for membership of the Union pursuant to the other paragraphs of this Rule.
- (ab) In the States of Victoria, New South Wales and Queensland in or about or in connection with the following aboriginal health services:-

Victorian Aboriginal Health Service Co-operative Limited  
Rumbalara Aboriginal Co-operative Limited  
Aboriginal and Islander Community Health Service Incorporated Ipswich  
Dandenong and District Aboriginal Co-operative Society Limited  
Biripi Aboriginal Co-operative Medical Centre  
Darak Aboriginal Community Controlled Medical Services Co-operative Limited  
Brewarrina Aboriginal Health Service  
Gippsland and East Gippsland Aboriginal Co-operative Limited Bairnsdale  
Walgett Aboriginal Medical Service  
St. Pius X Aboriginal Corporation  
Bourke Aboriginal Health Service Limited  
Townsville Aboriginal and Islander Health Services Limited  
The Aboriginal and Islander Community Health Service Brisbane  
Tharawal Aboriginal Corporation  
South Coast Medical Service Aboriginal Corporation  
Durri Aboriginal Corporation Medical Service Kempsey  
Murray Valley Aboriginal Co-operative Limited  
Aboriginal and Islander Health Services Limited Mackay  
Cummeragunja Housing and Development Corporation  
Ballarat and District Aboriginal Co-operative  
Aboriginal Medical Services Co-operative Limited Redfern  
Awabakal Newcastle Aboriginal Co-operative Limited

Central Gippsland Aboriginal Health and Housing Co-operative Limited  
Illawarra Aboriginal Medical Service Corporation  
National Aboriginal and Islander Health Organisation  
Wu-Chopperen Medical Service Limited  
Echuca Aboriginal Co-operative Society Limited  
Swan Hill and District Aboriginal Co-operative Limited

provided that persons engaged in social and/or welfare work shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this rule or is employed as a welfare aide in Victoria, by the Victorian Aboriginal Health Service, or as an employee delivering medical or paramedical care.

Provided further that this paragraph shall not exclude from membership of the Union persons otherwise eligible to be members of the Union pursuant to other paragraphs of this rule.

- (b) in the States of Victoria, Queensland, Tasmania and in the Australian Capital Territory, in the provision of care and training to the intellectually disabled and/or physically disabled and/or psychiatrically disabled and/or developmentally disabled and work ancillary thereto in hostels, day care centres, and homes (including dwellings) but excluding trained teachers employed as such and in the States of Victoria and Queensland and the Australian Capital Territory, teacher aides employed as such;

Provided that the following persons shall be excluded from coverage:-

- (i) in the State of Victoria -

1. cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
2. persons employed in the provision of home care services to persons in private homes and dwellings;
3. supervisors, administrators and community service officers as all defined in awards to which the Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
4. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);

- (ii) in the State of Tasmania -

1. cleaners employed in Government educational institutions or educational undertakings;
2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;

(iii) in the State of Queensland, community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;

(iv) in the Australian Capital Territory, persons employed in the provision of home care services to persons in private homes or dwellings;

and/or

(c) in the State of Victoria, in the provision of child care services in day care centres and residential centres but excluding -

1. trained teachers and teacher aides employed as such;
2. cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
3. supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
4. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, in any centre which is established after 8th October 1986 but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);

and/or

(d) (i) in the State of Tasmania, in or in connection with doctors and/or dental surgeries, clinics and practices;

(ii) in the Australian Capital Territory, radiographers and nursing staff in or in connection with doctors and/or dental surgeries, clinics and practices;

and/or

(e) in the States of Victoria, Queensland and Tasmania and in the Australian Capital Territory in or in connection with the provision of medical, paramedical and/or nursing care for aged persons in day care centres and/or homes (including dwellings) and work ancillary thereto;

Provided that the following persons shall be excluded from coverage:

(i) in the State of Victoria -

1. supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;

2. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);
  - (ii) in the State of Queensland -
    1. radiographers, dentists, pharmaceutical chemists, ancillary staff (other than at Eventide Homes) and persons employed in the provision of home care services to aged persons in private homes or dwellings;
    2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
  - (iii) in the state of Tasmania, persons employed as community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
  - (iv) in the Australian Capital Territory in the provision of home care services to aged persons in private homes and dwellings, and,
- (f) Provided that persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic) shall be excluded from coverage, other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2.
- (g) without limiting and without being limited by anything in the foregoing provisions of this Rule, in the State of Western Australia, persons engaged in professional, administrative, technical, supervisory or clerical capacities employed in the health industry:
  - (i) by any public or private hospital other than any hospital or institution established under the Mental Health Act, 1962 except for shift engineers employed at Royal Perth Hospital;
  - (ii) by the Hospital Laundry and Linen Service, except for persons employed in the callings of foreperson, laundrypersons, general hand, driver, gardener, security person, storeperson, press operator, seamstress, sorter, cook, tradesperson, drycleaner, presser, cutter in the Hospital Laundry and Linen Service or other persons employed as laundry workers;
  - (iii) by the Western Australian School of Nursing or any service ancillary to the practice of medicine, including institutions or facilities substantially engaged in providing medical laboratory services, radiological services, physiotherapy services, occupational therapy services, speech therapy services, social work services. Provided that any person who is employed as an officer under and within the meaning of the Public Service Act 1978-90 (W.A.), or who is employed in doctors' surgeries or any wholesale or retail distributing or manufacturing organisation, or who is employed by the St. John Ambulance Association for the purpose of operating first aid and/or ambulance services shall not by this paragraph be eligible for membership;

- (iv) by the Western Australian Division of the Red Cross Society (except for any person employed as a clerk) in facilities or services other than those specified in (i) and (iii) above;
- (v) by the Cerebral Palsy Association of Western Australia (Inc.) (except for tradespersons who perform the usual trades duties) in facilities or services other than those specified in (i) and (iii) above;
- (vi) by the Silver Chain Nursing Association (Inc.) in facilities or services other than those specified in (i) and (iii) above;
- (vii) by the ACTIV Foundation (Inc.) in facilities or services other than those specified in (i) and (iii) above;
- (viii) by dentists as dental therapists;
- (ix) by the Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. industries in facilities or services other than those specified in (i) and (iii) above. For the purposes of this paragraph only, the word "supervisory" appearing in the preamble to this sub-Rule (g) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law;
- (x) by any non-government employer primarily engaged in health services, as audiologists, chiropodists, clinical psychologists, dietitians, occupational therapists, nucleographers, physiotherapists, psychologists, social workers, speech therapists and welfare workers, howsoever designated. Provided that such an employee who is solely or substantially engaged in providing his or her services to other employees of his or her employer and who is eligible for membership as at 30th April, 1985, of another registered state organisation within the meaning of the Industrial Relations Act 1979 (W.A.) shall not by this paragraph be eligible for membership.

Provided that nothing in this paragraph 2A(g) shall render eligible for membership persons who are not otherwise eligible for membership under this rule and who were eligible for membership of the Australian Nursing Federation as at 23 March 1993.

- (h) in the State of Victoria in classes or grades of employment which were within the jurisdiction of the Health and Community Services (Management and Administrative Staff) Conciliation Board established pursuant to the Industrial Relations Act 1979 (Vic) as at 28 February 1993.
- (j) in the State of Victoria, in or in connection with private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service excluding registered medical practitioners employed as such and excluding registered nurses eligible for membership of the Australian Nursing Federation.
- (k) provided that in the State of Victoria registered nurses eligible for membership of the Australian Nursing Federation employed in, or in connection with, private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service shall not be eligible for membership.

### 3 - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP

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- B. the employment of persons employed or usually employed in the State of New South Wales in connection with Hospitals, Mental Hospitals, Hospital Dispensaries, Medical Schools, Laboratories, Colleges, Industrial and other similar Homes, Public Charitable Institutions, Ambulance Work (including First Aid Work), General Nursing, Reception Houses, Sanatoriums, Rest Homes, which are wholly or partly controlled by the Board of Health, Special Schools and of an unlimited number of persons employed or usually employed in or in connection with the Universities in the State of New South Wales and of an unlimited number of persons (other than persons not employed in industry) employed or usually employed in or in connection with Universities and/or colleges of advanced education in the Australian Capital Territory and of an unlimited number of persons employed or usually employed as animal technicians and of an unlimited number of persons (other than persons not employed in industry) employed or usually employed in or in connection with Universities and/or colleges of advanced education in the States of Tasmania, Queensland, Victoria, South Australia, and Western Australia, except -

Persons who are eligible for membership of the Federated Miscellaneous Workers Union of Australia except those persons in New South Wales only, who are employed or usually employed in hospitals, mental hospitals, hospital dispensaries, industrial homes, ambulance work, general nursing, reception houses, sanatoriums, rest homes which are wholly or partly controlled by the Board of Health, where those persons are employed in or usually employed in or in connection with any of the following callings, namely watchmen, caretakers, cleaners, lift attendants, gardeners, photographers, commissionaires, dentists, dental technicians, dental assistants, and attendants or parking attendants or domestic staff, groundsmen and yardmen in denominational or educational schools, laundry workers, messengers, chemical workers and gatekeepers, and except those employed or usually employed by the University of Sydney, the University of New England, University of Tasmania (Hobart campus), University of Canberra, Australian National University, University of New South Wales Medical School, University of Newcastle Medical School, Southern Cross University and the Macquarie University; and

Persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic) shall be excluded from coverage, other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2.

### 3 - CONDITIONS OF ELIGIBILITY FOR MEMBERSHIP

The Union shall consist of an unlimited number of persons -

- A. employed or usually employed -
- (a) throughout Australia in or about or in connection with the carrying on of all hospitals, benevolent homes, dispensaries, asylums, mental hospitals, sanatoriums, rest homes, convalescent homes, medical schools, laboratories, colleges, industrial and other homes, charitable institutions, ambulance work, all classes of nursing, public or private;
    - (i) except in the State of Western Australia persons employed by the Crown in Right of the State of Western Australia or any State instrumentality or in private hospitals or undertakings in the said State as (i) dental therapists and (ii) professional, clerical, technical and administrative employees in radiology and pathology clinics;
    - (ii) provided that in relation to persons employed in or about or in connection with the carrying on of all benevolent homes and convalescent homes the following shall be excluded from membership:-



1. in the State of Queensland ancillary staff (other than at Eventide Homes), dentists, radiographers and pharmaceutical chemists;
  2. in the State of Western Australia all enrolled nurses and all other staff excepting registered nursing staff and professional, administrative, clerical and technical staff;
  3. in the State of South Australia, all staff other than non-psychiatric nurses and enrolled nurses;
  4. in the Northern Territory, all staff other than registered nurses;
- (iii) except in the State of Victoria dentists employed by a public hospital and dental therapists employed by the school dental service.

and/or

- (aa) (1) In the State of Victoria in or about or in connection with the carrying on of all community health centres being declared community health centres under Section 45 of the Health Services Act 1988 or in receipt of funds in accordance with Section 20 of the Act but not including a person so employed as a registered medical practitioner unless such a person is eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided further that any person who is employed under the Victorian Public Service Act 1974 and who is located in a Community Health Centre shall be excluded from membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Also provided that persons engaged in social and/or welfare work other than social welfare work aides shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this Rule.

Provided that dentists employed by a community health centre, society or association in the State of Victoria shall not be eligible for membership.

- (2) In the State of Tasmania in or about or in connection with the carrying on of all community health centres being those conducted by the Tasmanian Department of Health Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule.
- (3) In the Australian Capital Territory in or about or in connection with the carrying on of all community health centres being those conducted by the A.C.T. Department of Health and Community Services but not including a person so employed as a registered medical practitioner unless such person is eligible for membership of the Union pursuant to other paragraphs of this Rule. Also provided that persons engaged in professional social work shall not be eligible for membership of the Union unless such person is eligible for membership of the Union pursuant to the other paragraphs of this Rule.

- (ab) In the States of Victoria, New South Wales and Queensland in or about or in connection with the following aboriginal health services:-

Victorian Aboriginal Health Service Co-operative Limited  
Rumbalara Aboriginal Co-operative Limited  
Aboriginal and Islander Community Health Service Incorporated Ipswich  
Dandenong and District Aboriginal Co-operative Society Limited  
Biripi Aboriginal Co-operative Medical Centre  
Darak Aboriginal Community Controlled Medical Services Co-operative Limited  
Brewarrina Aboriginal Health Service  
Gippsland and East Gippsland Aboriginal Co-operative Limited Bairnsdale  
Walgett Aboriginal Medical Service  
St. Pius X Aboriginal Corporation  
Bourke Aboriginal Health Service Limited  
Townsville Aboriginal and Islander Health Services Limited  
The Aboriginal and Islander Community Health Service Brisbane  
Tharawal Aboriginal Corporation  
South Coast Medical Service Aboriginal Corporation  
Durri Aboriginal Corporation Medical Service Kempsey  
Murray Valley Aboriginal Co-operative Limited  
Aboriginal and Islander Health Services Limited Mackay  
Cummeragunja Housing and Development Corporation  
Ballarat and District Aboriginal Co-operative  
Aboriginal Medical Services Co-operative Limited Redfern  
Awabakal Newcastle Aboriginal Co-operative Limited  
Central Gippsland Aboriginal Health and Housing Co-operative Limited  
Illawarra Aboriginal Medical Service Corporation  
National Aboriginal and Islander Health Organisation  
Wu-Chopperen Medical Service Limited  
Echuca Aboriginal Co-operative Society Limited  
Swan Hill and District Aboriginal Co-operative Limited

provided that persons engaged in social and/or welfare work shall not be eligible for membership unless such person is otherwise eligible for membership of the Union pursuant to other paragraphs of this rule or is employed as a welfare aide in Victoria, by the Victorian Aboriginal Health Service, or as an employee delivering medical or paramedical care.

Provided further that this paragraph shall not exclude from membership of the Union persons otherwise eligible to be members of the Union pursuant to other paragraphs of this rule.

- (b) in the States of Victoria, Queensland, Tasmania and in the Australian Capital Territory, in the provision of care and training to the intellectually disabled and/or physically disabled and/or psychiatrically disabled and/or developmentally disabled and work ancillary thereto in hostels, day care centres, and homes (including dwellings) but excluding trained teachers employed as such and in the States of Victoria and Queensland and the Australian Capital Territory, teacher aides employed as such;

Provided that the following persons shall be excluded from coverage:-

- (i) in the State of Victoria -

1. cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
  2. persons employed in the provision of home care services to persons in private homes and dwellings;
  3. supervisors, administrators and community service officers as all defined in awards to which the Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
  4. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958(Vic.);
- (ii) in the State of Tasmania -
1. cleaners employed in Government educational institutions or educational undertakings;
  2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
- (iii) in the State of Queensland, community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
- (iv) in the Australian Capital Territory, persons employed in the provision of home care services to persons in private homes or dwellings;
- and/or
- (c) in the State of Victoria, in the provision of child care services in day care centres and residential centres but excluding -
- (i) trained teachers and teacher aides employed as such;
  - (ii) cleaners employed pursuant to the Victorian Government School Cleaners Agreement or any successor thereto;
  - (iii) supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
  - (iv) persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, in any centre which is established after 8th October 1986 but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958(Vic.);

and/or

- (d) (i) in the State of Tasmania in or in connection with doctors and/or dental surgeries, clinics and practices;
- (ii) in the Australian Capital Territory, radiographers and nursing staff in or in connection with doctors and/or dental surgeries, clinics and practices;

and/or

- (e) in the States of Victoria, Queensland and Tasmania and in the Australian Capital Territory in or in connection with the provision of medical, paramedical and/or nursing care for aged persons in day care centres and/or homes (including dwellings) and work ancillary thereto;

Provided that the following persons shall be excluded from coverage:-

- (i) in the State of Victoria -
  1. supervisors, administrators and community service officers as all defined in awards to which The Municipal Officers Association of Australia is respondent, being employees of employer respondents to such awards;
  2. persons being otherwise eligible for membership of the Federated Municipal and Shire Council Employees Union of Australia who are employed directly by Local Government Authorities, but excluding any person employed by a committee of management recognised or appointed by such an Authority, including a committee to which an Authority delegates powers under Section 241A of the Local Government Act 1958 (Vic.);
- (ii) in the State of Queensland -
  1. radiographers, dentists, pharmaceutical chemists, ancillary staff (other than at Eventide Homes) and persons employed in the provision of home care services to aged persons in private homes or dwellings;
  2. community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
- (iii) in the State of Tasmania, persons employed as community service officers, supervisors and administrators employed by local governing authorities or statutory authorities;
- (iv) in the Australian Capital Territory, in the provision of home care services to aged persons in private homes and dwellings;
- (f) Provided that persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic) shall be excluded from coverage, other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2.

- (g) without limiting and without being limited by anything in the foregoing provisions of this Rule, in the State of Western Australia, persons engaged in professional, administrative, technical, supervisory or clerical capacities employed in the health industry:
- (i) by any public or private hospital other than any hospital or institution established under the Mental Health Act, 1962 except for shift engineers employed at Royal Perth Hospital;
  - (ii) by the Hospital Laundry and Linen Service, except for persons employed in the callings of foreperson, laundrypersons, general hand, driver, gardener, security person, storeperson, press operator, seamstress, sorter, cook, tradesperson, drycleaner, presser, cutter in the Hospital Laundry and Linen Service or other persons employed as laundry workers;
  - (iii) by the Western Australian School of Nursing or any service ancillary to the practice of medicine, including institutions or facilities substantially engaged in providing medical laboratory services, radiological services, physiotherapy services, occupational therapy services, speech therapy services, social work services. Provided that any person who is employed as an officer under and within the meaning of the Public Service Act 1978-90 (W.A.), or who is employed in doctors' surgeries or any wholesale or retail distributing or manufacturing organisation, or who is employed by the St. John Ambulance Association for the purpose of operating first aid and/or ambulance services shall not by this paragraph be eligible for membership;
  - (iv) by the Western Australian Division of the Red Cross Society (except for any person employed as a clerk) in facilities or services other than those specified in (i) and (iii) above;
  - (v) by the Cerebral Palsy Association of Western Australia (Inc.) (except for tradespersons who perform the usual trades duties) in facilities or services other than those specified in (i) and (iii) above;
  - (vi) by the Silver Chain Nursing Association (Inc.) in facilities or services other than those specified in (i) and (iii) above;
  - (vii) by the ACTIV Foundation (Inc.) in facilities or services other than those specified in (i) and (iii) above;
  - (viii) by dentists as dental therapists;
  - (ix) by the Paraplegic-Quadriplegic Association of Western Australia (Inc.), Good Samaritan Industries or F.C.B. industries in facilities or services other than those specified in (i) and (iii) above. For the purposes of this paragraph only, the word "supervisory" appearing in the preamble to this sub-Rule (g) shall include categories of work which oversee and/or supervise the execution or performance of tasks by or the actions and activities of persons who are not employees under Western Australian industrial law;

- (x) by any non-government employer primarily engaged in health services, as audiologists, chiropractors, clinical psychologists, dietitians, occupational therapists, nucleographers, physiotherapists, psychologists, social workers, speech therapists and welfare workers, howsoever designated. Provided that such an employee who is solely or substantially engaged in providing his or her services to other employees of his or her employer and who is eligible for membership as at 30th April, 1985, of another registered state organisation within the meaning of the Industrial Relations Act 1979 (W.A.) shall not by this paragraph be eligible for membership.

Provided that nothing in this paragraph 3A(g) shall render eligible for membership persons who are not otherwise eligible for membership under this rule and who were eligible for membership of the Australian Nursing Federation as at 23 March 1993.

- (h) in the State of Victoria in classes or grades of employment which were within the jurisdiction of the Health and Community Services (Management and Administrative Staff) Conciliation Board established pursuant to the Industrial Relations Act 1979 (Vic) as at 28 February 1993.
- (j) in the State of Victoria, in or in connection with private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service excluding registered medical practitioners employed as such and excluding registered nurses eligible for membership of the Australian Nursing Federation.
- (k) provided that in the State of Victoria registered nurses eligible for membership of the Australian Nursing Federation employed in, or in connection with, private medical centres or surgeries, private medical clinics or practices or by the Royal District Nursing Service shall not be eligible for membership.

B. employed or usually employed -

1. in the State of New South Wales in connection with Hospitals, Mental Hospitals, Hospital Dispensaries, Medical Schools, Laboratories, Colleges, Industrial and other similar Homes, Public Charitable Institutions, Ambulance Work (including First Aid Work), General Nursing, Reception Houses, Sanatoriums, Rest Homes which are wholly or partly controlled by the Board of Health, Special Schools;
2. in or in connection with Universities in the State of New South Wales;
3. in or in connection with Universities and/or colleges of advanced education in the Australian Capital Territory;
4. as animal technicians;
5. in or in connection with Universities and/or colleges of advanced education in the State of Tasmania;
6. in or in connection with Universities and/or colleges of advanced education in the State of Queensland.
7. in or in connection with Universities and/or colleges of advanced education in the State of Victoria;

8. in or in connection with Universities and/or colleges of advanced education in the State of South Australia;
9. in or in connection with Universities and/or colleges of advanced education in the State of Western Australia;

(EXCEPT Staff of Universities or Colleges of Advanced Education classified as Chancellors, Vice-Chancellors, Deputy Vice-Chancellors, Pro-Vice-Chancellors, Principal, Deputy Principal, Vice-Principal, Secretary Registrar, Associate Registrar and persons the major and substantial portion of whose employment is demonstrating to and/or instructing students);

Provided that:

- (a) Deleted
- (b) Deleted
- (c) persons employed in a University in the Australian Capital Territory as cooks, kitchen staff, dining room staff, house staff, or in the serving, mixing or dispensing of liquor;
- (d) persons employed in the Australian Public Service or in Australian Government Instrumentalities or Commissions but not including persons employed in Universities and/or colleges of advanced education in the Australian Capital Territory;
- (e) persons employed by the University of New South Wales or its colleges or any University which may be formed as a result of granting autonomy to such colleges or by the University of Newcastle or by the Australian National University within the scope of the Constitution Rule of the Amalgamated Metal Workers Union, or of the Australasian Society of Engineers;
- (f) persons employed as fitters in hospitals;
- (g) persons who are eligible for membership of the Transport Workers' Union of Australia, except drivers in the State of New South Wales of ambulances, drivers of motor cars and/or other vehicles with carrying capacity not exceeding 1 ton 5 cwt;
- (h) persons who are eligible for membership of The Federated Miscellaneous Workers Union of Australia except those persons in New South Wales only, who are employed or usually employed in hospitals, mental hospitals, hospital dispensaries, industrial homes, ambulance work, general nursing, reception houses, sanitariums, rest homes which are wholly or partly controlled by the Board of Health, where those persons are employed in or usually employed in or in connection with any of the following callings, namely, watchmen, caretakers, cleaners, lift attendants, gardeners, photographers, commissionaires, dentists, dental technicians, dental assistants, and attendants or parking attendants or domestic staff, groundsmen and yardmen in denominational or educational schools, laundry workers, messengers, chemical workers and gatekeepers, and except those employed or usually employed by the University of Sydney, The University of New England, University of Tasmania (Hobart campus), University of Canberra, Australian National University, University of New South Wales Medical School, University of Newcastle Medical School, Southern Cross University and the Macquarie University;
- (i) persons employed or usually employed in or in connection with Universities and/or colleges of advanced education in the States of Queensland, Victoria and South Australia, who are eligible for membership in the Federated Clerks Union of Australia as at 1st April 1975;

- (j) Deleted
- (k) persons who are employed in the Public Service of Victoria in the classifications or grades listed in Schedules 1-4 of the Salary Schedules made by the Public Service Board under the Public Service Act 1974 (Vic), other than persons who are employed in the classification or grade of dental nurse in Salary Schedule 2;

shall not be eligible for membership of the Union pursuant to the foregoing provisions of Clause B of this Rule;

- C. such other persons, whether or not employees in the industries of the Union as have been elected or appointed full time National Officers or Branch Officers or organisers of the Union or any Branch thereof and admitted as members of the Union. For the purposes of this Clause C of this Rule, the full-time Officers of the Union and of any Branch thereof shall be the holders of any of the offices of National Officers or Branch Officers where the duties of such office are of a full-time nature; and,
- D. such persons, whether or not employees in the industries of the Union, who -
  - (i) are full time organisers or industrial officers of the Union or a Branch of the Union; and,
  - (ii) were, on the day immediately preceding the date fixed by the Industrial Registrar and notified by him in the Gazette pursuant to the Conciliation and Arbitration Act 1904 as amended from time to time as the day upon which the amalgamation of The Hospital Employees' Union of Australia and the Health and Research Employees' Association of Australia is to take effect full time organisers or industrial officers of the Health and Research Employees' Association of Australia or a Branch thereof and members of The Health and Research Employees' Association of Australia.
- E. such persons, whether or not employees in the industries of the Union who -
  - (i) were, at a time prior to 30th November, 1992, employees in or in connection with the industries of the Union and members of the Union; and,
  - (ii) were, on the 30th November, 1992, employees (other than clerical or administrative employees), or full-time elected officers, of the Victoria No. 1 or No. 2 Branches of the Union; and,
  - (iii) remain employees of the Union.
- F. (i) who are independent contractors who, if they were employees performing work of the kind they usually performed as independent contractors, would be employees eligible for membership of the union.
  - (ii) (other than employees) who:
    - (a) are, or are able to become, members of an industrial union of employees within the meaning of the Industrial Arbitration Act, 1940 of New South Wales;
    - (b) are employees for the purposes of the Industrial Relations Act, 1961 of Queensland;



#### 4 - OBJECTS

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- (c) are employees for the purposes of the Industrial Relations Act, 1979 of Western Australia; or
- (d) are employees for the purposes of the Industrial Conciliation and Arbitration Act, 1972 of South Australia;

and who, if they were employees performing work of the kind which they usually perform, would be employees eligible for membership of the Union.

#### 4 - OBJECTS

The objects of the Union shall be:

- (a) to raise a fund by entrance fees, contributions, fines and levies, for the purpose of advancing the best interest of its members;
- (b) to regulate and protect the conditions of labour and relations between workers and employers, and between workers and workers;
- (c) to uphold the rights of combination of labour, and to improve, protect and foster the best interests of the members;
- (d) to take all necessary steps for the protection and safety of the members in the course of their occupation;
- (e) to take the necessary steps and actions under any industrial arbitration Act or other Act, or otherwise, for the purpose of securing satisfactory industrial conditions in respect of the remuneration of labour, the hours of labour, the age of employees and other conditions in or about their employment;
- (f) to promote industrial peace by all amicable means, such as conciliation, arbitration, or the establishment of permanent boards, to assist in their settlement by just and equitable methods;
- (g) to protect such rights that have already been gained by association of employees in collective bargaining and to lawfully initiate or further any steps that will give the Union the fullest power in arranging the terms and mode of employment of persons engaged in the callings referred to in Rule 3;
- (h) to obtain preference of employment for members of the Union;
- (i) to obtain equal pay for the sexes;
- (j) to urge the various Governments and other employers to establish superannuation funds for all employees;
- (k) to establish and maintain such publications as may be in the interests of the Union;
- (l) to provide legal and other assistance to financial members whenever and wherever considered necessary;
- (m) to amalgamate with or absorb any organisation or, subject to Rule 70, affiliate with any organisation which has any objects in common with the objects of the Union;

## 6 - ADMISSION TO MEMBERSHIP

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- (n) to establish branches and sub-branches throughout Australia;
- (o) to foster co-operation and harmonious relations between its members in the various States of Australia;
- (p) to establish a fund or funds for long service leave and superannuation for full-time officers and employees of the Union and its branches;
- (q) to make gifts for bona fide charitable purposes and to subscribe to testimonials or otherwise recognise services rendered to the Union;
- (r) to establish harmonious and co-operative relations with all legitimate managements and employee organisations and with government and statutory authorities in the hospital, institutional, industrial and social service fields;
- (s) to encourage a high standard of professional ethics and integrity amongst all members of the Union;
- (t) to establish scholarships, bursaries, courses of study, and training for the vocational advancement of all members of the Union;
- (u) to purchase, take on lease or in exchange, hire and otherwise acquire any real property and in particular any land, buildings or easements for any purpose connected with the conduct of the Union and its branches;
- (v) to borrow or raise or secure the payment of money in such manner as the Union or a branch may think fit, to secure the same, or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred, or to be entered into by the Union or a branch in any way, and to redeem or pay off such securities;
- (w) to sell, improve, manage, develop, exchange, leave, dispose of, turn to account, or otherwise deal with all or any part of the property and rights of the Union or a branch which may be vested in Trustees for them; and
- (x) to do all such things as the Union may from time to time deem incidental or conducive to the attainment of the above objects or any of them.

## 5 - REGISTERED OFFICE

The registered office of the Union shall be at such place as the National Council from time to time may decide.

## 6 - ADMISSION TO MEMBERSHIP

- (a) An applicant for membership of the Union shall forward or cause to be forwarded to the Secretary of the branch to which he/she would, if admitted to membership, be attached under Rule 48 of these Rules the following:
  - (i) An applicant for membership on a form approved by the National Executive for that purpose; or

- (ii) An application for membership by telephone; or
  - (iii) An application for membership via the internet.
- (b) An applicant for membership of the Union shall be informed in writing of:-
- (i) the financial obligations arising from membership of the Union; and,
  - (ii) the circumstances, and the manner, in which a member of the Union may resign from the Union.
- (c) Subject to clause (d) of this Rule, an applicant shall become and be a member of the Union as from the date of receipt of the application by the appropriate Branch Secretary, or from the date upon which the applicant commences payment of annual contributions pursuant to these rules, which ever is the earlier.
- (d) A Branch Secretary shall have power to refer any application for membership to the next ordinary meeting of his/her Branch Committee for consideration and decision in which case such applicant shall be notified in writing by the Branch Secretary of his/her admission to membership by the Branch Committee, and shall thereupon be deemed to have become a member as from the date specified in clause (c) of this rule. Where a Branch Committee refuses such an application for admission, the Branch Secretary shall forthwith notify the applicant in writing of such refusal and the grounds for such refusal and the applicant shall have the right of appeal to the National Executive provided that such appeal is made in writing and is delivered to the National Secretary within fourteen days of the applicant being notified of such refusal. The National Executive shall consider and determine the appeal at its next ordinary meeting. Where the decision of a Branch Committee or the National Executive is favourable to the applicant, the applicant shall thereupon be deemed to have become a member as from the date specified in paragraph (b) of this rule.
- (e) An applicant whose application is refused shall have refunded to him/her any amount or amounts paid by him/her by way of contributions.
- (f) This union is authorised to enter into agreements, in the form prescribed by the Fair Work (Registered Organisations) Act 2009, with State Registered Unions to the effect that members of the State Registered Union concerned who are ineligible state members are eligible to become members of the Union under the agreement.

## 7 - MEMBERSHIP AGENCY

By becoming and/or remaining a member of the Union each member agrees that she/he appoints that Union as his/her agent for the purpose of negotiating and/or agreeing to terms and conditions of employment under which that member is or is to be employed other than where the member has appointed another person under paragraph (c) of sub-section 1 of section 176 of the Fair Work Act 2009 as his or her bargaining representative for a proposed enterprise agreement that is not a greenfields agreement, or has revoked the status of the Union as his or her bargaining representative for the agreement under subsection 178A(2) of the Fair Work Act 2009. This rule shall not detract from the validity of any other agency otherwise in existence prior to the certification of this rule.

**8 - ANNUAL CONTRIBUTIONS**

- (a) The annual contributions payable by members shall be such amounts as may from time to time and from such date be determined by the branch committee of management of the appropriate branch.
- (b) Contributions shall be payable 13 weeks in advance.
- (c) Notwithstanding anything contained in these Rules -
  - (i) the National Executive or a Branch Committee may make arrangements with any employer whereby with the authority of any member or members of the Union contributions payable to the Union are to be deducted by the employer from the salary or salaries of the member or members on a regular basis and paid to the Union;
  - (ii) a member who has authorised such deduction of his/her contribution to the Union from his/her salary shall, subject to the provisions of paragraph (iii) of this clause, be deemed a financial member of the Union so long as such authority remains in force and provided that such member owes no arrears of contributions, fines, fees or levies;
  - (iii) where an arrangement referred to in this clause is terminated by the employer or the National Executive or a Branch Committee, the National Secretary or the Branch Secretary may notify in writing any member affected by such termination and a member so notified shall thereupon become liable to pay and shall, within twenty-eight days from the date of such written notice, pay to the Union the balance of any contribution owing for the relevant year (which amount shall be specified in such notice and shall be the amount of the annual contribution payable by that member for that year less such amount or amounts as has or have been deducted by the employer from that employee's salary in respect of such annual contribution) and thereafter shall be liable to pay contributions in accordance with this Rule.
- (d) All contributions, fees, fines and levies payable by members of the Union shall be paid to and collected by the appropriate Branch Secretary or his/her duly appointed agent.
- (e) A Branch Committee, upon receipt of a written application by a member, shall have power to exempt such member from the payment either wholly or in part of any contributions, fees or levies payable by such member.
- (f) Notwithstanding anything contained elsewhere in these Rules:
  - (i) A member may apply in writing to the Secretary of his/her Branch to pay his/her contributions by instalments paid fortnightly, monthly, quarterly (once every three months), or half-yearly (once every six months), on a basis of one twenty-sixth, one twelfth, one quarter, or one half, respectively, of the annual contribution payable. A member may apply to pay such instalments by any of the following methods:
    - A. by direct debit from a bank and/or financial institution account;
    - B. by a charge or credit card;
    - C. by cheque;
    - D. by cash; or
    - E. any other method approved by Branch Committee.

- (ii) A member shall be deemed to have made application in writing to pay his/her contributions by instalments upon receipt of documentation by the Branch which shows that member has paid or has authorised payment of his/her contributions by periodic instalments available under paragraph (f)(i), and by one of the methods referred to in that paragraph (f)(i). Any such application made before the commencement date shall be treated as an application for the purposes of this Rule.
- (iii) A Branch Committee shall have power to determine that on receipt of any written application or applications, any or all or any class or classes of members who apply to pay contributions by instalments, shall be permitted to do so by instalments from the date of such application, and may exercise that power in advance of or in anticipation of applications by members to pay contributions by instalments.
- (iv) Where a member is permitted to pay his/her contributions by instalments in accordance with this Sub-Rule, the permission shall take effect from the date the member commences to so pay.
- (v) Where a member's payment of an instalment has not been received by the Branch by the date on which it was due, the Branch Secretary shall notify that member:-
  - A. the Branch has not received that member's instalment payment;
  - B. of the consequences to the member of failure to pay that instalment as provided by this Rule; and
  - C. of the amount of the balance of the member's annual contribution owing for the year to which that contribution relates.
- (vi) A member notified in accordance with paragraph (v) above shall pay the instalment within 21 days from the date of the written notice from the Branch Secretary. A member who fails to pay that instalment within those 21 days shall cease to be entitled to pay the membership contribution by instalment and shall within a further 7 days from those 21 days be liable to pay the balance of that member's contribution for the relevant year.
- (vii) A member shall be liable to pay contributions for any period for which the Branch has not received a payment by instalment. A member owing contributions, fines, fees or levies equivalent to an amount in excess of 13 weeks' contributions shall be deemed to be unfinancial.
- (viii) This Sub-Rule 8(f)(viii) applies to any member who has prior to the commencement date made or caused a payment to be made or documentation to have been provided to the Secretary of the Branch which showed an intent to pay his/her contributions by periodic instalments as described in paragraph (f)(i) and (ii), and by one of the methods therein, and did pay any such instalment. Such a member shall on and after the commencement date be taken to have applied to and have been permitted to (and by this Sub-Rule also is retrospectively permitted to) pay his/her contributions by instalment from the date the member made the payment, and shall be treated as a financial member for all purposes in respect of the periods of time to which such payments are referable.

### 9 - LEVIES

- (a) The National Council shall have power to impose levies upon any one or more branches or upon the members of any specific category of the membership of the Union provided that such levy may only be imposed by a two-thirds majority of the National Council and provided that such a levy shall not be imposed in a harsh or discriminatory manner.
- (b) A Branch Committee shall have power to impose levies on members of the branch, provided that such levies shall not in any financial year exceed 20% of the annual contribution then in force per member unless approved by a general meeting of members of the branch.

### 10 - FINANCIALITY RULE

- (a) A member owing contributions, fines, fees or levies equivalent to an amount in excess of 13 weeks contributions shall be deemed to be unfinancial.
- (b) An unfinancial member shall not be entitled -
  - (i) to any of the rights and privileges of membership;
  - (ii) to nominate for or hold any office or in any way participate in any ballot or election in the Union or any branch of the Union;
  - (iii) to attend or speak or vote at any meeting of the Union or branch of the Union.
- (c) Any member exempted pursuant to Rule 8(e) of these Rules from payment either in whole or in part of any contribution, fee or levy shall, for the purposes of these Rules, retain continuity of membership and be deemed financial but shall not, during the period of exemption, be eligible to nominate for or hold any office in the Union or any branch of the Union.
- (d) Sections (e) and (f) of this rule apply where Branches of the Union are affiliated to state registered organisations.
- (e) Notwithstanding anything elsewhere contained in these Rules members of the Union in a Branch of the Union who is or becomes a member of an affiliated state registered organisation and who pays or has paid contributions to the affiliated state registered organisation in an amount equivalent to or greater than the amount payable by that member as contributions to the Branch of the Union under these rules shall be deemed for all purposes of these rules a financial member of the Union and shall be treated as a financial member for all purposes in respect of the periods of time to which such payments to the affiliated state registered organisation are referable.
- (f) For avoidance of doubt, if a member who so pays or paid contributions to the affiliated state registered organisation in an amount equivalent to or greater than the amount payable by that member as contributions to the branch of the Union under these Rules shall not be required to pay contributions to the Branch of the Union in respect of the periods of time to which such payments to the affiliated state registered organisation are referable.
- (g) For the purposes of sub-rules (e) and (f) above, an affiliated state registered organisation shall include the Health Services Union NSW being an organisation registered pursuant to the provisions of the *Industrial Relations Act 1996* (NSW).

### 11 - TRANSFER OF MEMBERS

Members desirous of transferring from one Branch to another shall apply to the Secretary of his/her Branch for a transfer certificate and if the member be in arrears and unable to pay same, the amount of arrears shall be shown on the certificate. The member's acceptance of the certificate shall be proof of its correctness. Such arrears shall become a debt due to the Branch from which he/she receives the certificate, and the member may be sued in accordance with these Rules for recovery of arrears, such arrears to count as ordinary arrears due to that Branch. Any member leaving the one Branch in arrears and attempting to join the Union as a new member shall be dealt with by the National Executive and be liable to a fine, and to pay the full amount of arrears from the date he last reported himself/herself to a Branch Secretary, without exceptions or reductions being granted.

### 12 - LIFE MEMBERS

- (a) The National Council, upon a recommendation of the National Executive made at the request of the appropriate Branch Committee, may grant life membership to a member or former member as a mark of appreciation for services rendered to the Union.
- (b) A life member shall not be liable for payment of any contributions, fees or levies.
- (c) A life member -
  - (i) Shall be entitled to attend all general meetings of his/her branch and speak thereat, but,
  - (ii) Unless he/she continues to pay contributions, fees and levies as they fall due, shall not be entitled to vote at any such meeting nor nominate for nor hold any office nor participate in any way in any election or ballot in the Union or any branch of the Union.
- (d) A member is eligible for consideration by National Council as a life member, where such a member has had a minimum of fifteen years membership of the Union of which at least 10 years have been as active members of the Union. Activity for this purpose shall be such as a Sub-Branch Committee member, Non Sub-Branch representative, delegate, Councillor, Branch Committee of Management, an employee and/or Official of the Union.
- (e) Notwithstanding anything else in these rules, National Executive can determine candidates eligible for life membership who do not meet the criteria set out in subclause (d) where special and/or exceptional circumstances warrant such consideration.
- (f) Notwithstanding the foregoing, a person who was granted honorary life membership of the Union pursuant to the Rules in force prior to the certification of this Rule shall be deemed to be a life member pursuant to this Rule.
- (g) The National Council may cancel such life membership or honorary life membership for any reason which to it seems proper, and shall forward written notice of such cancellation to the member concerned at his/her last known place of residence. Such member shall thereupon become liable to pay such contributions, fees and levies thereafter becoming payable.

### 13 - TERMINATION OF MEMBERSHIP

- (a) Membership of a member of the Union shall be terminated:
- (i) by resignation in accordance with these Rules,
  - (ii) by expulsion in accordance with these Rules,
  - (iii) by the member's ceasing to be eligible to become a member of the Union other than by being elected as a Member of Parliament or unless the member is a life member pursuant to Rule 12 of these Rules.

Provided that any person who is or becomes a member of the Union by virtue solely of her/his election or appointment or employment as a full-time officer or organiser or employee (other than clerical or administrative employee) of the Union or any Branch thereof shall, unless otherwise eligible to become or remain a member of the Union, forthwith cease to be a member of the Union upon her/his ceasing to hold such position in the Union or Branch.

- (b) A member may resign from membership of the Union by notice in writing addressed and delivered to the Secretary of the member's Branch.
- (c) A notice of resignation from membership of the Union shall take effect:-
- (i) where the member ceases to be eligible to become a member of the Union -
    - A. on the day upon which the notice is received by the Union, or
    - B. on the day specified in the notice, which is a day not earlier than the day when the member ceased to be eligible to become a member,whichever is the later; or
  - (ii) in any other case -
    - A. at the end of two weeks after the notice is received by the Union, or
    - B. on the day specified in the notice,whichever is the later.
- (d) A notice delivered to the Secretary of the member's Branch shall be taken to have been received by the Union when it was delivered.
- (e) A notice resignation that has been received by the Union shall not be invalid because it was not addressed and delivered in accordance with paragraph (b) of this Rule.
- (f) A resignation from membership of the Union shall be valid even if it is not effected in accordance with the foregoing provisions of this Rule if the member is informed in writing by or on behalf of the Union that the resignation has been accepted.



#### **14 - RE-ADMISSION TO MEMBERSHIP**

The re-admission to membership of persons who have been expelled from the Union, shall be conditional on the payment of any monies owing by such person to the Union in respect of his/her earlier membership and subject to the approval of the application by the National Executive.

#### **15 - RECOVERY OF CONTRIBUTIONS ETC.**

- (a) Each Branch Committee is authorised to proceed against any member or former member attached to that branch in the name of the Union for the recovery of any contributions, fines, fees, levies or dues in arrears and may instruct the Branch Secretary or any other person to take the necessary action for the recovery of such arrears.
- (b) If an unfinancial member, on being served with a written demand for payment of his/her arrears forwarded to his/her address appearing on a members' register, fails within a period of thirty days to comply with such demand the Branch Secretary may be instructed by the Branch Committee to sue for the recovery of such arrears.

#### **16 - PURGING THE REGISTER**

- (a) Each Branch Secretary shall from time to time as directed by his/her Branch Committee strike off the register of members the names of all members owing contributions, fines, fees, levies or dues for a period of twenty-six weeks.
- (b) The Branch Secretary shall give to each member whose name is proposed to be struck off, one month's written notice to his/her last address shown on the register of the intention to strike his/her name off the register.
- (c) The National Secretary shall be advised of all names struck off the register within fourteen days of such striking off.
- (d) No member whose name has been struck off the register shall have his/her name replaced thereon unless and until he/she has paid all monies due by him/her to the Union.

#### **17 - MISCONDUCT OF MEMBERS AND UNION OMBUDSMAN**

- (a) The National Council by at least a two thirds majority shall at the National Council meeting of each year, appoint the Union Ombudsman. However a person cannot be appointed to the position of Ombudsman where three or more branches object to the appointment.
- (b) Any financial member of the Union may raise a complaint with the Ombudsman over the actions of a member (including an Officer). The Ombudsman shall investigate and report to the National Executive any alleged impropriety or misdemeanour that a Sub-Branch Committee member, elected Officer or paid official of the Union is alleged to have committed.
- (c) Such complaints can include the following:
  - (i) divulging any of its confidential business to anyone not entitled to know the same; or,
  - (ii) refusing to obey any of the Rules of the Union; or

- (iii) refusing to abide by a resolution carried at any meeting of the National Council or National Executive, or of his/her Branch or of its Committee; or,
  - (iv) defrauding or attempting to defraud the funds of the Union or a branch; or,
  - (v) making a false charge against a fellow member; or,
  - (vi) violating or attempting to violate the terms of any industrial award or agreement; or,
  - (vii) entering or attempting to enter into any agreement with any employer contrary to the provisions of any award or agreement secured by the Union and applicable to him/her; or,
  - (viii) obstructing the National Council not subject to it, National Executive or Branch Committee or other lawful committee or body of the Union or branch in any way in the performance of any of its functions; or,
  - (ix) obstructing any officer of the Union or a branch in the course of his/her duties; or,
  - (x) wrongfully holding himself/herself out as occupying any office or position in the Union or any branch of the Union or as being entitled to represent the Union or any branch thereof in any capacity (to which charge it shall be a defence that the member believed bona fide and on reasonable grounds that he/she was entitled to so act); or,
  - (xi) behaving in a disorderly manner at any meeting held under these Rules or in the office of the Union or any branch thereof; or,
  - (xii) aiding or encouraging any other member or members in any offence under this Rule.
- (d) Referral of matters to the Union Ombudsman shall not occur until processes to deal with the matter at a branch level have been exhausted.
- (e) In any such report, the Ombudsman shall include his/her conclusions as to the validity of any allegations, as well as recommendations for action to be taken by the National Executive if any action is deemed necessary by the Ombudsman.
- (f) Any reports from the Ombudsman will be provided to the party alleging the impropriety and the party under investigation prior to the report being considered by National Executive. Where such a report recommends action be taken against any party, such party shall be afforded the opportunity to respond and put their case to the National Executive before action is considered by National Executive.
- (g) Any allegations made against the Union Ombudsman shall be the subject of investigation by not less than three members of the National Executive.
- (h) Where a member is unhappy with the decision of the National Executive, the matter can be referred to the National Council for consideration.

## 18 - RULE BOOK

Each member shall be supplied with a copy of the registered Rules of the Union upon application to his/her Branch Secretary.

## **PART B - NATIONAL ORGANISATION**

### **19 - OFFICERS OF THE UNION**

- (a) The Officers of the Union shall be the National President, the National Vice-President, the two National Trustees, the National Secretary, the Senior National Assistant Secretary and the National Assistant Secretary ("National Officers").
- (b) The National Council shall determine from time to time whether the offices of National Secretary and Senior National Assistant Secretary shall be full time paid offices provided that the status of either of those offices as full time paid offices may not be varied during the term of office of an incumbent holder of that office without the consent in writing of that holder of the office.

### **20 - NATIONAL COUNCIL**

- (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.
- (b) For the purposes of this Rule, the membership of a branch shall be the membership of that branch certified as such by the Branch Committee as at 31st December, in the year immediately preceding an ordinary election of delegates to National Council pursuant to Rule 29 of these rules; provided that:-
  - (i) if, as at the 31st December, in any subsequent year prior to the year immediately preceding the next following ordinary election of delegates to National Council pursuant to Rule 29 of these rules, the membership of a Branch certified as such by the Branch Committee has increased to such an extent as would increase the number of delegates to which that Branch would be entitled pursuant to paragraph (a) (ii) of this Rule, that Branch shall be entitled to elect or appoint extra delegate or delegates in accordance with Rule 29A(j) of these Rules as if it were filling an extraordinary or casual vacancy or vacancies, and,
  - (ii) if, as at the 31st December, in any subsequent year prior to the year immediately preceding the next following ordinary election of delegates to National Council pursuant to Rule 29 of these Rules, the membership of a Branch certified as such by the Branch Committee decreases the number of delegates to which that Branch is entitled shall not thereby decrease.
- (c) Where a delegate of a branch becomes an Officer of the Union, he/she shall cease to be and act as a delegate of that branch and that branch shall be entitled to elect or appoint a delegate in his/her place in accordance with Rule 41 of these Rules.
- (d) The Officers of the Union shall be ex-officio members of any committee or sub-committee of the National Council or National Executive.
- (e) Unless a branch has prior to the commencement of a meeting of the National Council paid to the National Council all monies owing by it to the National Council pursuant to these Rules, its delegates to the National Council shall not be entitled to participate in such meeting.

## 21 - POWERS AND DUTIES OF NATIONAL COUNCIL.

The National Council shall, subject to these Rules and the control by the members as hereinafter mentioned, be the supreme governing body of the Union and have the management and control of the affairs of the Union and, without limiting the generality of the foregoing, shall in particular have power:-

- (a) to determine and direct the policy of the Union in all matters affecting the National Council or the Union as a whole;
- (b) to make, add to, amend, rescind and/or otherwise alter these Rules;
- (c) to set the wages, conditions of employment and entitlements for any National Officers holding offices determined by the National Council to be paid offices pursuant to Rule 19(b) and the entitlements of any other National Officers;
- (d) to fix the remuneration to be paid to any National Returning Officer;
- (e) to employ and terminate the employment of any National Office Staff who are not National Officers and to set the wages and conditions of employment of such staff;
- (f) to resolve that the Union affiliate with or amalgamate with or absorb any other organisation or body;
- (g) to hear and determine appeals from Branches and members;
- (h) to appoint any person to represent the Union before any Court, Commission, Board, Tribunal or other authority.
- (i) to appoint a National Auditor and to fix the remuneration to be paid to the same;
- (j) to delegate its authority on all routine or other matters to the National Executive;
- (k) to establish any committees or sub-committees as it may from time to time determine provided that any such committee or sub-committee shall not exercise any executive powers but shall have and exercise only advisory powers;
- (l) to interpret these Rules;
- (m) to direct the investment of the funds of the Union; and,
- (n) to dispose of or transfer any of the funds of the Union or any securities in which the funds of the Union have been invested.
- (o) All decisions of the National Council shall be final and shall remain in force unless and until varied, amended or rescinded by it or by a plebiscite of members of the Union.
- (p) Provided that none of the powers conferred on the National Council by these Rules shall enable the National Council to alter an Entrenched Rule as defined herein.

## 22 - MEETINGS OF NATIONAL COUNCIL

- (a) The National Council shall meet annually in the month of September, October or November on a date and time as is determined by the National Council or the National Executive or the National Secretary in conjunction with the National President.
- (b) Special meetings of the National Council shall be held by resolution of the National Council or National Executive or by decision of the National Secretary in conjunction with the National President.
- (c) The National Secretary shall give each Branch Secretary and each member of the National Council at least 21 days clear notice of the annual meeting of National Council and fourteen days' clear notice of any special meeting thereof.

## 23 - AGENDA FOR NATIONAL COUNCIL

- (a) Not less than 60 days prior to an annual meeting of the National Council, the National Secretary shall invite Branches to submit items for the agenda, such items to be forwarded to the National Secretary not less than 28 days prior to the commencement of National Council.
- (b) The National Secretary shall, upon receipt of such items, prepare and forward to each Branch Secretary and each member of the National Council a copy of the agenda paper at least 21 days prior to the annual meeting of National Council.
- (c) National Executive shall have power to submit items for consideration by National Council and such items shall be included on the agenda paper referred to in paragraph (b) of this Rule.
- (d) The agenda paper for a special meeting of National Council shall be forwarded with the notice of such meeting.
- (e) National Council may, at any of its meetings, deal with any matter whether or not that matter has appeared or appears on the agenda paper, provided that a two-thirds majority of the members of National Council present and voting vote in favour of the particular item being considered.

## 24 - FARES AND EXPENSES

National Executive shall determine from time to time the fares and expenses to be paid to or on behalf of members of the National Executive when attending meetings of the same or when attending to the business of the Union. In the case of Branch delegates to National Council, such fares and expenses shall be paid by the Branch concerned and in the case of National Executive members such fares and expenses shall be paid out of the funds of the Union.

## 25 - MATTERS REQUIRING DECISION BETWEEN NATIONAL COUNCIL MEETINGS

- (a) The National Executive or the National Secretary in conjunction with the National President may determine that any matter requires a decision of the National Council between annual meetings of the National Council and that such matter be submitted to the National Council for decision in accordance with either of the procedures prescribed by clauses (b) and (c) of this Rule.

- (b)
  - (i) Where it is determined that the matter be submitted to the National Council for decision by ballot of the members of the National Council, such matter may be forwarded by post, email or such other communication device that provides a copy to each of the members of the National Council in such form as is determined by the National Executive.
  - (ii) The members of National Council shall record their vote of the matter so submitted by post, email or such other communication device that provides a written copy addressed to the National Secretary and the decision of the majority shall be binding as if such decision were obtained by vote at a regularly constituted meeting of the National Council.
  - (iii) All votes of their confirmation shall be signed by members of National Council recording the same. If any vote be recorded by means other than letter then such vote shall be confirmed by letter signed by the member of the National Council.
- (c)
  - (i) Where it is determined that the matter be submitted to the National Council for decision by a meeting of members of the National Council conducted by such telephonic or electronic means as may from time to time be available, the National Secretary shall as soon as is practicable arrange such a meeting.
  - (ii) The members of the National Council shall participate in such a meeting and the decision of the majority shall be binding as if such decision were obtained at a regularly constituted meeting of the National Council.
- (d) If -
  - (i) in the course of a ballot conducted pursuant to clause (b) of this Rule, a majority of members of the National Council notify the National Secretary, or,
  - (ii) in the course of a meeting conducted pursuant to clause (c) of this Rule, a majority of the members of the National Council resolve, that the matter as submitted to them is of such importance as to require a special meeting of the National Council, then such special meeting of the National Council shall be convened forthwith by the National Secretary to meet at such time and place as the National Executive shall determine.
- (e) If a special National Council meeting be held for the purposes of the immediately preceding clause such other matters as the National Executive or National Council shall determine may be submitted to the meeting.

## 26 - NATIONAL EXECUTIVE

- (a) The National Executive shall consist of the Officers of the Union and the Branch Secretary of each Branch.

### 27 - POWERS OF NATIONAL EXECUTIVE

- (a) The National Executive shall, subject to these Rules and to the decisions of National Council and to the control of members as hereinafter mentioned, have power (in addition to powers conferred on it elsewhere in these Rules) to conduct and manage the affairs of the Union including the powers specified in rule 21(e) and between meetings of the National Council may exercise all the powers of National Council except the power to grant life membership and the power to make, add to, amend, rescind and/or otherwise alter these Rules. Provided that none of the powers of the National Executive shall enable the National Executive to alter an Entrenched Rule as defined herein.
- (b) Where, at a meeting of the National Executive, delegates representing not less than four branches so request, a decision of that meeting shall be forthwith referred to the Committees of the branches for consideration and should the Committees of not less than five branches request the National Secretary in writing or by telegram within fourteen days of such National Executive meeting that the decision of the National Executive not be implemented, then no action shall be taken on that decision until and unless ratified by the National Council either at a meeting of the National Council or pursuant to Rule 25 of these Rules as if the National Executive had determined that the matter required a decision of the National Council.
- (c) The National Council may review any act or decision of the National Executive.

### 28 - MEETINGS OF NATIONAL EXECUTIVE

- (a) A meeting of the National Executive shall be held:
  - (i) when decided by the National Council or National Executive;
  - (ii) when requested in writing by any four members of the National Executive;
  - (iii) upon petition from any branch or Branch Committee; or,
  - (iv) if considered necessary by the National Secretary in conjunction with the National President;
  - (v) But at least three such meetings shall be held each calendar year.
- (b) The Secretary may and whenever directed to do so by the National Council or National Executive shall submit any question to a postal vote of the members of the National Executive and shall do so if requested by any Branch Committee. The decision of the majority of the members of the National Executive in such postal vote shall have the like force as a decision made in meeting assembled.
- (c)
  - (i) Where it is determined that the matter be submitted to the National Executive for decision by a meeting of members of the National Executive conducted by such telephonic or electronic means as may from time to time be available, the National Secretary shall as soon as is practicable arrange such a meeting.
  - (ii) The members of the National Executive shall participate in such a meeting and the decision of the majority shall be binding as if such decision were obtained at a regularly constituted meeting of the National Executive.
- (d) The voting power of the Officers and members of the National Executive shall be as follows:
  - (i) the National President, the National Vice-President, the National Secretary, the Senior National Assistant Secretary, the National Assistant Secretary and the National Trustees - one vote each; and

- (ii) Each Branch Secretary - one vote for every 1000 financial members or part thereof of the Branch of that Branch Secretary.
- (iii) Notwithstanding paragraph (ii), from 1 February 2008 until the payment of capitation fees by the Victoria No. 1 Branch based on the number of financial members of the Union attached to the Victoria No. 1 Branch as at 30th June 2008, the voting power of the Branch Secretary of the Victoria No. 1 Branch shall be as it was calculated in accordance with paragraph (ii) herein as at 31st January, 2008, plus one vote.
- (e) For the purposes of this rule, the financial membership of a Branch shall be the financial membership of that branch as calculated by reference to its last payment of capitation fees in accordance with Rule 36(c) and (d).
- (f) Where a Branch has in excess of 5000 financial members, the Committee of Management of that Branch may nominate one member of the Branch for every 5000 financial members or part thereof in excess of the first 5000 members to attend meetings of National Executive as an Executive Advisor. Executive Advisors shall be entitled to attend and observe the proceedings at meetings of National Executive and National Executive may consult with and seek advice from Executive Advisors, and may invite Executive Advisors to speak at any meeting.
- (g) National Executive may allow any other person to observe or speak to its meetings.

## 29 – ELECTIONS

### A – Branch Elections

Elections shall take place in 2010 and each four years thereafter for all Branch positions in all Branches .

- (a) General

The provisions of this rule shall apply to all elections for the following positions in the Union -

  - (i) Officers of a branch;
  - (ii) Ordinary members of a Branch Committee;
  - (iii) Councillors of the New South Wales Branch Council; and
  - (iv) Branch delegates to the National Council.
- (b) Tenure of Office
  - (i) Elections for the positions set out in A(a) shall be conducted every four years by secret postal ballot of all financial members of their respective branch. Persons declared elected shall hold office for four years or until such time as there successors have been elected or appointed and taken office.



- (ii) In the event that the taking of an office occurs beyond the time at which the term of office would ordinarily expire, for any reason including any caused by any election inquiry conducted by the Federal Court under the Fair Work (Registered Organisations) Act 2009, the person elected shall take office from the time of declaration of the ballot in which he/she is elected, and shall hold office for a period of four years less the period of the time between the time that the term of office would ordinarily expire and the taking of office, or until a successor has been elected and taken office.
  - (iii) The purpose of paragraph (ii) of this sub-rule is to ensure that so far as possible elections are synchronised, in a four yearly cycle, with persons elected to office taking office from the time of declaration of the ballot in which he/she is elected and holding office for a period of four years, and, if there are any delays in the electoral process, returning elections to that synchronised cycle.
- (c) Returning Officer
- (i) At its first meeting after election the Branch Committee shall appoint a Returning Officer for the conduct of any ballots or plebiscites and, subject to the Fair Work (Registered Organisations) Act 2009, any elections as may be necessary throughout the ensuing year provided that a duly appointed Returning Officer shall hold office until a successor thereto is duly appointed.
  - (ii) A Returning Officer so appointed –
    - a. May or may not be a member of the Union;
    - b. Shall not be the holder of any office in or an employee of the Union or any branch of the Union; and
  - (iii) In the event of a duly appointed Returning Officer being unable or unwilling to act as and when required, whether during the conduct of any election or ballot or not, the Branch Committee shall appoint another person to act as Returning Officer for that election or ballot.
- (d) Conduct of Elections

The Returning Officer shall conduct elections and ballots of the union in the following manner.

- (i) Nominations for positions shall be called for in a national daily newspaper. In addition, nominations for positions in the New South Wales Branch, the Victoria No.1 Branch and the Victoria No.3 Branch shall also be called for on the Union website as well as any other separate website maintained by the relevant branch.
- (ii) The opening date of nominations shall be the 1st of June with the closing date of the nominations being the 14th of June.
- (iii) Nominations must be in writing signed by the member who is nominated, and endorsed by at least six financial members of the Union. In respect of nominations for positions of Councillors of the New South Wales Branch, the nomination must disclose the nominee's employer, location of employment, sub-branch (if any) and the local health district the nominee is employed in. Local health districts are defined in Rule 53(b).

- (iv) Nominations must be forwarded by certified mail or by any other means that ensures delivery to the Returning Officer at the registered office of the Branch.
- (v) In respect of nominations for positions of Branch Officers and ordinary members of the Branch Committee in the New South Wales Branch, the Victoria No.1 Branch and the Victoria No.3 Branch, every nominee may provide with their nomination a candidate statement in Word format containing a brief statement of experience, suitability for office and the objectives and policies intended to be pursued if elected. The candidate statement may also contain brief information as to any group of candidates the nominee is aligned with. The candidate statement shall be limited to a maximum of three hundred (300) words and shall be distributed by the Returning Officer with the ballot papers should the nominee's nomination be compliant and a ballot for the position required. Provided that no candidate statement will be distributed if it is in the absolute opinion of the Returning Officer, offensive and/or defamatory.
- (vi) At the closing hour of the nominations, the Returning Officer, in the presence of the Scrutineers (if present), shall proceed to open all nominations.
- (vii) The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event of his/her finding a defect in any nomination, he/she shall before rejecting the nomination notify the person concerned of the defect, and, where it is practicable to do so, give him/her the opportunity of remedying the defect where practicable within seven days of his/her having been so notified.
- (viii) If there be no more nominations than the number to be elected for any position, the Returning Officer shall declare the nominated person/s to be elected to the position/s. The names of the persons so declared elected by the Returning Officer will appear on the ballot paper with the words "declared elected" printed in a box next to his or her name. The person or persons shall take office in accordance with sub-rule 29A(b).
- (ix) A candidate who has been nominated in an election may, by notice in writing addressed to the Returning Officer, withdraw the nomination at any time before the close of nominations.
- (x) If there are two or more nominations for any position, the Returning Officer shall advise each of the candidates immediately on receipt of the nominations of the names of the other candidate or candidates.
- (xi) The day on which the roll of voters for the ballot is to be closed shall be on the seventh day prior to the opening of nominations.
- (xii) Candidates shall have the right on request, to scrutinise the membership records of the Branch.
- (xiii) If more than the required number of nominations are received for any position, the Returning Officer shall have ballot papers printed and delivered to him containing the name of the candidates for each position in an order chosen in accordance with paragraph 29A(d)(xiv) herein, indicating the number to be elected to each position, the manner in which votes shall be recorded and the date and the time of closing of the ballot.

- (xiv) The order of candidates' names on ballot papers will, subject to the provisions of this rule dealing with "team nominations", be determined by lot, the drawing of which shall be conducted at a time that will be determined by the Returning Officer. The candidates will be notified of such date and time.
- (xv) The ballot shall open on the 7th of July. The ballot shall close at 5pm on the 7th of August.
- (xvi) The Returning Officer shall, forward by prepaid post to every member entitled to vote a ballot paper which has been initialled by him/her together with an envelope containing the ballot paper marked "Ballot paper – Health Services Union" and a business reply envelope addressed to the Returning Officer, Mail Exchange box number (obtained for the ballot). He/she shall forward by prepaid post a ballot paper and declaration envelope and a prepaid envelope addressed to the Returning Officer for the return of the vote to each member entitled to receive a ballot paper.
- (xvii) Envelopes enclosing ballot papers shall be marked: "if not delivered within seven (7) days please return to P.O. Box No. " (obtained for ballot).
- (xviii) The Returning Officer shall secure a postal box and bag, in his/her name, at the mail exchange to which all ballot papers shall be returned.
- (ix) The Returning Officer, in the presence of a Scrutineer (if present), shall clear the box and bag each day of business and shall sign for receipt of ballot papers from the mail exchange.
- (xx) Immediately after the closing date of the ballot, the box and bag at the Mail Exchange shall be cleared by the Returning Officer, in the presence of the Scrutineers, who shall accompany the Returning Officer to his/her office or place approved by the Returning Officer, to begin the counting.
- (xxi) The Returning Officer shall be responsible for the safe custody of the ballot papers.
- (xxii) On request of a member prior to the closing date of the ballot, his/her returned, undelivered ballot paper shall be readdressed. At the close of the ballot, the Returning Officer shall separate returned, undelivered ballot papers from returned votes, and the undelivered ballot papers shall be retained.
- (xxiii) At the close of the issue of ballot papers, the number issued by the Returning Officer shall be checked with the ballot papers and business reply envelopes obtained from the printers, and the surplus shall be retained.
- (xxiv) Upon completion of the count of the ballot, the Returning Officer shall immediately inform the Branch President that he/she is ready to announce the result. The Branch President shall convene a special meeting of Branch Committee of Management or a special General Meeting as soon as practicable at which the Returning Officer shall declare the result of the ballot. The persons so declared elected will take office from the conclusion of the meeting in accordance with sub-rule 29 Part A (b).
- (xxv) In the event of a tie occurring in any ballot in the New South Wales Branch, the Victoria No.1 Branch and the Victoria No.3 Branch, the result shall be determined by the Returning Officer drawing lots provided that if one of the tied candidates is a retiring office holder from the position subject of the ballot he/she shall be declared elected.

(xxvi) The Returning Officer will then notify all successful candidates by letter of their election.

(xxvii) This rule does not apply to ballots and elections in Sub-Branches or workplace committees.

(e) Qualification for Office

(i) Nominations for any position of full time paid Branch Officer shall have been a continuously financial member of the Union for not less than twelve months immediate preceding his/her nomination and shall be a financial member of the Union at the date of his/her nomination.

(ii) Nominations for any position other than that of full time paid Branch Officer shall have been a continuously financial member of the Union for not less than three months immediately preceding his/her nomination and shall be a financial member of the Union at the date of his/her nomination.

(iii) No member may nominate for more than one position at each election of Branch Officers and ordinary members of the Branch Committee of Management. In addition, in the case of the New South Wales Branch, no member may nominate for the positions of Branch Officer and Councillor of the Branch Council at any election. For the avoidance of doubt, any member of the New South Wales Branch may nominate for the position of Councillor of the Branch Council and ordinary member of the Branch Committee at any election.

(iv) In addition to the foregoing, no member may nominate for any position at each election in the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch unless the member is attached to the relevant Branch.

(f) Team Nominations

This sub-rule shall not apply to any election conducted in the New South Wales Branch, the Victoria No.1 Branch and the Victoria No.3 Branch.

Notwithstanding sub rule (d) of this rule, candidates in an election of:

- (i) Officers of a branch;
- (ii) Ordinary members of a Branch Committee;
- (iii) Branch delegates to the National Council;

may, subject to the following conditions, nominate as members of a “team nomination”:-

- a. Each candidate being nominated as a member of a team nomination must signify his/her acceptance of such nomination by signing the nomination to the Returning Officer.

- b. No member of a team nomination may nominate or be nominated as a member of another “team nomination” or as an individual candidate.
- c. A “Team” nomination must nominate a candidate (or the required number of candidates) for each position for which nominations have been called whereupon each candidate will be considered to have nominated for each position concerned.
- d. The Returning Officer will ensure that the names of members of a team nomination are printed on the ballot paper in a manner which clearly identifies that the candidate is standing for election in the nominated position as part of a team. The names of members of a team nomination will appear on the ballot paper as a group. If there is more than one team nomination the order of team nomination appearing on the ballot paper will be determined by lot at the same time and place as the determination by the Returning Officer of the order on the ballot paper of individual candidates. The Returning Officer will at the same time also determine by lot whether the team nominations appear before or after the names of individual candidates on the ballot paper.
- e. Where a person who has nominated as part of a team nomination is declared elected to a position by the Returning Officer pursuant to sub-rule (e) of this rule, that person’s name together with the words “declared elected” shall appear on the ballot paper together with the other members of the team nomination.
- f. The Returning Officer shall ensure that the ballot paper makes provision for the recording of a vote for each member of a team nomination by way of marking one box at the top of the list of names of members of that team (a “team box”). The Returning Officer shall also ensure that the ballot paper contains clear instructions to the effect that a member voting may vote individually for candidates, including members of a team nomination, or, alternatively, vote for each member of a team by marking the team box.
- g. The withdrawal from the ballot of a member of a team nomination after the close of nominations does not invalidate that team nomination. A vote for a team nomination shall count as a vote for each of that team remaining in the ballot. Once a candidate has nominated for a team nomination he/she cannot withdraw unless with the consent of all the members of that team.

(g) Scrutineers

- (i) Each candidate shall have the right to appoint a Scrutineer, who shall be entitled to be present at all stages of the ballot, without cost to the Union. The candidate appointing the scrutineer shall, before the closing of nominations, notify the Returning Officer in writing of the name of such scrutineer.

- (ii) Scrutineers may be present during the whole conduct of the ballot and at every operation from receipt of nominations to final count of the ballot.
  - (iii) Scrutineers shall be entitled to be present throughout the ballot and may query the inclusion or exclusion of any vote in the count, but the Returning Officer shall have final determination of any vote so queried.
  - (iv) Scrutineers shall not be entitled to remove, mark, alter or deface any ballot paper or other document used in connection with the election.
  - (v) Scrutineers shall not interfere with or attempt to influence any member at the time such member is casting his vote.
- (h) Extraordinary Vacancies of the Branch
- (i) Where an extraordinary or casual vacancy (howsoever occurring) in the office of any Officer of a branch, ordinary member of a Branch Committee of Management, branch delegate to the National Council or Councillor of the New South Wales Branch Council, the Branch Committee shall take immediate action to have such vacancy filled by secret postal ballot of all financial members of the branch provided that:
    - a. where the unexpired portion of the term of office in which the vacancy occurs does not exceed three years, the Branch Committee may fill such vacancy by appointment of an eligible member of the Union; and,
    - b. where the unexpired portion of the term of office in which the vacancy occurs exceeds three years the Branch Committee of Management may fill such vacancy by appointment of an eligible member of the Union until an election is held, provided that no person so appointed shall hold office for a period exceeding six months.
  - (ii) Such ballot shall be conducted by the Returning Officer appointed pursuant to this rule and the Returning Officer so appointed shall determine the dates for the closing of nominations and the closing of the ballot and shall report the result of the ballot to the next following meeting of the Branch Committee.
  - (iii) Any person so elected shall take office from the date of the declaration of his/her election and shall hold office until the expiration of the term of the person he/she replaces.
- (i) System of Voting
- (i) The system of voting in any election conducted pursuant to this Rule shall be the first-past-the-post system.

- (ii) A voter shall record his/her vote or votes (as the case may be) by placing a single 'X' or a tick opposite the name or names of all candidates for whom he/she desires to record a vote provided that he/she shall not record a vote for more candidates than are required to fill any particular position or office.
- (iii) A ballot paper shall be rejected if it is not marked in a manner prescribed or allowed by this Rule; but except as otherwise provided by these Rules a ballot paper shall not be rejected for any reason other than the reason set out in this Rule but effect shall be given according to the voter's intention so far as his/her intention is clear.

#### B – National Officer Elections

##### (a) Tenure of Office

- (i) Subject to paragraph (ii) of this sub rule, the Officers of the Union shall be elected at the annual meeting of the National Council (the said meeting) by secret ballot of the members of National Council being the Officers of the Union and the delegates to National Council, shall take office from the completion of the annual meeting of National Council in the year of their election and shall hold office for a period of four years or until successors thereto have been elected and taken office.
- (ii) In the event that there is any delay in an election for an office or the taking of office occurs beyond the time of the relevant annual meeting of National Council for any reason including any delay caused by any election inquiry, the person elected shall take office from the time of declaration of the ballot in which he/she is elected, and shall hold office for a period of four years less the period of the time of that delay, or until a successor has been elected and taken office.

##### (b) Qualifications for Office

Any nominee for the position of an Officer of the Union shall:

- (i) Be a member of the National Council at the time of his/her nomination (not including any person holding such an office merely because of having filled a casual vacancy in the office within the last 12 months, or the last quarter of the term of the office);
- (ii) Be a financial member of the Union at the time of the nomination;
- (iii) Have been a financial member of the Union for the period of 12 months immediately preceding his/her nomination;
- (iv) Be nominated by a member of the National Council (who shall be a financial member of the Union); and
- (v) Not be nominated for more than one position.

- (c) Returning Officer
- (i) At its first meeting after election the National Council shall appoint a Returning Officer for the conduct of any elections, ballots or plebiscites as may be necessary throughout the ensuing year provided that a duly appointed Returning Officer shall hold office until a successor thereto is duly appointed. The election shall be conducted in accordance with these rules.
  - (ii) A Returning Officer so appointed –
    - (a) May or may not be a member of the Union;
    - (b) Shall not be the holder of any office in or an employee of the union or any branch of the Union: and
  - (iii) In the event of a duly appointed Returning Officer being unable or unwilling to act as and when required, whether during the conduct of any election or ballot or not, the National Executive shall appoint another person to act as Returning Officer for that election or ballot.
- (d) The Returning Officer shall conduct elections and ballots of the Union in the following manner:
- (i) The opening date of nominations shall be the 15th day of August , the closing date of nominations shall be the 31st day of August.
  - (ii) At the closing hour of the nominations, the Returning Officer, in the presence of the Scrutineers (if present), shall proceed to open all nominations.
  - (iii) The Returning Officer shall check all nominations received for compliance with the requirements of these rules and shall reject any that do not so comply; provided that in the event of his/her finding a defect in any nomination, he/she shall before rejecting the nomination notify the person concerned of the defect, and, where it is practicable to do so, give him/her the opportunity of remedying the defect where practicable within seven days of his/her having been so notified.
  - (iv) A candidate who has been nominated in an election may, by notice in writing addressed to the Returning Officer, withdraw the nomination at any time before the close of nominations.
  - (v) Prior to the opening date of nominations the Returning Officer shall call for nominations by notice in writing to each member of the National Council at their home address.
  - (vi) Nominations shall be in writing and signed by the nominee and nominator and shall be delivered to the Returning Officer at the registered office of the Union prior to the close of nominations.
  - (vii) If there be no more nominations than there are vacancies for a position, he/she shall declare the nominated person or persons elected to the position.
  - (viii) If more nominations are received than there are vacancies for a position he/she shall have ballot papers printed and delivered to him/her containing the names of the candidates for each position in an order chosen by ballot indicating the number to be elected to each position, and the manner in which votes shall be recorded.



- (ix) He/she shall be responsible for the safe custody of the ballot papers.
  - (x) He/she shall obtain from the printer a certificate of the number of ballot papers printed.
  - (xi) He/she shall initial every ballot paper prior to its distribution.
  - (xii) He/she shall attend the said meeting on the first day of the said meeting to conduct the ballot.
  - (xiii) He/she shall distribute a ballot paper to each Officer and delegate to National Council entitled to receive a ballot paper.
  - (xiv) He/she shall arrange for the use of a ballot box or other receptacle to which ballot papers may be returned to him/her and after the closing of the ballot he/she shall collect the ballot papers from such box or receptacle.
  - (xv) Upon collecting the same he/she shall, in the presence of the scrutineers (if so requested) count all the votes cast and subject to paragraph (xvii) of this clause declare the result of the ballot.
  - (xvi) In the event of a tie occurring the result shall be determined by the Returning Officer drawing lots provided that if one of the tied candidates is a retiring office holder from the position subject of the ballot he/she shall be declared elected.
  - (xvii) The Returning Officer shall report the result of the election to the said meeting and shall submit to the said meeting a full report of the ballot indicating the number of ballot papers printed, the number distributed, the number on hand and any other relevant matters.
- (e) Absentee Voting

Where a member of the National Council is unable to attend the said meeting or that part of it at which the ballot is conducted that member may so advise the Returning Officer in writing requesting that the member be provided with a ballot paper prior to the ballot at the said meeting. Upon receipt of that request the Returning Officer shall provide the member concerned with a ballot paper and a prepaid envelope or business replied paid envelope addressed to the Returning Officer together with a further blank envelope with instructions to the member that the ballot paper when completed should be inserted in the blank envelope which should then be sealed and further inserted in the prepaid or replied paid envelope and either given to the Returning Officer or posted to the Returning Officer in sufficient time for it to be able to be opened at that part of the said meeting where the ballot is conducted. The Returning Officer upon receiving any such vote is required to ensure its safe custody and that it not be opened before the collection and subsequent counting of votes cast at the said meeting as required by clause (e) of this Rule. The Returning Officer shall be responsible to ensure the secrecy of the vote cast by the absent member and for the purpose of doing so shall open each of the envelopes in the presence of any scrutineers and without examining or revealing the contents of the ballot paper contained in those envelopes, include that ballot paper together with other ballot papers contained in the ballot box referred to in clause (e) of this Rule in such a way as to prevent anyone being able to identify in which way the absent member has voted.

A member of National Council may not authorise any person to exercise a member's vote at or before such meeting.

(f) Scrutineers

Any candidate may if he/she so desires appoint a scrutineer who is a financial member of the Union to represent him/her at the ballot. The candidate appointing the scrutineer shall, before the closing of nominations, notify the Returning Officer in writing of the name of such scrutineer, who -

- (i) Shall be entitled to be present throughout the ballot and may query the inclusion or exclusion of any vote in the count, but the Returning Officer, shall have final determination of any votes so queried.
- (ii) Shall not be entitled to remove, mark, alter or deface any ballot paper or other document used in connection with the election.
- (iii) Shall not interfere with or attempt to influence any member at the time such member is casting his/her vote.

(g) Extraordinary Vacancies

(i) Where an extraordinary or casual vacancy (howsoever occurring) occurs in the office of any Officer of the Union, the National Executive shall take immediate action to have such vacancy filled by secret postal ballot of the members of the National Council who are financial members of the Union provided that -

- (a) Where the unexpired portion of the term of office in which the vacancy occurs does not exceed three years, the National Council may fill such vacancy by appointment of a member of the Union who is eligible for that office; and,
  - (b) Where the unexpired portion of the term of office in which the vacancy occurs exceeds three years the National Council may fill such vacancy by appointment of a member of the Union who is eligible for that office until an election is held provided that no persons so appointed shall hold office for a period exceeding six months.
- (ii) The secret postal ballot shall be conducted by a Returning Officer appointed for such purpose by the National Executive and the Returning Officer so appointed shall determine the date for the closing of nominations and the date for the closing of the ballot and shall report the result of the ballot to the next following meeting of the National Council and/or the National Executive, whichever is sooner.
  - (iii) The Returning Officer shall forward by pre-paid post a ballot paper and a prepaid or business reply paid envelope addressed to the Returning Officer for the return of the ballot paper to each Officer and delegate to National Council entitled to receive a ballot paper.
  - (iv) He/she shall arrange for the use of a post office box or other receptacle to which ballot papers may be returned to him/her and after the closing of the ballot he/she shall collect the ballot papers from such box or receptacle.
  - (v) Any person so elected shall take office from the date of the declaration of his/her election and shall hold office until the expiration of the term of the person he/she replaces.
  - (vi) In all other respects the ballot shall be conducted in accordance with the foregoing provisions of this Rule.

(h) System of Voting

- (i) The system of voting in any election conducted pursuant to this Rule shall be the first-past-the-post system.
- (ii) A voter shall record his/her vote or votes (as the case may be) by placing a single 'X' or a tick opposite the name or names of all candidates for whom he/she desires to record a vote provided that he/she shall not record a vote for more candidates than are required to fill any particular position or office.
- (iii) A ballot paper shall be rejected if it is not marked in a manner prescribed or allowed by this Rule; but except as otherwise provided by these Rules a ballot paper shall not be rejected for any reason other than the reason set out in this Rule but effect shall be given according to the voter's intention so far as his/her intention is clear.

**30 - NATIONAL PRESIDENT**

The National President shall attend all meetings of the National Council and National Executive and any meeting in the Union held by decision of the National Council and National Executive and preside at these meetings, and may, if he/she desires, preside over any other meeting of the Union or a Branch thereof at which he/she is present. He/she shall preserve order so that the business may be conducted in due form and with propriety and, the National President shall, within 14 days of any minutes being confirmed, sign the minutes and the original will be kept in the minute folder. He/she shall be impartial in all transactions and shall see that these Rules are rigidly adhered to.

**31 - NATIONAL VICE-PRESIDENT**

- (a) The National Vice-President shall at all times assist the National President in the execution of his/her duties and when requested by the National President shall carry out such functions of the National President in his/her absence as the National President authorises in writing.
- (b) In the absence of the National President, the National Vice-President shall preside over a meeting of the National Council or the National Executive or any meeting held by decision of the National Council or National Executive and when so doing shall exercise all the powers and functions of the National President.
- (c) In the event of the National President and Vice-President being absent from a meeting of the National Council or the National Executive or any meeting held by decision of the National Council or National Executive, the members present shall appoint a Chairman to preside over such meeting.

**32 - NATIONAL SECRETARY**

The National Secretary shall -

- (a) Be the registered officer of the Union to sue and be sued on its behalf;
- (b) Summon by notice in writing to each member thereof and attend, unless excused, all meetings of the National Council and National Executive and keep or cause to be kept correct minutes of the same;
- (c) Have the right to speak at any general or special meeting of any branch or Branch Committee, but not to vote unless he/she is a member of such branch or Branch Committee;

- (d) Answer and file all correspondence;
- (e) Keep or cause to be kept the records required to be kept by an organisation pursuant to the provisions of the Workplace Relations Act 1996 or as amended from time to time;
- (f) lodge and file with and furnish to the Industrial Registrar all such documents as are required to be lodged, filed or furnished under the said Act at the prescribed times and in the prescribed manner;
- (g) receive all monies on behalf of the Union and pay the same within seven days of receipt into the Union Bank account to the credit of the Union and enter into a book kept for that purpose particulars of all amounts received and paid to such bank;
- (h) Draw up a report and balance sheet to be submitted to the National Council at its annual Meeting and forward a copy of the same to each branch;
- (i) submit his/her books, accounts and receipts annually or as often as may be required by the National Council or National Executive to the auditors and to give them such assistance as they may require in the audit;
- (j) be responsible for the books, records, property and moneys of the Union and, within 48 hours of receiving a request from the National Council to do so, deliver to the National Council such books, records, property and moneys;
- (k) Take all reasonable steps to increase the membership of the Union and foster a branch of the Union in each State or Territory where members are employed;
- (l) Supply branches with information as to the proceedings of the National Council, National Executive and branches;
- (m) confer with Branch Secretaries as often as is necessary in the interests of the Union and assist as best he/she is able all Branch Secretaries and Committees;
- (n) Between meetings of the National Executive, control and conduct the business of the Union, but shall not have the powers specified in rule 21(e);
- (o) Between meetings of the National Council and National Executive, have power to call any meeting in the Union which the National Council has power to call;
- (p) Be ex-officio a member of all Committees of the National Council;
- (q) Be indemnified from the funds of the Union;
- (r) Provide the Returning Officer with such assistance as is necessary to enable him/her to conduct any election;
- (s) Have the power to submit any industrial dispute in which members of the Union are involved to Conciliation and Arbitration; and,
- (t) Carry out such other duties as the National Council or National Executive may from time to time assign to him/her.

### 33 - NATIONAL ASSISTANT SECRETARIES

- (a) The Senior National Assistant Secretary shall
  - (i) assist the National Secretary at all times in the execution of his/her duties; and,
  - (ii) be subject to the direction of the National Secretary and act in his/her stead whenever appointed to do so by the National Executive.
- (b) The National Assistant Secretary shall:
  - (i) assist the National Secretary and the Senior Assistant National Secretary at all times in the execution of their duties; and
  - (ii) be subject to the direction of the National Secretary, and the Senior Assistant National secretary when the Senior Assistant National Secretary is acting in the stead of the National Secretary.

### 34 - TRUSTEES

The Trustees shall invest the funds of the Union and otherwise deal with the property and funds of the Union as they may from time to time be directed by the National Council or National Executive.

### 35 - NATIONAL AUDITOR

The National Auditor shall -

- (a) be appointed annually by the National Council or the National Executive;
- (b) be a competent person within the meaning of the Fair Work (Registered Organisations) Act 2009 and the Fair Work (Registered Organisations) Regulations;
- (c) perform such functions and duties as are prescribed by the Fair Work (Registered Organisations) Act 2009 and the Fair Work (Registered Organisations) Regulations and such other functions and duties not inconsistent with the Fair Work (Registered Organisations) Act 2009 and the Fair Work (Registered Organisations) Regulations as are required by the National Council or the National Executive;
- (d) have access to and examine if desired all books, papers, deeds, documents and accounts of the National Council, the National Executive and each branch and be empowered to question any office-bearer or officer or employee of the Union or any branch thereof with regard to the same and to obtain from any bank or other institution at which the funds of the Union or any branch thereof are deposited or invested such information as he/she may require; and,
- (e) have power to place before the National Executive any suggestion he/she may desire to make concerning the financial affairs of the Union or its branches and before the Committee of a branch any suggestion he/she may desire to make concerning the financial affairs of that branch.

### 35A - FINANCIAL REPORTING REQUIREMENTS

- (a) The National Secretary shall within five (5) months of the end of the financial year provide free of charge to all members of the Union a copy of the full report for the financial year. The full report may be provided to members by publication in the Union's Journals, by correspondence or email, by posting on the Union's website or by some other method where all Union members have access to and are able to view the full report.

- (b) Notwithstanding sub-rule (a) and in addition to Rule 27 the National Executive shall have the power to resolve that a concise report is to be provided to all members of the Union in lieu of a full report.
- (c) The National Secretary shall on the requisition in writing and signed by 5% or more of the Union's members, call a general meeting of members by way of a series of general meetings of members at different locations in each of the States and the Australian Capital Territory for the purpose of considering the auditor's report, the general purpose financial report and the operating report.
- (d) The requisition must be made within six (6) months of the end of the financial year and state that the purpose of the general meeting is to consider the auditor's report, the general purpose financial report and the operating report of the Union for the financial year.
- (e) Upon receiving a valid requisition, the National Secretary must direct Branch Secretaries to give all members of the Branch not less than fourteen (14) days notice of the date, time, place and reason for calling of the series of general meetings of the members.
- (f) The notice referred to in sub-rule (e) may be given by Branch Secretaries to the Members of the Branch by correspondence, email or by publishing a notice in the Branch's Journals or by notification on the Branch's website.
- (g) For the convenience of facilitating member attendance, video conferencing may be used for the series of general meetings.
- (h) At the series of general meetings, the Branch President or the Branch Vice-President shall preside. All members of the Branch shall be entitled to attend and vote.
- (i) Not less than 5% of the membership of the Union shall form a quorum which shall be calculated by reference to the total number of members attending the series of general meetings. The question of adoption or otherwise of each of the auditor's report, the general purpose financial report and the operating report shall be decided by the majority of those members present at the series of general meetings. In the event of an even vote, the National President shall have the casting vote. The general meeting is taken to have occurred at the time of the last of the meetings in the series.

### 36 - NATIONAL FUNDS AND PROPERTY

- (a) The funds and property of the Union shall consist of -
  - (i) any real or personal property of which the National Council or National Executive of the Union, by these Rules or by any established practice not inconsistent with these Rules, has, or, in the absence of any limited term lease bailment or arrangement, would have, the right of custody, control or management;
  - (ii) the amounts of the branch contributions payable to the National Council pursuant to this rule;
  - (iii) any interest, rents, dividends, or other income derived from the investment or use of such funds and property;
  - (iv) any superannuation or long service leave or other fund operated or controlled by the Union as a whole in accordance with these rules for the benefit of its officers or employees;

- (v) any sick pay fund, accident pay fund, funeral fund or like fund operated by the Union as a whole in accordance with these rules for the benefit of its members;
  - (vi) any property acquired wholly or mainly by expenditure of the moneys of such funds and property or derived from other assets of such funds and property; and,
  - (vii) the proceeds of any disposal of parts of such funds and property.
- (b) The funds and property of the Union shall be controlled by the National Council and the National Executive both of which shall have power to expend the funds of the Union for the purposes of carrying out the objects of the Union and all cheques drawn on the funds of the Union shall be signed by two officers of the Union and at least one Trustee. For the expenditure of the funds of the Union on the general administration of the Union and for purposes reasonably incidental to the general administration of the Union, the prior authority of the National Council or the National Executive shall not be necessary before cheques are signed or accounts paid.
- (c) Each Branch shall pay annually to the National Council capitation fees (which includes the Branches proportion of the National unions affiliation fee to the ACTU) being such amount per financial member as decided from time to time by two-thirds vote of National Council. Such capitation fees shall apply equally to branches.
- (d) Each Branch's capitation fees shall be calculated and payable on the basis of the number of financial members of the Union attached to that Branch as at the 30th June in the appropriate year certified as correct by the Branch Secretary and shall be paid in the case of capitation fees, by the 31st August next following, or, if a branch chooses to pay capitation fees on a quarterly basis, by 14 July, 14 October, 14 January and 14 April next following, or if the Branch chooses to pay monthly by the 14<sup>th</sup> of each month.
- (e) Any Branch which has failed to pay its capitation fees in accordance with this Rule shall not, unless the National Council otherwise decides, be entitled to any representation at any meeting thereof until such payment is made in full. Where any Branch has so failed to pay, its Branch Secretary shall not, unless the National Executive otherwise decides, be entitled to participate in any meeting of the National Executive until such payment is made in full.
- (f) The financial year of the Union and the Branches shall end on the 30th June in each year.
- (g) Subject always to paragraph (h) in this rule, but notwithstanding anything elsewhere contained in these rules, the Union shall not make any loan, grant or donation of any amount exceeding \$1,000 unless the National Council or the National Executive of the Union -
- (i) has satisfied itself -
    - (a) that the making of the loan, grant or donation would be in accordance with the other rules of the Union, and,
    - (b) in relation to a loan, that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory and,
  - (ii) has approved the making of the loan, grant or donation.
- (h) The provisions of paragraph (g) of this rule shall not apply to or in relation to payments made by the Union by way of provision for, or reimbursement of, out of pocket expenses incurred by persons for the benefit of the Union.

- (i) This clause shall apply where the Union through its National Council is liable to pay payroll tax or similar types of tax in respect to employees employed in any Branch of the Union. In such circumstances the following actions are required to be taken:
- (i) By the 30th of June in each year the relevant Branch Secretary shall advise or as provided in paragraph (ii) commence to advise the National Secretary in writing of a calculated estimate of the salaries, wages, allowances, fringe benefits, superannuation contributions and any other payments to or for employees (including paid officers) in the Branch for which any such tax will be liable to be paid in the following 12 months.
  - (ii) The calculated estimate referred to in paragraph (i) may be provided annually, quarterly or monthly in advance, specifying the calculated estimate for the relevant year, quarter or month.
  - (iii) Prior to the 15th of July in each year the relevant Branch Secretary shall forward to the National Secretary a detailed statement ("the reconciliation statement") stating the total amounts of any payments made to employees (including paid officers) in the Branch in the financial year preceding the 1st of July in that year and for which any such tax is liable to be paid or is on that date considered to be liable to be paid. That reconciliation statement shall specify separately the total amount of gross salaries and wages, allowances, fringe benefits, employer superannuation contributions and any other payments made to or for such employees for which such tax is assessable.
  - (iv) Prior to the 15th of July in each year the relevant Branch Secretary shall also forward to the National Secretary a statement from the Branch Auditor reporting on the accuracy of the reconciliation statement referred to in paragraph (iii);
  - (v) Prior to the 15th of July in each year the relevant Branch Secretary shall forward to the National Secretary in respect to all employees (including paid officers) in the Branch in the financial year preceding 1 July in that year a copy of all annual group tax and WorkCover reconciliations, the most recent fringe benefits tax annual assessment and a copy of the annual report from any Superannuation Fund to which superannuation contributions are made.
  - (vi) Any Branch Secretary who at any time fails to comply with any part of the provisions of clauses (i) to (v) inclusive above shall within two days of such failure advise the National Secretary in writing of that fact, the reason for non-compliance and of the date by which he/she expects there will be compliance with the provisions. If such non-compliance continues that Branch Secretary shall each subsequent week thereafter advise the National Secretary in writing of the reasons for non-compliance at that stage and the date by which compliance is then expected.
  - (vii) Where there is an estimated tax liability in relation to the payments to which this clause refers the relevant Branch shall pay to the National Council the full amount of that estimate at the same time as it forwards the calculated estimate referred to in paragraphs (i) and (ii). If that payment is not made or the liability is underestimated by the Branch Secretary the Branch shall pay to the National Council the payment that was due or the amount of the underestimation and also any penalty imposed on the Union because of the failure to make that payment to the National Council or because of the underestimation.



- (viii) Where a Branch fails to provide the reconciliation statement or any part of it by the date required by this clause and any penalties are imposed on the Union as a consequence of that failure the Branch shall pay an amount equal to the penalty to the National Council.
- (ix) Any Branch which fails to pay to the National Council in advance the annual, quarterly or monthly tax payment to which this clause applies, or fails to pay any penalty which this clause requires it to pay within five days of being called upon in writing by the National Secretary to pay the relevant tax payment and/or the penalty shall not unless the National Council decides otherwise, be entitled to representation at any meeting of National Council or National Executive.

### **37 - REMOVAL OF OFFICERS ETC.**

- (a) An Officer of the Union or a member of National Council or National Executive may be removed from his/her office if the National Council or National Executive by majority resolution of members voting finds him/her guilty, in accordance with these Rules, of misappropriation of the funds of the Union or any Branch thereof, a substantial breach of the Rules of the Union, gross misbehaviour or gross neglect of duty or finds that he/she has ceased, according to these Rules, to be eligible to hold his/her office. Any charge shall be in writing and shall be forwarded to the National President or the National Secretary, who shall notify the person charged of the details of the charge.
- (b) Such person may be charged by any member under this Rule and such a matter should be in the first instance be dealt with by the Union's Ombudsman under rule 17. Until the Ombudsman has completed their investigation charges shall not be laid. Once the Ombudsman's findings have been presented the person/s laying the charge have seven days to consider whether they wish to proceed with the matter.
- (c) The person charged shall be given not less than fourteen days' notice in writing of the time and place of the meeting at which the charge is to be heard and determined and shall be entitled to attend such meeting and to be heard but not to vote thereat.
- (d) A member so removed by the National Executive shall have the right to appeal to the National Council provided that he/she gives to the National Secretary notice of his/her intention to appeal within seven days of his/her being notified in writing of his/her removal, but the giving of such notice shall not operate to stay the decision of the National Executive.
- (e) Notwithstanding the foregoing, either the National President or the National Secretary may, in their discretion, suspend from office a person charged under this rule pending determination of the charge but in no event shall a person remain suspended for a period exceeding twenty-eight days.
- (f) A person shall be ineligible to hold office as an officer of the Union or member of the National Council or National Executive if -
  - (i) he/she becomes of unsound mind; or,
  - (ii) he/she ceases to be a financial member of the Union.

### **38 - NATIONAL INDUSTRIAL PROCEEDINGS**

- (a) The National Executive shall have power and authority:
  - (i) to make any claims or demands upon anybody and to lodge or file any claims, demands, disputes or any other matters including applications, notifications, declaration or returns with such Tribunal, Court or other body as may be necessary or desirable and to file or lodge same for determination, and

- (ii) to initiate, participate in and conclude any process related to the terms and conditions of employment of persons who are members of, or eligible for membership of the Union including initiating periods for bargaining with any employer, giving notice of any intention to take industrial action, making agreements with any employers or acting under any statutory provision related to registered organisations. This paragraph is intended to avoid doubt as to the meaning and application of paragraph (i) above.
- (b) In the event that such matters impact upon a state branch, the National Executive or its authorised officers shall be authorised to consult with and seek agreement with the affected branch or branches before such matters are lodged or filed;
- (c) (i) Notwithstanding the foregoing and having regard to subclause (b), the National Secretary or in his/her absence, the Senior National Assistant Secretary, shall have a discretionary power to do the things referred to in clause (a) above. The use of this power shall be reported to a meeting of the National Executive.  
(ii) The National Secretary, or in his/her absence, the Senior National Assistant Secretary, may in a particular matter delegate his/her power under this clause to a Branch Secretary when the matter concerns only the members of that Branch. The use of this power shall be reported to a meeting of the National Executive.
- (d) For the purpose of this rule the National Secretary, or any other officer as the National Executive may decide, shall be the officer(s) authorised to sign any claims, demands, disputes or any other matters and to sign any document or instrument related to any aspect of the matters referred to in clause (a) and/or (c) on behalf of the National Executive.
- (e) The Union may be represented at any hearing of any such claim, demand, dispute or any other dealing with any matter referred to in clause (a) by the National Secretary or by such other officers or persons as the National Executive or the National Secretary may decide.

### 39 - SEAL

- (a) The Union shall have a common seal which shall be kept in the exclusive custody of the National Secretary.
- (b) Any document not required by law to be under seal may be executed by the National Secretary.
- (c) Any document required by law to be under seal shall be executed on behalf of the Union by affixing the seal of the Union thereto and by being signed by the National Secretary and one other member of the National Executive.
- (d) Where the National Secretary has executed a document under the seal of the union, this shall be reported at the next National Executive meeting.

### 40 - INDUSTRIAL AGREEMENTS

- (a) The National Executive shall have full power and authority to negotiate and enter into industrial agreements. Such agreements may be signed for or on behalf of the Union by the National Secretary.

- (b) A Branch Committee shall have power to negotiate and enter into industrial agreements affecting only the members of that Branch and such agreements may be signed for or on behalf of the Branch by the Branch Secretary. Claims shall be signed for and on behalf of the Branch by the Branch Secretary.

#### **41 - NATIONAL VOTING**

- (a) Voting at meeting of National Council and National Executive shall be by show of hands or by such other method as the meeting may decide. The Chairman shall have a deliberative vote only and in the event of a tie, the question shall lapse.
- (b) In the event that a member of National Council shall for any reason or at any time be unable to be present at any meeting of National Council -
  - (i) in the case of an officer of the Union, he/she may appoint in writing another member of the National Council as his/her proxy to exercise his/her vote at such meeting; and,
  - (ii) in any other case, the Committee of the branch concerned may appoint any other member of that Branch Committee as his/her proxy to exercise his/her vote at such meeting.
- (c) In the event that a National Officer shall for any reason or at any time be unable to be present at any meeting of National Executive he/she may appoint in writing another National Officer as his/her proxy to exercise his/her vote at such meeting.
- (d) In the event that a Branch Secretary shall for any reason or at any time be unable to be present at any meeting of National Executive he/she may appoint in writing another member of the relevant Branch Committee of Management as his/her proxy to exercise his/her vote at such meeting.

#### **42 - NATIONAL QUORUMS**

- (a) The quorum at any meeting of National Council shall be eight excluding the Officers of the Union but including delegates from at least three Branches.
- (b) The quorum at any meeting of National Executive shall be seven.
- (c) If no quorum be present at the expiration of thirty minutes after the time stated for the commencement of any meeting of National Council or National Executive, such meeting shall lapse, but without prejudice to another meeting being called for the same purpose as such meeting was called, at such other time and place as may be thought fit. In the event that any such other meeting has been called the business for which the same has been called may be transacted by those present, notwithstanding the fact that there is not a quorum present. Any resolutions passed at any such meeting shall be as binding and effectual as if a quorum were present. Seven days' notice of any such other meeting shall be given by the National Secretary to all members of the National Council or of the National Executive as the case may be.

#### **43 - DISPUTES BETWEEN BRANCHES**

A Branch Secretary may report to the National Secretary any dispute, existing between his/her own and any other Branch.

#### 44- RIGHTS OF BRANCHES

- (a) All Branches shall be completely and absolutely autonomous within the ambit of these Rules, and shall be responsible for their own Government and administration. The Branch shall be the basic unit of the Union, and shall possess full and adequate powers to conduct its own affairs and to seek its objectives under the Rules. The control of the Branch resides exclusively in the members of the Branch, who shall be bound by these Rules. This Rule can never be altered except by a ballot of all financial members of the Union. Such alteration to be carried must receive a majority vote of two-thirds of the financial members of the Union.
- (b) Subject to the Rules, or Federal Policy, nothing shall alienate the right of members assembled in the General Meeting to determine the policy of the Branch. The decision of properly constituted General Meetings shall be binding on all members of the Branch.
- (c) Where the National Council is satisfied that a Branch has failed to carry out these Rules of the Branch or to comply with the requirements of any Industrial Arbitration Law or of any Industrial Registrar, it shall have power to call a general meeting of financial members of that Branch and to take such steps as may be necessary to enforce due compliance with the Rules and/or the law.

#### 45 - NATIONAL PLEBISCITE

- (a) Notwithstanding anything contained in these rules, a plebiscite of all members of the Union -
  - (i) may be held for any purpose at the discretion of the National Council or the National Executive provided that the National Council and the National Executive shall not cause a plebiscite to be held about or in respect of an Entrenched Rule as defined herein; and,
  - (ii) shall be held if requested by resolution of special general meetings of three branches or if requested by a requisition in writing and signed by not less than 5 per cent of the financial members of the Union. Such requisition to contain in block letters the name of each member signing same and the name of the establishment at which such member is employed.

Provided that no decision of the National Council or the National Executive shall be reviewed or referred to a plebiscite of members pursuant to paragraph (ii) of this clause unless the appropriate request has been delivered to the National President or National Secretary within two months of the said decision.

Provided further that where a plebiscite has been held under paragraphs (i) or (ii), the subject matter which has been put to plebiscite may not be put to a further plebiscite under paragraph (ii) for at least 18 months after the declaration of the outcome of the plebiscite that has been held.

- (b) Any such plebiscite shall be conducted by secret postal ballot and shall be under the absolute control and direction of a Returning Officer who shall -
  - (i) prepare ballot papers which shall contain the question to be voted on;
  - (ii) issue a ballot paper to each member entitled to vote;
  - (iii) determine the time and date for the closure of the ballot, having consideration for the convenience of the voters;

- (iv) take such steps as are necessary to ensure that a result is correctly ascertained; and,
  - (v) report the result of the plebiscite to the first meeting of the National Executive held after the conclusion of the counting of the votes cast.
- (c) The returning officer shall be the appropriate officer from the Australian Electoral Commission.
- (d) A simple majority decision of the members voting shall be final and shall prevail over any contrary decision of the National Council or National Executive.

#### **46 – FINANCE COMMITTEE**

A Finance Committee consisting of the Officers of the Union as defined in rule 19 shall meet regularly to receive a report and recommendations from the National Secretary in relation to the current state of the Union's finances. Such a report will include details of Union income and expenditure and set and monitor budget targets if necessary. The Finance Committee may refer a matter to the National Executive.

The two ordinary members of National Executive who form part of the finance committee shall be elected by National Executive at the first National Executive meeting after the annual Council meeting each year.

#### **47 – STUDENT MEMBERS**

Any person attending a course of study that upon graduation will enable them to seek employment in avocations covered by rule 2 and 3, Industry and Eligibility of these rules, shall be eligible to join the Union as a Student member.

The relevant Branch shall determine the conditions and benefits of student membership and any administration fee to be applied provided that student members shall not be deemed financial members for all purposes of these Rules

### **PART C - BRANCH ORGANISATION**

#### **48 - BRANCHES**

- (a) The Union may establish such Branches as the National Council may from time to time decide and the existence of the following Branches is hereby confirmed :-

- Victoria No.1
- Victoria No. 2
- Victoria No.3
- Victoria No. 4
- Tasmania No .1
- Tasmania No. 2
- New South Wales
- South Australia
- Queensland
- Western Australia

(b) The Victoria No. 1 Branch shall consist of all members of the Union employed in Victoria other than members:-

- (i) employed under the provisions of the *Public Administration Act 2004 (Vic)* as amended from time to time; and/or
- (ii) employed in or in connection with the provision of mental and/or mental retardation services; and/or
- (iii) eligible to be members of the Victoria No.3 or Victoria No.4 Branches.

Note: The *Public Administration Act 2004 (Vic)* is a successor to the *Public Service Act 1974 (Vic)* due to the operation of Section 7(c) of Schedule 2 (Saving and Transitional Provisions) of the *Public Administration Act 2004 (Vic)*.

(c) The Victoria No. 2 branch shall consist of all members of the Union employed in Victoria who are -

- (i) employed under the provisions of the *Public Administration Act 2004 (Vic)* as amended from time to time; and/or,
- (ii) employed in or in connection with the provisions of mental health and/or mental retardation services.

Note: The *Public Administration Act 2004 (Vic)* is a successor to the *Public Service Act 1974 (Vic)* due to the operation of Section 7(c) of Schedule 2 (Saving and Transitional Provisions) of the *Public Administration Act 2004 (Vic)*.

(d) The Victoria No. 3 Branch shall consist of all members of the Union employed in Victoria who are employed in the following classifications, other than those eligible to be members of the Victoria No. 2 or Victoria No. 4 Branches:-

- Research Technologist (employed at the Peter McCallum Institute)
- Medical Laboratory Technician
- Physiotherapist
- Radiographer/Medical Imaging Technologist
- Radiotherapy Technician/Radiation Therapy Technologist
- Hospital Librarian
- Occupational Therapist
- Orthoptist
- Speech Therapist/Speech Pathologist
- Medical Photographer
- Medical Illustrator
- Chiropodist/Podiatrist
- Nulceographer/Nuclear Medicine Technologist
- Orthotist (excluding those persons employed by the Commonwealth Government and its Statutory Authorities)
- Orthotist/Prosthetist (excluding those persons employed by the Commonwealth Government and its Statutory Authorities)
- Prosthetist (excluding those persons employed by the Commonwealth Government and its Statutory Authorities)
- Recreation Therapist
- Music Therapist

Dentist  
Psycho-Therapist who would have been covered by the (Victorian) Health Professional Services Award as that award stood immediately before 1st March 1993  
Recreation Worker  
Welfare Worker  
Youth Worker  
Community Development Worker  
Social Planner  
Rehabilitation Counsellor  
Behavioural Scientist who would have been covered by the (Victorian) Health Professional Services Award as that Award stood immediately before 1st March 1993  
Orientation and Mobility Practitioners  
Medical Records Administrator  
Cardiac Technician  
Safety Officer  
Radiation Engineer

- (e)<sup>1</sup> (i) The Victoria No. 4 Branch shall comprise all person (other than those eligible to be a member of any other Branch of the Union) who would have been subject to or classified according to the (Victorian) Medical Scientists Award, the (Victorian) Psychologists Award or the (Victorian) Hospital Pharmacists Award immediately before 1st March 1993, including, but not limited to:

AUDIOLOGISTS: Without limiting the generality of the aforesaid classification, it shall include -

Otoneurologist

DIETITIAN

PHARMACIST

PSYCHOLOGIST: Without limiting the generality of the aforesaid classification, it shall include -

Behavioural Scientist

Psychotherapist other than a psychotherapist who would have been covered by the (Victorian) Health Professional Services Award as it stood immediately before 1st March 1993.

SCIENTIST: Without limiting the generality of the aforesaid classification, it shall include -

ANATOMICAL PATHOLOGY SCIENTIST

Histologist

Cytologist

BIOCHEMIST

Clinical Biochemist

Chemical Pathology Scientist

Enzymologist

CLINICAL PHARMACOLOGIST

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<sup>1</sup> This rule relating to the Victorian No. 4 Branch was formerly numbered 48(e) and was renumbered as 48(d) on 24 May 2010 by R2010/35 – no alteration was made to the contents of this rule by R2010/35.

Pharmacokineticist  
ENDOCRINOLOGIST  
GASTROENTEROLOGIST  
GENETICIST  
Cytogeneticist  
Molecular Biologist  
HAEMATOLOGIST  
Immunohaematologist  
Serologist  
Blood Banking Scientist  
Haemodialysis Technologist/Scientist  
IMMUNOLOGIST  
INTENSIVE CARE SCIENTIST/TECHNOLOGIST  
LABORATORY MANAGER  
MEDICAL SCIENTIST/TECHNOLOGIST  
MICROBIOLOGIST  
Virologist  
Bacteriologist  
NEUROPHYSIOLOGIST  
EEG Scientist/Technologist  
EMG Scientist/Technologist  
PERFUSIONIST  
Clinical Perfusionist  
Cardiovascular Perfusionist  
PHYSICAL SCIENTIST  
Biophysicist  
Medical Physicist  
REPRODUCTIVE BIOLOGIST/TECHNOLOGIST  
Andrologist  
IVF Scientist  
RESPIRATORY SCIENTIST/TECHNOLOGIST  
STATISTICIAN  
TISSUE TYPING SCIENTIST  
TOXICOLOGIST  
VASCULAR SCIENTIST/TECHNOLOGIST.

Provided that Medical Officer shall not be eligible for membership of the Branch. All persons who were members of a relevant component association (i.e. the Medical Scientist Association of Victoria and the Victorian Psychologists Association) on the relevant day and who are eligible to be members of the Union, shall be eligible to be members of the Victoria No. 4 Branch.

(ii) Entrenching Provision

This Rule 48(e) shall be an "Entrenched Rule", that is, notwithstanding any other provision of these Rules, it shall not be altered except with the approval of the members of the Victoria No. 4 Branch assembled in general meeting. The requisite approval of the Victoria No. 4 Branch will only be obtained if, at a special general meeting (called in accordance with Rule 62), a vote is held and a majority of the members present vote in favour of the alteration.



- (f) The Tasmania No 1 Branch shall consist of all members of the Union in Tasmania other than those eligible for the Tasmanian No 2 Branch.
- (g) The Tasmania No. 2 Branch shall consist of all members of the Union in Tasmania employed at the University of Tasmania.
- (h) The Queensland Branch shall consist of all members of the Union in Queensland.
- (i) Notwithstanding anything elsewhere contained in these Rules, paragraph h of this sub-rule shall not be amended or altered in any way affecting the Queensland Branch unless agreed to by a Special General Meeting of that Branch and such meeting shall be convened for the purpose by the Branch Secretary within one month of the National Council deciding such change.
- (j) The Western Australia Branch shall consist of all of the members of the Union in Western Australia.
- (k) The New South Wales Branch shall consist of all members of the Union employed in New South Wales and/or the Australian Capital Territory.
- (l) The South Australian Branch shall consist of all members of the Union in South Australia and the Northern Territory.
- (m) The National Council shall have the power to -
  - (i) alter the area embraced by any Branch with the consent of that Branch and any other Branch concerned, and;
  - (ii) amalgamate any Branch with another with the consent of the Branches concerned; and
  - (iii) constitute a new Branch or Branches in or within any State or Territory with the consent of any existing Branch concerned.

Provided that, where National Council is exercising or is seeking to exercise any of the powers conferred upon it by this clause for the purpose of or in the course of amalgamating the Union with any other organisation or Union of employees, the consent of any Branch or Branches shall not be required.

Provided that the powers conferred in paragraph (m) of this sub-rule shall not empower the National Council to alter an Entrenched Rule as defined herein.

- (n) The office of each Branch shall be at such place as the Branch Committee may from time to time determine.
- (o) Any member who is elected or appointed as a full-time national officer of the Union shall remain a member of the Branch of which she/he was a member immediately preceding his/her election or appointment to such office.

**48A - VICTORIAN NUMBER 4 BRANCH TRANSITIONAL RULE**

**PART 1 - INTRODUCTION**

- (a) The provisions of this Rule shall operate notwithstanding anything elsewhere contained in these Rules.
- (b) The provisions of this Rule shall operate
  - (i) insofar as they relate to the MSAV and the VPA, during the first transitional period, and
  - (ii) insofar as they relate to the AHP, during the second transitional period.

The purpose of this Rule is to establish and enlarge a new Branch of the Union, the membership of which will reflect the combined membership of three existing Associations in Victoria, namely, The Association of Hospital Pharmacists (AHP), The Medical Scientist Association of Victoria (MSAV) and the Victorian Psychologists Association (VPA).

At the conclusion of each transitional period this Rule will cease to govern such operations of the Branch as are governed by it during such transitional period and the Branch will be governed by the Rules of the Union, except to the extent where the words of this Rule clearly intend part of this Rule to have effect and/or govern the operations of the Branch after the conclusion of either transitional period.

- (c) For the purposes of this Rule:-
  - (i) "the first transitional period" shall mean the period commencing on the first certification date and finishing on the close of the Branch Annual General Meeting in September 1994;
  - (ia) "the second transitional period" shall mean the period commencing on the second certification date and finishing on the close of the Branch Annual General Meeting in September, 1996;
  - (ii) "the first certification date" shall mean the date upon which this Rule is first certified by a Registrar;
  - (iia) "the second certification date" shall mean the date upon which amendments to this Rule in respect of the AHP are certified by the Registrar;
  - (iii) "the Branch" shall mean the Victoria No. 4 Branch of the Union;
  - (iv) "component Association" means the AHP MSAV and the VPA collectively;
  - (v) "relevant component Association" means the component Association of which a person is entitled to be a member.
  - (vi) "first relevant day" means the first certification date.
  - (via) "the second relevant day" means the second certification date.

PART 2 - MEMBERSHIP

- (d) To the extent of any inconsistency, this Part of this Rule will prevail over Rule 6.
- (e) On and from the first certification date, any person who is, on that date, a member of the Union and eligible to be a member of the Branch shall be and be deemed to be a member of the Branch.
- (f) At any time after the first certification date, all members of the component Associations who are eligible for membership of the Union under the eligibility Rule of the Union shall, upon receipt by the President of the Branch of an application made on their behalf by the President of the relevant component Association become and be deemed to be members of the Union, provided that no person shall become a member of the Union pursuant to this paragraph unless she or he has been notified by letter that on a date nominated by the relevant component Association and specified in the letter (being not less than six weeks after the date of the letter) an application in accordance with this Rule will be made on her or his behalf to the Union. The letter shall advise him/her of the financial obligations arising from membership of the Union and the circumstances and the manner in which a member may resign membership. The letter shall also advise her or him that if a written objection to the President of the relevant component Association is received within one month of the letter then no application on her or his behalf will be made.
- (g) Any member of the relevant component Association who becomes a member of the Union shall be deemed to be a financial member of the Union to the extent that she or he is a financial member of the relevant component Association at the time of becoming a member of the Union.
- (h) Any member of a relevant component Association who becomes a member of the Union shall become liable to pay dues to the Union from the date of receipt by the Union of an application made on their behalf by the President of the relevant component Association.
- (i) Any period of financial membership of a relevant component Association immediately preceding membership of the Union shall be deemed to be financial membership of the Union for all purposes of these Rules.
- (j) Any member of the Union who is simultaneously a member of a relevant component Association and who pays subscriptions to the relevant component Association in an amount equivalent to or greater than the amount payable by that member as annual contributions pursuant to these Rules shall, subject to these Rules, during the currency of any agreement between the Union and the relevant component Association providing for the payment of that member's subscription by the relevant component Association to the Branch, be for all purposes a financial member of the Union. To the extent of any inconsistency, this sub-Rule prevails over Rule 8.
- (k) If a member of the Branch who is deemed to be financial pursuant to this Rule transfers to another Branch of the Union pursuant to Rule 11 of these Rules, she or he shall, when annual contributions next fall due and thereafter, be liable to pay to the Branch to which she or he has transferred the annual contribution determined by that Branch in accordance with Rule 8 of these Rules.

PART 3 - OFFICERS OF BRANCH

- (l) The Officers of the Branch shall be
  - (i) From the first certification date until the completion of the first transitional period or until elections are held under subrule (o) whichever is the later the Branch President, the Branch Senior Vice President, the Branch Junior Vice President, the Branch Secretary, the Branch Assistant Secretary and two Branch Trustees.

- (ii) From the second certification date the Branch President, the Branch Senior Vice President, two Branch Junior Vice Presidents, the Branch Secretary, the Branch Assistant Secretary and two Branch Trustees.
- (m) From the first certification date until the second certification date the Branch Committee of the Branch shall consist of the Officers of the Branch, as listed in sub-Rule 48A(l), and twelve Committee members.
- (ma) From the second certification date until the completion of the second transitional period or until an election is held under subrule (oa), whichever is the later, the Branch Committee of the Branch shall consist of the officers of the Branch as listed in subparagraph 48(A)(l)(ii) and 17 Committee members.
- (mb) From the completion of the second transitional period or elections held under subrule (oa), whichever is the later, the Branch Committee of the Branch shall consist of the officers of the Branch as listed in subparagraph 48(A)(l)(ii) and 12 Committee members.
- (n) On and from the first certification date, each of the following persons, provided that she or he is, on the first certification date, a member of the committee of management of a relevant component Association and eligible for membership of the Union, shall be and be deemed to be a member of the Branch Committee and, subject to removal from office in accordance with these Rules, shall hold such office on the Branch Committee of the Branch until the completion of the first transitional period or until their successors are duly elected, in elections under sub-rule (o), whichever is the later:

President	Leanne TAAFFE
Senior Vice President	David LIST
Junior Vice President	Nina DAVIDSON
Secretary	Sam EICHENBAUM
Assistant Secretary	Jennie BREMNER
Trustee	Ibolya NYULASI
Trustee	Jill GIESE
Branch Committee	James ALCOCK
	Joseph MANITTA
	Graeme RIDDLE
	Vanda VOLPE
	Phillip PAULL
	Christopher PEARCE
	Eddie KEIR
	Patricia LEAPER
	Patricia MIACH
	Peter PINNEY
	Robyn STARGUTT

- (na) On and from the second certification date the Branch Committee of the Branch shall consist of the officers and members of the Branch Committee of the Branch holding office under this part as at that date together with each of the persons listed below. Provided that, such listed person is, on the second certification date, a member of the Committee of Management of the AHP and eligible for membership of the union then he or she shall be deemed to be a member of the Branch Committee and, subject to removal from office in accordance with these rules, shall hold such office on the Branch Committee of the Branch until the completion of the second transitional period or until his or her successor is duly elected in elections under subrule (oa) whichever is the later:

Junior Vice President  
Branch Committee

Gregory Weeks  
Reginald Arulappa  
Judith Cameron  
Geoffrey Davies  
Ronald Harper  
Emma Wong

- (o) (i) The first Branch elections after the first certification date will be held in 1994 under Rule 29.
- (ii) At these elections all Officers of the Branch, as listed in subparagraph 48(A)(1)(i), twelve Branch Committee members and Branch Delegates to the National Council will be elected.
- (iii) For the purposes of qualifications for office under Rule 29, any period of financial membership of a relevant component Association immediately preceding membership of the Union shall be deemed to be financial membership of the Union.
- (iv) Notwithstanding anything else in these Rules, at the first elections and thereafter, one position of Junior Vice President, one Trustee position and one Committee position (the reserved positions) shall be elected by and from members of the Branch who are also eligible to be members of the Victorian Psychologists Association. Nominations for these positions shall be called in accordance with Rule 29, mutatis mutandis. The reserved positions shall be called, respectively "Vice President (Psychologists)", "Trustee (Psychologists)" and "Committee Member (Psychologists)".

In the event of a casual vacancy occurring on the Branch Committee during the transitional period the Branch Committee may appoint any member of the Branch, who would have been eligible to be a member of the relevant component Association from which the departed Committee member came, to fill that vacancy.

- (oa) (i) The first Branch elections after the second certification date will be held in 1996 under Rule 29, for the positions referred to in paragraph (ii) of this sub-rule.
- (ii) Notwithstanding anything else in these Rules, at these elections one position of Junior Vice President, and two Committee positions shall be elected by and from members of the Branch who are also eligible to be members of the Association of Hospital Pharmacists. Nominations for these positions shall be called in accordance with Rule 29, mutatis mutandis. These positions shall be called respectively 'Vice President (Pharmacist)', 'Committee Members (Pharmacists)'.
- (iii) The persons elected in accordance with this sub-rule shall be the successors to the persons named in sub-rule (na) herein.
- (iv) The persons so elected shall take office from the declaration of their election and shall hold office until the completion of the Branch Annual General Meeting in September 1998 or until successors thereto have been elected and taken office.
- (v) For the purposes of qualification for office under Rule 29, any period of financial membership of a relevant component association immediately preceding membership of the union shall be deemed to be financial membership of the union.

In the event of a casual vacancy occurring on the Branch Committee during the second transitional period, the Branch Committee may appoint any member of the Branch who would have been eligible to be a member of the relevant component association from which the departing Committee member came, to fill that vacancy.

- (ob) (i) The second Branch elections after the second certification date will be held in 1998 under Rule 29.
- (ii) At these elections and elections thereafter, all officers of the Branch as listed in sub-rule 48(A)(1)(ii), twelve branch committee members and delegates to the National Council will be elected.
- (iii) For the purposes of qualification for office under Rule 29, any period of financial membership of a relevant component association immediately preceding membership of the union shall be deemed to be financial membership of the union.
- (iv) Notwithstanding anything else in these Rules, at these elections and thereafter, of the positions referred to in paragraph (ii) of this sub-rule, one position of Junior Vice President, one Trustee position and one committee position shall be elected by and from the members of the Branch who are also eligible to be members of the Victorian Psychologists' Association; and one position of Junior Vice President and two committee positions shall be elected by and from members of the Branch who are also eligible to be members of the Association of Hospital Pharmacists. Nominations for these positions shall be called in accordance with Rule 29 mutatis mutandis. These positions shall be called respectively "Vice President (Psychologist)", "Trustee (Psychologist)", "Committee Member (Psychologist)", "Vice President (Pharmacist)", "Committee Members (Pharmacists)".
- (v) In the event of an appointment to fill a casual vacancy occurring on the Branch Committee, the Branch Committee may appoint any member of the Branch who would have been eligible to be a member of the relevant component association to which the departing Committee member was eligible to be a member of, to fill that vacancy.
- (p) At the first meeting after the first certification date the Branch Committee shall appoint a Returning Officer who shall hold office until a successor is duly appointed in accordance with Rule 29. The Rules of the Union, so far as they relate to Returning Officers, apply to the Returning Officer appointed under this sub-Rule.
- (q) (i) This sub-Rule concerns the appointment of delegates to National Council during the first transitional period.
- (ii) At the first meeting after first certification date the Branch Committee shall appoint, by and from the Committee, delegates to National Council on the basis of one delegate for every 1000 members or part, thereof, provided that members in this sub-Rule means the combined membership of the component Associations. Those delegates shall, subject to removal from such office in accordance with these Rules, hold such office until an election can be held to fill the position.
- (iii) At its second meeting after the first certification date, the Branch Committee shall elect the requisite numbers of its members as Branch Delegates to National Council and those persons shall, subject to removal from such office in accordance with these Rules, hold such office until the completion of the transitional period.
- (iv) Notice of the election shall be given by the Returning Officer of the Branch when notice of the holding of the meeting is given to Branch Committee members.

- (v) Nominations shall be in writing, signed by the nominee and nominator (who shall be a member of the Branch Committee) and shall be delivered to the Returning Officer of the Branch before the meeting is scheduled to commence.
- (vi) Notwithstanding Rule 29, the election shall be conducted by secret ballot during the course of the meeting.

#### **49 - BRANCH MANAGEMENT**

- (a) The Government, management and the control of the affairs of each branch shall, subject to these rules and any proper direction of the National Council or the National Executive be vested in a Branch Committee.
- (b) It shall be competent for any one branch or more than one branch in any State or Territory to form a State Council or Conference, the Rules of such Council or Conference to be drawn up by the participating branches and submitted to National Council for adoption. Such State Council or Conference shall have no power other than that of recommendation.
- (c) Subject to clause (d) hereof each branch shall be bound by these rules.
- (d) Each branch may make rules from time to time for its own internal management and may therefore add to, amend, rescind or alter any of these rules insofar as they relate to the internal management of a branch through its Branch Committee of management or by a special general meeting of its members.
- (e) Any rule or rules made by a branch pursuant to clause (d) of this rule shall be forwarded to the National Secretary who, upon receipt of any information and documentation necessary for the purpose, shall forthwith apply to the Industrial Registrar for certification of the same and upon certification such rule or rules shall form part of the rules of the Union for all purposes other than Rule 75 but shall apply only to the Branch initiating the same.
- (f) If at any time not less than 20 per cent of the members of the Branch petition the Committee of Management of the Branch requesting the withdrawal of the Branch from the Union the Committee shall hold a ballot of financial members to decide the question. Within 14 days from the receipt of the petition the Secretary of the Branch shall call a special meeting of members to appoint a returning officer and two assistants to conduct the ballot. The question shall be decided by a simple majority, and if the result of the ballot is in the affirmative, the Committee of Management of the Branch shall immediately take steps to effect the Branch's withdrawal from the Union. The funds and effects of the Branch shall be the absolute property of the Branch, except so far as the Branch is liable to National Council in respect of badges, capitation fees and levies. No Officer or Servant of the National Council shall in any way seek to obstruct or disadvantage a Branch taking advantage of this rule. The returning Officer shall serve notice on the National Secretary in respect of the result of the ballot, and if the Branch has decided to withdraw, then this shall be communicated to all National Councillors by the National Secretary. The withdrawal of the Branch shall be final as from the 21st day after the returning Officer's announcement of the ballot results.

#### **50 - BRANCH OFFICERS**

- (a) The Officers of a branch shall consist of the Branch President, the Branch Senior Vice-President, the Branch Junior Vice-President, the Branch Secretary, the Branch Assistant Secretary and the two Branch Trustees ("the Branch Officers"). Provided that in the New South Wales Branch and the Victoria No. 1 Branch there shall be no Branch Trustees.

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- (b) In the New South Wales Branch and the Victoria No. 1 Branch, the offices of Branch Secretary and Branch Assistant Secretary (who shall be called the Branch Assistant Secretary-Treasurer in the New South Wales Branch and the Victoria No. 1 Branch) shall be full time paid offices. The office of Branch Secretary in the Victoria No. 3 Branch shall be a full time paid office.
  - (c) The Branch Officers shall be ex officio members of any sub-committee of the branch. Provided that in the case of the New South Wales Branch, the Victoria No.1 Branch and the Victoria No.3 Branch the Branch Officers shall not be ex officio members of the Audit and Compliance Committee established pursuant to Rule 88.

#### **51 - BRANCH COMMITTEE**

- (a) A Branch Committee shall consist of the Officers of the Branch and not less than five and not more than fifteen ordinary members as the Branch may from time to time determine, provided that such decision must be endorsed by a Special General Meeting of the Branch convened for that purpose at which at least twenty-five financial members are present. Provided that for the purposes of the elections to be held in 2012 pursuant to the Scheme approved by the Federal Court of Australia on 21 June 2012, the number of ordinary members of the Victoria No. 1 Branch shall be eight (8) and the number of ordinary members of the Victoria No. 3 Branch shall be five (5).

#### **52 - NEW SOUTH WALES BRANCH COMMITTEE**

- (a) Notwithstanding Rule 51, the New South Wales Branch Committee shall consist of the Branch President, the Branch Senior Vice-President, the Branch Junior Vice-President, the Branch Secretary, the Branch Assistant Secretary-Treasurer and five (5) ordinary members.
- (b) The Branch Committee shall exercise all the powers as contained in Rule 54 other than Rules 54(e) and 54(f) and shall be responsible for the management of the Branch's affairs, property and funds. The Branch Committee shall be the committee of management of the Branch.
- (c) Notwithstanding Rule 55, the Branch Committee shall meet at least monthly,
- (d) A special meeting of the Branch Committee may be called by the Branch Secretary if requested to do so by no less than four (4) members of the Branch Committee.
- (e) Meetings of the Branch Committee may be conducted by telephone or by such other electronic means as may be available from time to time.
- (f) Notwithstanding Rule 68(a)(ii), six (6) members of the Branch Committee shall constitute a quorum.

#### **53 - NEW SOUTH WALES BRANCH COUNCIL**

- (a) The supreme governing body of the New South Wales Branch, subject to these Rules and to the control of the Branch members as hereinafter mentioned, shall be the Branch Council which shall meet annually at a place and on a date to be fixed by the Branch Committee. Provided that the Branch Committee may call meetings of the Branch Council at other times to deal specifically with matters arising under sub-rule (f)(C) hereof.
- (b) The Branch Council shall consist of:
  - (i) The Branch Officers;
  - (ii) Twenty-five (25) Councillors constituted as follows:



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- (A) Twenty-one (21) Councillors with at least one (1) but not more than two (2) being drawn from hospitals or health services in each of the fifteen (15) local health districts (refer Note 1) provided that one (1) Councillor shall come from the Health Managers Sub-Branches;
  - (B) One (1) Councillor from a Private Hospital;
  - (C) One (1) Councillor from a non-public sector aged care facility;
  - (D) One (1) Councillor from the NSW Ambulance Services; and
  - (E) One (1) Councillor from the Australian Capital Territory.

Note 1 - The fifteen (15) local health districts ("LHD") as constituted by section 17, and specified in Schedule 1 of the *Health Services Act 1997* (NSW), as at the date of the certification of this Rule, with these being Sydney LHD, South Western Sydney LHD, South Eastern Sydney LHD, Illawarra Shoalhaven LHD, Western Sydney LHD, Nepean Blue Mountain LHD, Northern Sydney LHD, Central Coast LHD, Hunter New England LHD, Murrumbidgee LHD, Southern NSW LHD, Western NSW LHD, Far West LHD, Mid North Coast LHD, and Northern NSW LHD.

- (c) Meetings of the Branch Council may be conducted by telephone or by such other electronic means as may be available from time to time.
- (d) In the event that a member of Branch Council shall for any reason or at any time be unable to be present at any meeting of Branch Council he/she may appoint in writing another member of the Branch Council as his/her proxy to exercise his/her vote at such meeting. A member of Branch Council may be appointed proxy for any number of members.
- (e) A special meeting of Branch Council shall be called by the Branch Committee if requested to do so by no less than fifteen (15) members of the Branch Council.
- (f) The Branch Council shall, subject to these Rules and to the control of the Branch members as hereinafter mentioned, have power:
  - (A) to generally watch the interests of the Union in the area where the Branch is established;
  - (B) to fix the remuneration and terms and conditions of employment of any officer or employee of the Branch;
  - (C) to suspend or remove from office in accordance with these Rules any officer of the Branch;
  - (D) in addition to the powers of the Branch Committee to do so, to alter, amend, rescind or add to any Rules insofar as they relate to the internal management of the branch pursuant to Rule 49(d);
  - (E) to develop and implement Rule 83 Branch policies and procedures;
  - (F) to review decisions of the Branch Committee; and
  - (G) to take any action which in its opinion is in the interests of the Branch, provided that such action does not conflict with the policies and procedures of the Union.
- (g) The quorum for a meeting of the Branch Council shall be eighteen (18) members of the Council.

### 54 - POWERS AND DUTIES OF BRANCH COMMITTEE

A Branch Committee shall, subject to these rules and to the control of the branch members as hereinafter mentioned, have power -

- (a) to transact all the business of the branch;
- (b) to supervise and pay all, lawful debts of the Branch;
- (c) to periodically review and attend to the collection of all fees, levies and dues payable by branch members;
- (d) to generally watch the interests of the Union in the area in which the branch is established;
- (e) to fix the remuneration and terms and conditions of employment of any officer or employee of the branch;
- (f) to suspend or remove from office in accordance with these rules any officer of the branch;
- (g) to direct the Branch Secretary and Branch Assistant Secretary in the performance of their duties;
- (h) to investigate grievances and disputes submitted by its members;
- (i) to appoint collectors and agents to collect moneys on behalf of the Union and/or branch;
- (j) to instruct its delegates to the National Council how to vote on any matter;
- (k) to appoint a Branch Auditor;
- (l) to take any action which in its opinion is in the interests of the branch, provided that such action does not conflict with the policies of the Union; and,
- (m) to exercise any other powers conferred upon it by these rules.
- (n) Workplace committees (however named) may be established by branch committees at workplaces where 15 or more are enrolled as members of the Branch, provided that workplaces where there is less than 15 employees, these employees may be grouped conveniently by the Branch committee of management so as to form workplace committees and so that each workplace committee so formed shall comprise not less than 15 members of the Branch. Provided further the Branch committee may from time to time authorise the establishment of more than one Sub-Branch in a workplace.

### 55 - MEETINGS OF BRANCH COMMITTEE

A Branch Committee shall meet at least quarterly and at such other times as it may determine provided that the Branch President or the Branch Secretary may, by notice in writing either by post, email or other communication method call a meeting of the Branch Committee and shall call such a meeting if requested to do so by not less than one-third of the members of such Committee. The Branch President or the Branch Secretary may decide that a meeting of the Branch Committee of Management be conducted by such telephonic or electronic means as may from time to time be available. The members of the Committee shall participate in such a meeting and the decision of the majority shall be binding as if such decision were obtained at a regularly constituted meeting of the Committee.

### **56 - BRANCH PRESIDENT**

The President of a branch shall be the official head of the branch and -

- (i) shall preside at all meetings of the branch and Branch Committee (and the Branch Council in the case of the New South Wales Branch) and preserve order thereat so that business may be conducted in due form with propriety and in conformity with standing orders;
- (ii) shall sign all documents requiring his/her signature as official head of the branch and shall sign all minutes of the branch duly confirmed in the presence of the meeting confirming the same;
- (iii) shall instruct the Secretary to call meetings of the Branch Committee and General or Special Meetings of members when necessary;
- (iv) shall generally ensure the well-being of the Union and its members and the carrying out of the objects of the Union within the area administered by his/her branch.

### **57 - BRANCH VICE-PRESIDENTS**

- (a) The Branch Vice-Presidents shall at all times assist the Branch President in the execution of his/her duties and when requested by the Branch President shall carry out such functions of the Branch President in his/her absence as the Branch President authorises in writing.
- (b) In the absence of the Branch President, the Senior Vice-President (and in his/her absence also the Junior Vice-President) shall preside over a meeting of the branch or the Branch Committee (or the Branch Council in the case of the New South Wales Branch) and when so doing shall exercise all the powers and functions of the Branch President.
- (c) In the event of the Branch President and all Vice-Presidents being absent from a meeting of a branch or a Branch Committee (or the Branch Council in the case of the New South Wales Branch), the members present shall appoint a chairman to preside over the meeting.

### **58 - BRANCH SECRETARY**

The Secretary shall be the chief executive officer of the branch and subject to these Rules, have charge of the general conduct, administration and business, of the branch. He/she shall be the investigating and organising officer of the branch and shall be the officer to sue and to be sued on behalf of the branch. The Secretary shall be ex-officio, a member of all committees and Sub-Committees of the branch.

The Branch Secretary shall -

- (a) call and attend all meetings of the branch and Branch Committee unless excused and keep or cause to be kept minutes of the business transacted at such meetings;
- (b) receive or cause to be received all moneys on behalf of the branch and issue receipts and pay all moneys received by him/her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;
- (c) have charge of the financial books and statements of his/her Branch;
- (d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee, produce all relevant books;

**60 - BRANCH ASSISTANT SECRETARY-TREASURER OF THE NEW SOUTH WALES BRANCH AND VICTORIA NO. 1 BRANCH**

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- (e) keep an up-to-date register of branch members showing their names and their postal addresses so far as known and shall periodically notify the National Secretary of any changes in such list;
- (f) conduct the business and correspondence on behalf of the branch;
- (g) forward to the National Secretary within fourteen days of the Annual General Meeting of his/her branch a list of the full names and addresses of all office-holders in the branch;
- (h) provide the National Returning Officer and the Branch Returning Officer with such assistance as is necessary to enable them to conduct any elections.
- (i) inform the Branch President whenever he/she will be absent from duty or from a meeting;
- (j) hand to his/her successor, on the latter's election, all moneys and property held by him/her on behalf of the Branch;
- (k) subject to any direction of the Branch Committee appoint, engage, control and dismiss such clerical and other staff as may be necessary for the conduct of the affairs of the branch;
- (l) prepare returns required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;
- (m) have the right to attend or appoint a member of the branch to attend any meeting of members of the branch and to speak and vote on any matter before such meeting provided that a person appointed to attend any such meeting by the Secretary shall also have the right to speak and vote thereafter subject always to any directions given to him/her by the Secretary; and,
- (n) carry out such other duties as the Branch Committee may from time to time assign to him/her or as may be conferred upon him/her by these rules or as may be required by the Fair Work Act 2009 and the Fair Work (Registered Organisations) Act 2009;

Provided that in the case of the New South Wales Branch and the Victoria No. 1 Branch, the Branch Secretary shall not exercise the powers referred to in paragraphs (b), (c), (d) and (j) above. Provided further that the Branch Secretary of these Branches shall not exercise the power outlined in paragraph (l) above in respect of financial and accounting returns required by the *Fair Work (Registered Organisations) Act 2009*.

**59 - BRANCH ASSISTANT SECRETARY**

The Branch Assistant Secretary shall -

- (a) assist the Branch Secretary at all times in the execution of his/her duties; and,
- (b) be subject to the direction of the Branch Secretary and act in his/her stead whenever appointed to do so by the Branch Committee of Management.

**60 - BRANCH ASSISTANT SECRETARY-TREASURER OF THE NEW SOUTH WALES BRANCH AND VICTORIA NO. 1 BRANCH**

Notwithstanding Rule 59, the Branch Assistant Secretary-Treasurer of the New South Wales Branch and the Victoria No. 1 Branch shall:

- (a) assist the Branch Secretary at all times in the execution of his/her duties;

- (b) receive or cause to be received all moneys on behalf of the branch and issue receipts and pay all moneys received by him/her on behalf of the Branch into such bank, Building society, credit union or any other financial institution as the Branch Committee may from time to time decide;
- (c) have charge of the financial books and statements of his/her Branch;
- (d) prepare and present to each meeting of the Branch Committee an up-to-date financial statement and when called upon to do so by the Branch Committee;
- (e) hand to his/her successor, on the latter's election, all moneys and property held by him/her on behalf of the Branch;
- (f) prepare financial and accounting returns required by the *Fair Work (Registered Organisations) Act 2009*;
- (g) ensure that Branch Policies and Procedures are implemented in accordance with Rule 83;
- (h) carry out such other duties of the Branch Committee as it may from time to time assign to him/her or as may be conferred upon him/her by these Rules or as may be required by the *Fair Work Act 2009* and the *Fair Work (Registered Organisations) Act 2009*;
- (i) subject to the sub-rules (b) - (h) above, be subject to the direction of the Branch Secretary and act in his/her stead whenever appointed to do so by the Branch Committee.

#### **61 - BRANCH TRUSTEES**

The Branch Trustees shall invest the funds of the branch and otherwise deal with the property and funds of the branch as they may from time to time be directed by the Branch Committee. Provided that the duties and functions of Branch Trustee in the New South Wales Branch and the Victoria No. 1 Branch shall be undertaken by the Branch Assistant Secretary-Treasurer as directed by the Branch Committee or as required by any Branch policy and procedure determined pursuant to Rule 83.

#### **62 - BRANCH AUDITOR**

A Branch Auditor shall -

- (a) be appointed annually by the Branch Committee;
- (b) be a competent person within the meaning of the *Fair Work (Registered Organisations) Act 2009* (the "Act") and the *Fair Work (Registered Organisations) Regulations* (the "Regulations");
- (c) perform such functions and duties as are prescribed by the Act and the Regulations and such other functions and duties not inconsistent with the Act and the Regulations as are required by the Branch Committee;
- (d) have access to and examine if desired all books, papers, deeds, documents and accounts of the Branch Committee and be empowered to question any office-bearer or officer or employee of the branch with regard to the same and to obtain from any bank or other institution at which the funds of the branch are deposited or invested such information as he/she may require; and,
- (e) have power to place before Branch Committee any suggestion he/she may desire to make concerning the financial affairs of that branch.

**63 - BRANCH FUNDS AND PROPERTY**

- (a) The funds and property of a branch shall consist of -
- (i) any real or personal property of which the branch by these rules or by an established practice not inconsistent with these rules, has, or, in the absence of any limited term lease, bailment or arrangement would have, the right to custody, control or management;
  - (ii) the amounts of entrance fees, contributions, fees, and levies collected by the branch less so much of those amounts as is payable to the National Council in accordance with these rules;
  - (iii) any interest, rents or dividends derived from the investment of the funds;
  - (iv) any superannuation or long service leave fund operated or controlled by the branch for the benefit of its officers or employees;
  - (v) any sick pay fund, accident, pay fund, funeral fund or like fund operated or controlled by the branch for the benefit of its members;
  - (vi) any property acquired wholly or mainly by expenditure of the moneys of such funds and property or derived from other assets of such funds and property; and,
- (b) The funds and property of a branch shall be vested in the Trustees of the branch who shall deal with the same as directed by the Branch Committee. Provided that, in the case of the New South Wales Branch and the Victoria No. 1 Branch there shall be no Branch Trustees.
- (c) All cheques drawn on the funds of a branch shall be signed by the Branch Secretary (or in his/her absence the Branch Assistant Secretary) together with any two (2) members of the Branch Committee. In the case of the New South Wales Branch and the Victoria No. 1 Branch all cheques and written authorisations for the transfer and/or disbursement of funds of the branch shall be signed by the Branch Assistant Secretary-Treasurer (or in his/her absence the Branch Secretary) together with any two (2) members of the Branch Committee. In the case of the Victoria No. 3 Branch all cheques and written authorisations for the transfer and/or disbursement of funds of the branch shall be signed by the Branch Secretary (or in his/her absence the Branch Assistant Secretary) together with any two (2) members of the Branch Committee.
- (d) For the expenditure of the funds of a branch on the general administration of the branch and for purposes reasonably incidental to the general administration of the branch, the prior approval of the Branch Committee shall not be necessary before such cheques (or written authorisations for the transfer and/or disbursements of funds of the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch) are signed or accounts paid.
- (e) Subject always to clause (f) of this rule but notwithstanding anything elsewhere contained in these rules, a shall not make any loan, grant or donation of an amount exceeding \$1,000 unless the Committee of the branch -
- (i) has satisfied itself -
    - (a) that the making of the loan, grant or donation would be in accordance with the other rules of the Union and the branch; and,

- (b) in relation to a loan, that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and,
  - (ii) has approved the making of the loan, grant or donation.
- (f) The provisions of clause (e) of this rule shall not apply to or in relation to payments made by a branch by way of provision for, or reimbursement of, out of pocket expenses incurred by persons for the benefit of the Union or the branch.

#### **64 - REMOVAL OF BRANCH OFFICERS ETC.**

- (a) An Officer of a branch or a member of a Branch Committee or delegate of a branch to the National Council or a Councillor of the New South Wales Branch Council may be removed from his/her office if the Branch Committee (or in the case of the New South Wales Branch, by Branch Council) by majority resolution of members voting finds him/her guilty, in accordance with these rules, of misappropriation of the funds of the Union or any branch thereof, a substantial breach of the rules of the Union, gross misbehaviour or gross neglect of duty or finds that he/she has ceased, according to these rules, to be eligible to hold his/her office.
- (b) Such person may be charged by any member under this rule and such a matter should in the first instance be dealt with by the Union's Ombudsman under rule 17. Any charge shall be in writing and shall be forwarded to the Branch President or the Branch Secretary, who shall notify the person charged of the details of the charge.
- (c) The person charged shall be given not less than fourteen days' notice in writing of the time and place of the meeting at which the charge is to be heard and determined and shall be entitled to attend such meeting and to be heard but not to vote thereat.
- (d) A member so removed by the Branch Committee (or in the case of the New South Wales Branch, by the Branch Council) shall have the right to appeal to the National Executive provided that he/she gives to the National Secretary notice of his/her intention to appeal within seven days of his/her being notified in writing of his/her removal, but the giving of such notice shall not operate to stay the decision of the Branch Committee (or in the case of the New South Wales Branch, the Branch Council).
- (e) Notwithstanding the foregoing, either the Branch President or the Branch Secretary may, in their discretion, suspend from office a person charged under this rule pending determination of the charge but in no event shall a person remain suspended for a period exceeding twenty-eight days. Provided that this sub-rule shall not apply to the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch.
- (f) A person shall be ineligible to hold office as an Officer of a branch or member of a Branch Committee or delegate of a branch to the National Council or a Councillor of the New South Wales Branch Council if
  - (i) he/she becomes of unsound mind; or,
  - (ii) he/she ceases to be a financial member of the Union.

### 65 - BRANCH GENERAL MEETINGS

- (a) An Ordinary General Meeting of the branch may be called at any time on a resolution of the Branch Committee being carried that such a meeting be held.
- (b) A Special General Meeting of the branch shall be called by the Branch President or the Branch Secretary upon receipt by him/her of a request signed by not less than 200 financial members or five per cent of the members of the branch, whichever is the lesser amount. Such request shall state the business to be discussed at the meeting and shall contain the signature and name written in block letters of each petitioner and shall also contain a statement that the petitioner has read and understood the request prior to attaching his or her signature.
- (c) Not less than one month's written notice of the time, place and agenda of all General Meetings shall be given to each shop steward of the branch. Providing that when a matter requires immediate attention such lesser notice of a Special General Meeting as may be determined by the Branch Committee may be given.
- (d) A Special General Meeting shall not be competent to deal with any matter other than the reason set out by the petition of members or the notification of such meeting as has been given by the Branch Committee.
- (e) Any Ordinary General Meeting or Special General Meeting shall be held at such time and place as shall be determined by the Branch Committee of the branch, but should such Special General Meeting be called under the provisions of paragraph (b) it shall be held not later than 35 days following the receipt of the petition by the President or Secretary of the branch.
- (f) No General Meeting of members of a branch shall have power to direct a Branch Committee or in the case of the New South Wales Branch, the Branch Council or reject or review a decision of a Branch Committee or in the case of the New South Wales Branch, the Branch Council unless at least 200 members or five per cent of the financial members of the branch (whichever amount is the lesser) are present at the meeting.
- (g) This sub-rule shall apply to the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3 Branch.
  - (i) Each Branch may call a general meeting of members by way of a series of general meetings of members at different locations.
  - (ii) For the convenience of facilitating member attendance, video conferencing or any other electronic means as may be available from time to time may be used for the series of general meetings.
  - (iii) At the series of general meetings, the President or a Vice-President shall preside. All members of the Branch shall be entitled to attend and vote.
  - (iv) The general meeting is taken to have occurred at the time of the last of the meetings in the series.
  - (v) Quorum shall be calculated by reference to the total number of members attending the series of general meetings. Voting shall be decided by the majority of those members present at the series of general meetings.



**66 – WORKPLACE COMMITTEES (SUB BRANCHES) AND REPRESENTATIVES**

- (a) Workplace Committees (however named) may be established by Branch Committees at workplaces where 15 or more are enrolled as members of this union provided that workplaces where less than 15 employees are enrolled shall be grouped conveniently by the Branch committee so as to form workplace committees and so that each workplace committee so formed shall not comprise less than 15 members of the union. Provided that the Branch committee may establish more than one workplace committee in a workplace.
- (b) It shall be a duty of the Branch Secretary to ensure that Union delegates (however named) are elected at workplaces whether they are part of a workplace committee or not.
- (c) The rules relating to the election of such delegates and workplace committees and the location of such delegates and workplace committees shall be determined by the relevant Branch committee of management. However as a guide the following processes may apply:
  - (i) A person shall not be elected as a Union delegate unless he/she is a financial member of the branch.
  - (ii) A Union delegate shall be elected for a fixed and regular term in accordance with procedures adopted by the Branch committee of management and consistent with these rules.
  - (iii) A Union delegate may -
    - 1. Represent the members of the branch employed in his/her area in dealings between those members and management;
    - 2. Generally represent the branch in his/her area;
    - 3. Take all reasonable and necessary steps to enrol as members all eligible employees in his/her area;
    - 4. Ensure that all members in his/her area are and remain financial;
    - 5. Where authorized in writing by the Branch Secretary, collect all fines, fees, levies and dues owing by members employed in his/her area, pay over all moneys so collected to the Branch Secretary at least monthly and obtain a receipt for the same;
    - 6. Immediately report to the Branch Secretary any complaint from a member in his/her area or any breach or suspected breach of any agreement or award which is occurring or is suspected of having occurred in his/her area; and
    - 7. Report to the Secretary on any matter concerning his/her area as directed by the Secretary or the Branch Committee.
    - 8. Take any action which is authorised or directed by the Branch Secretary or the Branch Committee.
- (d) The election of a person as a Union delegate shall automatically terminate -
  - (i) if he/she resigns his/her membership of the branch or is expelled there from in accordance with these rules;

- (ii) if he/she dies;
  - (iii) if he/she ceases to be employed in the area in respect of which he/she was appointed.
- (e) Should the Secretary become aware that any Union Delegate is not performing such duties or responsibilities as set out in (e), or is reported by a financial member or members at his/her place of employment for dereliction of these duties, the Secretary shall report same to the Committee of Management who shall have the power to refer the matter to the union ombudsman and if necessary following the ombudsman report, summon the Union Delegate before the Committee and should the charges be proved, the Committee shall have the power to dismiss such Union Delegate and cause another election to take place within 28 days of the dismissal.

The Committee shall ensure that a Union Delegate charged with dereliction of duty is informed in writing at least two weeks before the meeting, at which such charges are to be heard of the nature of the charges and the Committee of Management shall ensure a full and fair hearing of such charges, such person shall be eligible for re-election as a Union Delegate.

### 67 - SUB-BRANCHES - NEW SOUTH WALES BRANCH

- (a) Notwithstanding Rule 66, Sub-Branches of the New South Wales Branch may be established by the Branch Committee at workplaces where fifteen (15) or more are enrolled as members attached to the Branch, provided that workplaces where less than fifteen (15) employees are enrolled shall be grouped conveniently by the Branch Committee so as to form Sub-Branches and so that each Sub-Branch so formed shall comprise not less than fifteen (15) members attached to the Branch. Provided further the Branch Committee may authorise the establishment of more than one Sub-Branch in a workplace.
- (b) (i) In addition to the Sub-Branches created pursuant to Rule 65A(a) of these Rules, separate Sub-Branches known as Health Managers Sub-Branches, may be established by Branch Committee on a local health district basis where fifteen (15) or more are enrolled as members attached to the Branch, provided that where less than fifteen (15) employees are enrolled they may be grouped by Branch Committee so that each Health Managers Sub-Branch shall comprise not less than fifteen (15) members attached to the Branch.
- (ii) Members eligible to be members of a Health Managers Sub-Branch may not attend nor vote at Sub-Branch meetings of the institution at which they are employed. They may not accept office in any institutional or other Sub-Branch.
- (c) The members of the Sub-Branch shall elect a committee consisting of a President, Vice-President, Secretary and a number of members of the Sub-Branch, all of whom shall be representatives of the Sub-Branch. The number of ordinary Sub-Branch members to be elected to the committee shall be determined by the Sub-Branch, but, in any case, such number shall be not less than five (5). If more than sufficient candidates are nominated elections shall be held in the order, President, Vice President, Secretary, Committee Member. The quorum of a Sub- Branch committee shall be not less than four (4). The quorum of a Sub-Branch meeting shall be not less than seven (7), provided that only members who at the time of nomination have had at least 12 months' continuous financial membership shall be eligible to nominate for the position of President, Vice-President, Secretary, except where this provision is waived by the Branch Secretary on the grounds of not previously having sufficient members at a workplace. All other provisions of this rule apply to those members.

The Sub-Branch committee shall have no power to alter or rescind rules or to enforce, or perform functions in relation to the enforcement of rules, or to exercise any of the functions of management.

- (d) (i) The members of the Sub-Branch committee shall be elected annually by secret ballot at the Annual General Meeting and shall hold their positions until the next succeeding Annual General Meeting or until their successors have been appointed, whichever is the sooner.
- (ii) At least twenty-one (21) days notice in writing on notice boards accessible to all members of the Sub-Branch shall be given by the Sub-Branch Secretary to members of the date set for Annual General Meetings.
- (iii) At the Annual General Meeting, a Returning Officer and two (2) Scrutineers shall be appointed for the purposes of conducting elections under this Rule and shall exercise their respective functions until their successors have been appointed. The Returning Officer and Scrutineers so appointed,
  - (1) may or may not be a member of the Union,
  - (2) shall not be the holder of any office in or an employee of the Branch or Sub-Branch of the Union. In the event of the Returning Officer or Scrutineers being unable to carry out their duties the Sub-Branch committee may appoint a Returning Officer and/or Scrutineers to conduct the election.

The Returning Officer and Scrutineers so appointed by the Sub-Branch committee shall only act until the Returning Officer and Scrutineer can resume their duties.

- (iv) Nominations must be in writing, signed by the member who is nominated and endorsed by at least two (2) financial members and must be forwarded by registered mail or by any other means that ensures delivery so as to reach the Returning Officer at least seven (7) days prior to the Annual General Meeting. The Returning Officer shall provide each member with a receipt upon delivery of his nomination.
- (v) The Returning Officer shall check all nominations received for compliance with the requirements of these Rules and shall reject any that do not so comply; provided that in the event of his finding a defect in a nomination he/she shall, before rejecting the nomination, notify the person concerned of the defect, and, where it is practicable to do so, give him/her the opportunity of remedying the defect within seven (7) days of his having been so notified.
- (vi) If more than sufficient candidates are nominated an election shall be held.
- (vii) The Returning Officer shall obtain sufficient ballot papers for the election and shall make arrangements so as to enable members to vote at the Annual General Meeting.
- (viii) The Returning Officer shall initial all ballot papers which shall not bear any other distinguishing mark.
- (ix) Any member of the Sub-Branch who will not be present at the Annual General Meeting may lodge with the Returning Officer, at any time after the closing date for nominations and before the Annual General Meeting commences, a written request for an absentee vote. On the receipt of such a written request, the Returning Officer will promptly provide the appropriate absentee voting form to the member. This absentee voting form shall be completed by the member and submitted to the Returning Officer prior to the commencement of the Annual General Meeting. All absentee votes so received shall be counted by the Returning Officer at the Annual General Meeting.
- (x) In the cases of an equality of votes for two (2) or more candidates the Returning Officer shall determine by drawing lots which of the members is elected.

- (xi) Any candidate at any such election may appoint a scrutineer who shall be entitled at the expense of the candidate to be present at all stages of the ballot.
  - (xii) The Returning Officer shall declare the result of the ballot following the count which includes any absentee votes received at the Annual General Meeting and all persons elected shall occupy their positions forthwith.
- (e) There shall be a General Meeting of each Sub-Branch at least once in each quarter for the payment of contributions and other general business, except in cases where the Branch Committee sanctions the holding of meetings less frequently. Members of each Sub-Branch shall attend all general meetings of the Sub-Branch, at which non-members shall not be admitted. An Annual General Meeting of the Sub-Branch shall be held each year in the month of February, March or April, at which nominations shall be received and an election take place for the committee of the Sub-Branch.
- The committee of a Sub-Branch may at any time direct the Secretary to call a Special General Meeting of the Sub- Branch.
- At least seven (7) days' notice in writing on notice boards accessible to all members of the Sub-Branch shall be given by the Sub-Branch Secretary to members of the date set for general meetings or special meetings with the exception of Annual General Meetings where twenty-one (21) days notice shall be given.
- (f) The committee of a Sub-Branch may meet once in every calendar month. Such meetings will be called by the Secretary by notice in writing to members of the Sub-Branch committee. The President of the Sub-Branch may, however, at any time instruct the Secretary to summon a special meeting of the committee.
  - (g) All moneys collected by Sub-Branches shall be forwarded to the Branch Assistant Secretary-Treasurer within two (2) weeks after each general meeting of the Sub-Branch, together with a statement showing the names of the members making such payments and the amount so paid.
  - (h) Each Sub-Branch may adopt by-laws for its own conduct and guidance provided that such by-laws are not inconsistent with any of the Rules of the Branch and are first approved by the Branch Committee. Such by-laws may be altered, added to, amended or rescinded by a simple majority vote of members at an Annual or Special General Meeting of the Sub-Branch, provided that such alterations, additions, amendments or rescissions must be approved by the Branch Committee.
  - (i)
    - (i) The President shall preside at all meetings conducted by the Sub-Branch and will preserve good order so that business may be conducted properly.
    - (ii) He/she shall see that minutes of the meeting are read and confirmed and upon such reading and confirmation sign the same.
    - (iii) The President shall have a deliberate vote only.
    - (iv) The Vice-President shall assist the President, and shall in his/her absence exercise the power of the President.

- (j) The Secretary shall attend all meetings and prepare documents for the Sub-Branch and committee meetings. He/she shall conduct and file all correspondence, summon members to meetings of the Sub-Branch committee and members of the Sub-Branch to the quarterly meeting. He/she shall submit to the President, any urgent information he/she may officially receive and the President, together with the Secretary, shall decide upon the best course to be proceeded with until the next meeting of the Sub-Branch committee. He/she shall keep a register of the names and addresses of the representatives and members of the Sub- Branch.
- (k) Subject to the resolutions and the decisions of the Branch Council and of the Branch Committee, the meetings of the Sub-Branch shall have the general control and conduct of the business of the Sub-Branch and decisions of the meetings shall bind all members of the Sub-Branch.
- (l) Casual vacancies occurring in the positions of President, Vice-President, Secretary or member of the committee of the Sub-Branch shall be filled by the Sub-Branch committee from members of the Sub-Branch who would be eligible to nominate for the vacant position at an annual election. Such person shall only hold such position until the following election.
- (m) No member of the Sub-Branch committee shall be dismissed unless a resolution is passed by a majority of members at an ordinary or Special General Meeting of the Sub-Branch convened for the purpose, finding him/her guilty, in accordance with these rules, of misappropriation of the funds of the Union, a substantial breach of the rules of the Union, gross misbehaviour or gross neglect of duty, or finding that he/she has ceased, according to these rules, to be eligible to hold his position.

No such motion will be moved unless the member concerned has been given fourteen (14) days' notice in writing of the intention to move a resolution charging him/her with an offence, the alleged grounds for such resolution and the time, date and place of the meeting at which he shall be given the opportunity to be heard.

- (n) This Rule shall be reviewed by the Branch Council prior to the elections due in 2014.

#### 68 - BRANCH QUORUM

- (a) Quorums for the meetings of a branch held in accordance with these rules, shall be as follows -
  - (i) at any General Meeting of a branch 25 financial members;
  - (ii) at any meeting of the Branch Committee, a majority of members of the Branch Committee or ten members thereof, whichever is the lesser.
- (b) If no quorum be present at the expiration of 15 minutes after the time stated for the commencement of the meeting, such meeting shall lapse, but without prejudice to another meeting being called for the same purpose as such meeting was called, at such other time and place as may be thought fit. In the event that any such other meeting has been called, the business for which the same has been called may be transacted by those present, notwithstanding the fact that there is not a quorum present. Any resolutions passed at any such meeting shall be as binding and effectual as if a quorum were present. Seven days' notice of any such other meeting shall be given by the Branch Secretary to all members of the branch or Branch Committee as the case may be.
- (c) Notwithstanding anything else contained in these rules, where a branch has less than 100 members the following quorum shall apply:
  - (i) At any General Meeting of a branch 10 financial members;

- (ii) at any meeting of the Branch Committee, a majority of members of the Branch Committee or five members thereof, whichever is the lesser.

#### **69 - BRANCH VOTING**

- (a) Voting at all meetings of a branch or Branch Committee or the New South Wales Branch Council shall be by show of hands or by such other method as the meeting may decide. The Chairman shall have a deliberative vote only and in the event of a tie the questions shall lapse.

#### **70 - BRANCH PLEBISCITE**

- (a) Notwithstanding anything contained in these rules, a plebiscite of all members of a branch -
  - (i) may be held for any purpose at the discretion of the Branch Committee; and,
  - (ii) shall be held if requested by a requisition in writing and signed by not less than 5 per cent of the financial members of the branch.

Such requisition to contain in block letters the name of each member signing same and the name of the establishment at which such member is employed. Provided that no decision of a Branch Committee or the New South Wales Branch Council shall be reviewed or referred to a plebiscite of members pursuant to paragraph (ii) of this clause unless the appropriate request has been delivered to the Branch President or Branch Secretary within two months of the said decision.

- (b) Any such plebiscite shall be conducted by secret postal ballot and shall be under the absolute control and direction of the Branch Returning Officer who shall -
  - (i) prepare ballot papers which shall contain the question to be voted on;
  - (ii) issue a ballot paper to each member entitled to vote;
  - (iii) determine the time and date for the closure of the ballot, having consideration for the convenience of the voters;
  - (iv) take such steps as are necessary to ensure that a result is correctly ascertained; and,
  - (v) report the result of the plebiscite to the first meeting of the Branch Committee held after the conclusion of the counting of the votes cast.
- (c) A simple majority decision of the members voting shall be final and shall prevail over any contrary decision of the Branch Committee or the New South Wales Branch Council.

### **PART D - GENERAL**

#### **71 - INSPECTION OF BOOKS**

Any financial member of the Union shall, on giving three days' notice to the Branch Secretary if seeking to inspect Branch books, or the National Secretary if seeking to inspect the National Union's books, and within the ordinary office hours of the Union be entitled to inspect the books and documents of the Union, provided that the Union may refuse to allow inspection of such books and documents where to do so would, or would be likely to, amount to a breach of confidentiality or an invasion of privacy in respect of any other member or person.

## **72 - MEMBERS ENGAGED ON UNION BUSINESS**

- (a) Should any member of the Union lose any part of his/her salary or wages or be required to work overtime in consequence of his/her having been engaged on the business of the Union or his/her branch under instructions from the National Executive or his/her Branch Committee, the National Executive or his/her Branch Committee, as the case may be, shall make good all such loss or shall remunerate the member at his/her rate of salary for the time occupied by him/her whilst so engaged. Reasonable out-of-pocket expenses shall be allowed members engaged on Union or branch business.
- (b) Any Officer or member transacting business on behalf of the Union or any branch thereof shall report on such business to the body which appointed him/her to carry out such business. Any such Officer or member neglecting to make such report may forfeit all claims for any time lost and expenses incurred whilst so engaged on such business.

## **73 - DISSOLUTION**

The Union shall not be dissolved so long as there are two branches and there are not less than 100 members. The question of dissolution shall be determined by a national plebiscite in accordance with these rules. The provisions of this clause shall not apply to any amalgamation with any other trade union or organisation.

## **74 - AFFILIATION**

- (a) The Union may, by resolution of the National Council, affiliate with any body having objects in common with the objects of the Union.
- (b) A Branch Committee may by resolution affiliate the branch with any body having objects in common with the objects of the Union.

## **75 - ALTERATIONS OF RULES**

- (a) The National Council shall have power to make new Rules or to add to, amend, rescind or otherwise alter these rules at a meeting of the National Council or by postal ballot of the members of the National Council conducted pursuant to Rule 25 of these rules.
- (b) Notice of any proposal for the making of a new Rule or for the adding to, amendment, rescission or other alteration of any of these Rules shall be given in writing to each member of the National Council and to the Secretary of each branch at least one month prior to the relevant meeting of the National Council or to the commencement of the postal ballot (as the case may be) provided that any such proposal may itself be amended when being considered by the relevant meeting.
- (c) Nothing contained in this Rule shall derogate from the power conferred by Rule 49 on a branch to make Rules for its own internal management but details of any proposal to make such a Rule shall be contained in the notice calling the special general meeting of members at which the proposal is to be considered.

## **76 - NAME AND RESIDENCE**

A register of the names and addresses of the Officers and members of the branch shall be kept in the office of the branch. A member shall notify the Branch Secretary in writing within fourteen days of any change of that member's address. Any notice which is required to be given to a member under these Rules shall be forwarded to the address of that member last appearing on that register of members.

### 77 - DUAL OFFICES

- (a) No person shall hold more than one full time paid office within the Union or any branch thereof.
- (b) No person shall simultaneously hold more than one of the offices of National President, National Vice-President, National Trustee, National Secretary, Senior National Assistant Secretary or National Assistant Secretary.
- (c)
  - (i) Where a Branch Secretary is elected or appointed to one of the National offices of National President, National Vice-President, National Trustee, National Secretary, Senior National Assistant Secretary or National Assistant Secretary, he/she shall not while holding that National office also act as a member of National Executive by virtue of being a Branch Secretary. During the time that the Branch Secretary holds that National office, the Assistant Branch Secretary of the relevant Branch shall act as a member of the National Executive instead of that Branch Secretary, and shall, on the National Executive, exercise all the powers and duties otherwise exercised by that Branch Secretary. If the Branch Secretary ceases to hold that National office, he/she shall resume the position on National Executive he/she holds by virtue of his/her office of Branch Secretary.
  - (ii) Where a Branch Assistant Secretary is elected or appointed to one of the National offices of National President, National Vice-President, National Trustee, National Secretary, Senior National Assistant Secretary or National Assistant Secretary, and where the Branch Secretary of that same Branch is elected or appointed to one of those National offices, that Branch Assistant Secretary shall not while holding that National office also act as a member of National Executive by virtue of paragraph 73(c)(i). During the time that the Branch Assistant Secretary holds that National office, and the Branch Secretary of that same Branch holds one of those National offices, the Branch Committee of Management of the relevant Branch shall appoint one of its members to act as a member of the National Executive instead of that Branch Secretary, and that person shall, on the National Executive, exercise all the powers and duties otherwise exercised by that Branch Secretary. If the Branch Assistant Secretary ceases to hold that National office, he/she shall act in the position on National Executive he/she would otherwise act in instead of the Branch Secretary.
- (d) No person shall simultaneously hold more than one of the following offices -  
Branch President, Branch Vice-President, Branch Secretary, Branch Assistant Secretary, Branch Trustee, and ordinary member of Branch Committee.
- (e) No person shall simultaneously hold a full time paid National office and an office of ordinary member of Branch Committee.

### 78 - FULL TIME PAID OFFICERS - NEW SOUTH WALES BRANCH AND NEW SOUTH WALES STATE REGISTERED HEALTH SERVICES UNION NSW

- (a) Notwithstanding anything elsewhere in the Rules of the Union, in the New South Wales Branch where the Branch Secretary or Branch Assistant Secretary-Treasurer is also elected or appointed to an equivalent full time paid office in the Health Services Union NSW, an organisation registered pursuant to the provisions of the *Industrial Relations Act 1996* (NSW), and is in receipt of remuneration and terms and conditions of employment from the Health Services Union NSW equal to that determined by the Branch Council, he/she shall be deemed to be paid by the New South Wales Branch for such time as he/she continues to receive such payment from Health Services Union NSW and shall not be entitled to be paid by the New South Wales Branch. For all other purposes under the rules of the Union the officer shall be deemed to be the holder of a full time paid office in the New South Wales Branch.



- (b) For the avoidance of doubt, if an officer referred to in sub-rule (a) herein ceases to be paid by the Health Services Union NSW in respect of the full time paid office, he/she will be entitled to remuneration and terms and conditions of employment provided by the New South Wales Branch identical to that previously provided by the Health Services Union NSW.

### **79 - STANDING ORDERS AND RULES OF DEBATE**

The National Council shall determine from time to time the standing orders and rules of debate to apply to meetings of the National Council, National Executive, Branch Committees and General meetings of members of the Union or any branch thereof. A copy of such standing orders and rules of debate as determined from time to time shall be supplied free of charge by a Branch Secretary to any financial member of the branch requesting the same.

### **80 – ASSOCIATE MEMBER**

Associate membership is only open to persons who are not otherwise eligible to apply for ordinary membership.

A resigning or retiring member may apply to remain an Associate Member. Further any person, who supports the objects of the Union as outlined in Rules 2 and 3, may apply to become an Associate Member.

The relevant Branch shall determine the conditions and benefits of Associate Membership and any administration fee to be applied provided that Associate Members shall not be deemed financial members for all purposes of these Rules.

## **PART E – SPECIAL BRANCH RULES – NEW SOUTH WALES, VICTORIA NO.1 AND VICTORIA NO.3 BRANCHES**

### **81 – APPLICATION OF THIS PART**

This Part shall apply to the New South Wales Branch, the Victoria No. 1 Branch and the Victoria No. 3.

### **82 – DEFINITIONS**

- (a) “board” means a group of persons who supervise a corporation, organisation, association or other like body including a Board of Directors
- (b) “disclosure period” means the financial year of the Union as defined by Rule 36(f)
- (c) “declared person or body” means:
- (i) an officer of the Branch who has disclosed a material personal interest under Rule 85(a) and (b); and
  - (ii) the interest relates to, or is in, the person or body; and
  - (iii) the officer has not notified the Branch that the officer no longer has the interest.
- (d) “financial duties” includes duties that relate to the financial management of the Union or a Branch of the Union
- (e) “financial year” means the financial year of the Union as defined by Rule 36(f)

- (f) “General Manager” means the General Manager of Fair Work Australia.
- (g) “non-cash benefit” means property or services in any form other than money, but does not include a computer, mobile phone or other electronic device that is used only or mainly for work purposes.
- (h) “peak council” means a national or State council or federation that is effectively representative of a significant number of organisations (within the ordinary meaning of the term) representing employers or employees in a range of industries.
- (i) “office” has the same meaning as defined by Section 9 of the *Fair Work (Registered Organisations) Act 2009*.
- (j) “related party” has the same meaning as defined by Section 9B of the *Fair Work (Registered Organisations) Act 2009*.
- (k) “relative” in relation to a person, means the spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of the person
- (l) “relevant remuneration” in relation to an officer of the Branch for a disclosure period is the sum of the following:
  - (i) Any remuneration disclosed to the Branch by the officer under Rules 84(a) and (b) during the disclosure period;
  - (ii) any remuneration paid during the disclosure period, to the officer of the Branch.
- (m) “relevant non-cash benefits” in relation to an officer of the Branch for a disclosure period means the non-cash benefits provided to the officer, at any time during the disclosure period, in connection with the performance of the officer’s duties as an officer, by the Branch or by a related party of the Branch

**83 – BRANCH POLICIES AND PROCEDURES**

- (a) Each Branch shall develop and implement internal control policies and procedures relating to the expenditure of the Branch and to ensure that the Branch is conducted in accordance with the principles of good governance and to ensure accountability to members of the Branch. Each Branch shall also develop and implement policies and procedures to ensure that the Branch is representative of and accountable to its members, will be able to operate effectively, will encourage members to participate in the affairs of their Branch and to encourage the democratic functioning and control of the Branch.
- (b) Such policies and procedures shall be adopted by the Branch Committee (or in the case of the New South Wales Branch, the Branch Council) and once adopted shall be binding on all officers and members of the Branch. Such policies and procedures must be identified in the resolutions of the Branch Committee (or in the case of the New South Wales Branch, the Branch Council) as Rule 83 Branch policies and procedures.
- (c) Rule 83 Branch policies and procedures must be published on the website of the Branch within fourteen (14) days of their adoption.

- (d) Rule 83 Branch policies and procedures once adopted may only be altered, amended, or revoked by a resolution duly passed by not less than 70% of all members of the Branch Committee (or in the case of New South Wales Branch, the Branch Council). Provided that where the Branch Committee (or in the case of New South Wales Branch, the Branch Council) so alters, amends or revokes the Rule 83 Branch policies and procedures, such alteration, amendment or revocation may be rescinded by a plebiscite of the Branch in accordance with Rule 70.
- (e) Notwithstanding anything appearing elsewhere in these Rules, this Rule may only be altered, amended or revoked by a resolution passed by not less than 70% of all members of Branch Committee (or in the case of New South Wales Branch, the Branch Council). Provided that where the Branch Committee (or in the case of New South Wales Branch, the Branch Council) so alters, amends or revokes this Rule, such alteration, amendment or revocation may be rescinded by a plebiscite of the Branch in accordance with Rule 70. Nothing in this sub-rule operates to limit the operation generally of Rule 70.

**84 – DISCLOSURE BY BRANCH OFFICERS OF REMUNERATION AND NON-CASH BENEFITS**

- (a) Each person holding an office, in a Branch shall disclose to the Branch Committee any remuneration paid to the officer:
  - (i) because the officer is a member of, or holds a position with, a board or other organisation, if:
    - (A) the officer holds such a position with the board or other organisation only because the officer is an officer of the Branch; or
    - (B) the officer was nominated for the position by the Union, the Branch or a peak council; or
  - (ii) by any third party, in connection with the performance of the officers' duties as an officer.
- (b) The disclosure required by sub-rule (a) shall be made to the Branch Committee:
  - (i) as soon as practicable after the remuneration is paid to the officer; and
  - (ii) in writing.
- (c) A Branch Committee shall disclose to the members of the Branch:
  - (i) the identity of each officer of the Branch who receives remuneration from the Branch in connection with their holding of office during the disclosure period, and
  - (ii) all disclosures made by officers of the Branch pursuant to sub-rule (a); and
  - (iii) for those officers:
    - (A) the actual amount of the officers' relevant remuneration for the disclosure period; and
    - (B) the value of, and the form of the officers' relevant non cash benefits for the disclosure period.

- (d) For the purposes of sub-rules (c), the disclosure shall be made:
  - (i) in relation to each financial year;
  - (ii) within three (3) months after the end of the financial year; and
  - (iii) in writing and published on the Branch website.

#### **85 – DISCLOSURE BY BRANCH OFFICERS OF PERSONAL INTEREST**

- (a) Each person holding an office in a Branch shall disclose to the Branch Committee any material personal interest in a matter that:
  - (i) the officer has or acquires; or
  - (ii) a relative of the officer has or acquires;that relates to the affairs of the Branch.
- (b) The disclosure required by sub-rule (a) shall be made to the Branch Committee:
  - (i) as soon as practicable after the interest is known or acquired; and
  - (ii) in writing.
- (c) A Branch Committee shall disclose to the members of the Branch the interests disclosed to the Branch pursuant to sub-rules (a).
- (d) For the purposes of sub-rule (c), the disclosures shall be made:
  - (i) in relation to each financial year;
  - (ii) within three (3) months after the end of the financial year; and
  - (iii) in writing.

#### **86 – DISCLOSURE BY BRANCH OF PAYMENTS**

- (a) Each Branch shall disclose to the members of the Branch:
  - (i) each payment made by the Branch, during the disclosure period:
    - (A) to a related party of the Branch; or
    - (B) to a declared person or body of the Branch.
  - (ii) the total of the payments made by the Branch, during the disclosure period:
    - (A) to each related party of the Branch; or
    - (B) to each declared person or body of the Branch.

- (b) Sub-rule (a) does not apply to a payment made to a related party if the payment consists of amounts deducted by the Branch from remuneration payable to officers or employees of the Branch.
- (c) For the purposes of sub-rule (a), the disclosures shall be made:
  - (i) in relation to each financial year;
  - (ii) within three (3) months after the end of the financial year; and
  - (iii) in writing and published on the Branch website.

### **87 – TRAINING OF OFFICERS OF BRANCHES**

- (a) This Rule shall take effect on the commencement of Schedule 1 Part 2 of the *Fair Work (Registered Organisations) Amendment Act 2012*.
- (b) Each person holding an office in a Branch whose duties include duties that relate to the financial management of the Branch shall undertake training:
  - (i) approved by the General Manager under the provisions of the *Fair Work (Registered Organisations) Act 2009* or an Act replacing that Act; and
  - (ii) that covers each of the officers' financial duties.
- (c) An officer shall complete the training required by sub-rule (b) within:
  - (i) six (6) months after the person begins to hold office; or
  - (ii) if the officer holds office at the date of the Proclamation referred to in sub-rule (a), within six (6) months of that date.

### **88 - AUDIT AND COMPLIANCE COMMITTEE**

- (a) Each Branch shall have an Audit and Compliance Committee comprising the Branch Assistant Secretary-Treasurer (in the case of the New South Wales and Victoria No.1 Branches), Branch Secretary (in the case of the Victoria No.3 Branch), the two (2) Branch Trustees (in the case of the Victoria No.3 Branch) and two (2) ordinary members of the Branch Committee appointed by and from the Branch Committee. Provided that in the case of the New South Wales Branch there shall be four (4) ordinary members appointed by and from the Branch Council. Provided further that in the case of the Victoria No.1 Branch, there shall be four (4) ordinary members appointed by and from the Branch Committee.
- (b) The Audit and Compliance Committee shall prepare budget and cash forecasts, closely examine financial statements on a regular basis and monitor and protect the funds and property of the branch.
- (c) The Audit and Compliance Committee shall meet on a monthly basis and provide monthly written reports of its activities to the Branch Committee.

**89 – TRANSITIONAL RULE - MEMBERSHIP**

- (a) On the date of the certification of this Rule any person who is then life member of the HSU East Branch shall become a life member of the New South Wales Branch, the Victoria No.1 Branch or the Victoria No.3 Branch, whichever is applicable having regard to Rule 48.
- (b) On the date of the certification of this Rule, any period of membership and/or financial membership of the Union in the HSU East Branch in accordance with the Union's Rules prior to the date of certification shall be deemed to be for all purposes membership and/or financial membership of the Union in the New South Wales Branch, Victoria No.1 Branch or Victoria No.3 Branch, whichever is applicable having regard to Rule 48. Any period of unfinancial membership in the HSU East Branch in accordance with the Union's Rules prior to the date of certification shall be deemed to be for all purposes a period of unfinancial membership in the New South Wales Branch, the Victoria No.1 Branch or the Victoria No.3 Branch, whichever is applicable having regard to Rule 48.

**PART F - SPECIAL BRANCH RULE - VICTORIA NO. 1 BRANCH**

**90 – VICTORIA NO. 1 BRANCH PROPERTY**

- (a) This rule prevails over any other rule to the extent of any inconsistency and may only be amended or rescinded by a resolution of the National Executive consenting to the amendment or rescission.
- (b) For the purposes of this rule:
  - (i) A reference to the Secured Property is a reference to the property known as 208-212 Park Street, South Melbourne, Victoria, or any new property acquired by the Union for the benefit of the Victoria No. 1 Branch;
  - (ii) The Secured Property forms part of the Branch Fund of the Victoria No. 1 Branch; and
  - (iii) A reference to financing documents is a reference to facility agreements, loan agreements, mortgages, guarantees, security and other documents relating to the financial accommodation provided by a lender and security for that financial accommodation.
- (c) This rule deals with any financing documents required to be entered into by the Union with the Commonwealth Bank for the benefit of the Victoria No. 1 Branch as a consequence of the dissolution of the HSU East Branch or any replacement financing documents affecting the Secured Property which are entered into by the Union for the benefit of the Victoria No. 1 Branch.
- (d) To the extent that the Union is required to enter into financing documents, the Branch Committee shall ensure that all payments required to be made pursuant to any financing documents will be made as and when required and all other obligations required to be performed will be undertaken as and when required. Without limiting the generality of this obligation, the Branch Committee shall ensure that:

- (i) all facilities provided by the lender are repaid in full on or before the due date as and when required under the financing documents;
- (ii) if the financing documents include a guarantee and indemnity or other security provided in respect of facilities provided to the Health Services Union NSW, it pays any amounts that become payable to the lender under that guarantee and indemnity and security documents as and when demanded by the lender;
- (iii) it does not take any action or fail to perform any act that will result in a breach under the financing documents or an event of default or potential event of default occurring under the financing documents;
- (iv) at all times the Branch has the capacity to make the payments as and when required under the financing documents;
- (v) all information that is provided to a lender for the purpose of obtaining the financial accommodation referred to in the financing documents and during the term of the financing documents including any accounts and financial information is not incorrect or misleading;
- (vi) there is no material adverse change in its assets or financial position from that disclosed in information provided to a lender for the purpose of obtaining the financial accommodation during the term of the financing documents;
- (vii) all ongoing compliance and reporting obligations under the financing documents are met, including, but not limited to, maintaining proper accounts and providing such accounts, cash flow projections, reports and valuations as may be required by a lender and which comply with the accounting standards required by a lender;
- (viii) all the requirements of a lender in relation to insurance over the Secured Property are complied with and ensure that the Union is the beneficiary of any insurance policy;
- (ix) all obligations under financing documents in relation to the Secured Property are complied with;
- (x) all monies required to be paid in connection with the Secured Property including rates and taxes are paid on the due date for payment;
- (xi) the Secured Property is maintained in good condition and repair;
- (xii) no leases, licences or other rights to use the Secured Property are granted without obtaining the prior approval of the National Executive and the lender;
- (xiii) the prior consent of National Executive and the lender is obtained in respect of any dealings relating to the Secured Property;
- (xiv) there is no subdivision or consolidation of any Secured Property without obtaining the prior approval of the National Executive and the lender;

- (xv) there is no change to or steps taken to change the zoning of any Secured Property or change the use of the Secured Property or the nature of the business conducted on the Secured Property without obtaining the prior consent of the National Executive and the lender; and
  - (xvi) no variations to any leases or management agreements affecting the Secured Property are made which will materially affect the Secured Property and its value.
  - (xvii) Where in this sub-rule the consent of the National Executive is required, the National Executive will not unreasonably withhold that consent.
- (e) The Branch Committee will ensure that the National Secretary is provided with:
- (i) details of any proposed communication or information to be provided to a lender prior to it being provided to a lender which communication or information must be approved by the National Secretary prior to it being submitted to a lender;
  - (ii) copies of all accounts, reports, valuations, cash flow projections and any other financial information that is provided to a lender;
  - (iii) evidence of insurance in relation to the Secured Property and that all premiums in relation to the insurance have been paid;
  - (iv) evidence that all monies in connection with the Secured Property have been paid on time including rates and taxes;
  - (v) immediate notification of any event, action or circumstance that may result in a breach of the financing documents or an event of default or potential event of default under the financing documents; and
  - (vi) any other notification, information or documents received from a lender in relation to the financial accommodation provided by a lender and the financing documents.
- (f) The Branch Committee will ensure that the National Secretary is provided with a monthly statement showing that the Branch has met its obligation to pay instalments of principal with interest, line fees, and any other amounts due to be paid each month under the financing documents and any further information requested by the National Secretary or the National Executive in writing in relation to the Branch Committee's management of the Secured Property and adherence to the terms of the financing documents.
- (g) The Branch Committee shall inform the National Secretary, and keep the National Secretary informed, of all accounts at banks or financial institutions in which funds that form part of the Branch Fund of the Branch are held and the purpose for which each account is maintained.



- (h) In the event that the National Executive forms the view, on reasonable grounds, that the Branch Committee has breached its obligations, or that there is a likelihood that the Branch Committee will not meet its obligations, under the terms and conditions of the financing documents, the National Executive may take all steps necessary to remedy the breach, including exercising any of the powers of the Branch Committee in relation to the Secured Property. The National Executive shall be entitled to meet the costs of taking such remedial action using the funds of the Branch.
- (i) In the event that the Branch wishes to enter into new financing documents, it shall obtain the consent of the National Executive. The National Executive shall give that consent by resolution provided that it is satisfied on reasonable grounds that entering into the new financing documents is in the best interests of the Union, having regard to the Union's obligations under the existing financing documents and the new financing documents, the interests of the Branch and any other relevant matter.
- (j) In the event that the Branch Committee decides to sell the Secured Property, or acquire new real property, it shall obtain the consent of the National Executive for the sale or acquisition. The National Executive shall give that consent by a resolution, provided that it is satisfied on reasonable grounds that the sale is in the best interests of the Union, having regard to the impact of the sale or acquisition on the Union, the interests of the Branch and any other relevant matters.
- (k) The Branch Committee shall pay for all costs and expenses incurred by the Union in relation to considering and entering into any such financing documents and complying with any ongoing compliance obligations under the financing documents as and when required under the financing documents or in relation to any sale of the Secured Property or the acquisition of any new real property.

\*\*\*END OF RULES\*\*\*

**Attachment 4**

**VID1375/2013**

**Order of Jessop J in the Federal Court of Australia**

**6 March 2014**

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No: (P)VID1375/2013

Federal Court of Australia  
District Registry: Victoria  
Division: Fair Work

**HEALTH SERVICES UNION**  
Applicant

**ORDER**

**JUDGE:** Justice Jessup  
**DATE OF ORDER:** 6 March 2014  
**WHERE MADE:** Melbourne

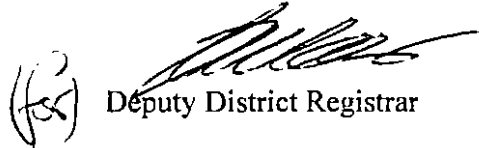
**THE COURT DECLARES THAT:**

The Queensland Branch of the Health Services Union has ceased to function effectively and there are no effective means under the rules of the Health Services Union or of the Queensland Branch by which it can be enabled to function effectively.

**THE COURT ORDERS THAT:**

1. The Scheme contained in the provisions of the Schedule attached to these Orders, for the taking of action by the National Executive of the Applicant to enable the Queensland Branch to function effectively, is approved.

Date that entry is stamped: 6 March 2014

  
Deputy District Registrar

## SCHEDULE

- (1) In this Scheme,
- (a) a reference to the Branch means the Queensland Branch of the Health Services Union;
  - (b) a reference to the Branch Committee of Management means the Branch Committee of Management of the Branch;
  - (c) a reference to the rules means the rules of the Health Services Union; and
  - (d) a reference to the National Officers means the National Officers of the Health Services Union specified in rule 19 of the rules, other than the National Secretary.
- (2) Notwithstanding anything in the rules, including rule 50,
- (a) the Branch Committee of Management shall consist of the National Officers;
  - (b) the duties and powers of the officers of the Branch specified in the first column of the below table shall be performed and exercised by the corresponding national officer identified in the second column:

<b>Branch office</b>	<b>National officer</b>
Branch President	National President
Branch Vice Presidents	National Vice President
Branch Secretary	National Assistant Secretary
Branch Assistant Secretary	Senior National Assistant Secretary
Branch Trustees	National Trustees

- (3) The National Officers do not become members of the Branch by virtue of this Scheme.
- (4) From the commencement of this scheme until the declaration of the results in the next elections held for offices in the Branch pursuant to rule 29 of the rules,

- (a) the Branch Committee of Management shall not have the power referred to in paragraph 49(f) of the rules;
  - (b) rule 64 shall not apply to National Officers who perform and exercise powers of the Branch Committee of Management or of offices of the Branch pursuant to this Scheme;
  - (c) so far as it applies to the Branch, in rule 65(b) and (e), and in rule 70(a)(ii), the words “five per cent” are replaced by the words “25 per cent”;
  - (d) rule 77(e) shall not apply to National Officers who perform and exercise powers of the Branch Committee of Management or of offices of the Branch pursuant to this Scheme.
- (5) The following modifications are made to rule 29A of the rules for the purposes of elections to be held for offices in the Branch in 2014:
- (a) in rule 29A(d)(iii), the nomination need not be signed or endorsed by any other financial member;
  - (b) in rule 29A(e)(i) the word “twelve” is replaced by the word “one”;
  - (c) in rule 29A(e)(ii) the word “three” is replaced by the word “one”.

# **Attachment 5**

**PR972468**

**Arrangement for conduct of election**

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*Workplace Relations Act 1996*  
s.189 of Schedule 1 - arrangement for conduct of an election

**Health Services Union of Australia**  
(E2006/127)

T. NASSIOS  
DEPUTY INDUSTRIAL REGISTRAR

MELBOURNE, 16 MAY 2006

*Arrangement for conduct of election.*

**DECISION**

[1] On 12, 15 and 16 May 2006 the abovenamed organisation lodged in the Industrial Registry prescribed information in relation to an election for the following offices:

**National Office**

National President	1
National Vice President	1
National Secretary	1
Senior National Assistant Secretary	1
National Assistant Secretary	1
National Trustees	2

**Victoria No. 1 Branch**

Branch President	1
Branch Senior Vice President	1
Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	8
Branch Delegates to National Council	15

**Victoria No. 2 Branch**

Branch President	1
Branch Senior Vice President	1
Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	8
Branch Delegates to National Council	7

### **Victoria No. 3 Branch**

Branch President	1
Branch Senior Vice President	1
Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	5
Branch Delegates to National Council	4

### **Victoria No. 4 Branch**

Branch President	1
Branch Senior Vice President	1
Branch Vice President (Pharmacist)	1
Branch Vice President (Psychologist)	1
Branch Trustee (Psychologist)	1
Branch Trustee	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Committee Members (Pharmacists)	2
Branch Committee Member (Psychologist)	1
Ordinary Members of Branch Committee	9
Branch Delegates to National Council	3

### **Victoria No. 5 Branch**

Branch President	1
Branch Senior Vice President	1
Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	5
Branch Delegate to National Council	1

### **New South Wales Branch**

President	1
Vice Presidents	2
General Secretary-Treasurer	1
Assistant Secretary	1
Organisers	20
Ordinary Members of Union Council	24
Branch Delegates to National Council	38

### **Western Australia Branch**

Branch President	1
Branch Senior Vice President	1



Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	7
Branch Delegates to National Council	5

#### **South Australia Branch**

Branch President	1
Branch Senior Vice President	1
Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	5
Branch Delegate to National Council	1

#### **Queensland Branch**

Branch President	1
Branch Senior Vice President	1
Branch Junior Vice President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	5
Branch Delegate to National Council	1

#### **Tasmania No. 1 Branch**

Branch President	1
Branch Senior Vice-President	1
Branch Junior Vice-President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	8
Branch Delegates to National Council	8

#### **Tasmania No. 2 Branch:**

Branch President	1
Branch Senior Vice-President	1
Branch Junior Vice-President	1
Branch Secretary	1
Branch Assistant Secretary	1
Branch Trustees	2
Ordinary Members of Branch Committee	5
Branch Delegate to National Council	1

[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 Schedule 1 of the Workplace Relations Act 1996, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



Printed by authority of the Commonwealth Government Printer

**Attachment 6**  
**PR997468**  
**Arrangement for conduct of election**

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Fair Work  
Australia

## DECISION

*Fair Work (Registered Organisations) Act 2009*

s.189 – Arrangement for conduct of election

### Health Service Union

(E2010/2562)

T. NASSIOS

MELBOURNE, 25 MAY 2010

*Arrangement for conduct of election.*

[1] On 13 April 2010 the Health Services Union lodged with Fair Work Australia prescribed information in relation to an election for a number of offices.

[2] On 19 May 2010 the organisation's solicitors advised that the election should be delayed pending the determination of a rule change that would have the effect of merging the NSW, Victoria No. 1 and Victoria No. 3 Branches to form a new *HSU East Branch*. Those rule alterations were certified on 24 May 2010 [R2010/35].

[3] Subsequently on 25 May 2010 the organisation lodged a revised election notification that advised that elections for the following offices are now due:

#### **National Office**

National President  
National Vice-President  
National Secretary  
Senior National Assistant Secretary  
National Assistant Secretary  
National Trustees (2)

#### **HSU East Branch**

General Secretary  
Deputy General Secretaries (2)  
Divisional Secretaries (2)  
Assistant Divisional Secretaries (2)  
Executive President (1)  
General Representatives from NSW (20)  
Ordinary Members of Union Council (48)  
Branch Delegates to National Council (35)

#### **Tasmania No 1 Branch**

Branch President  
Branch Senior Vice-President  
Branch Junior Vice-President  
Branch Secretary  
Branch Assistant Secretary  
Branch Trustees (2)  
Ordinary Members of Branch Committee (8)  
Branch Delegates to National Council (8)

**Tasmania No 2 Branch**

Branch President  
Branch Senior Vice-President  
Branch Junior Vice-President  
Branch Secretary  
Branch Assistant Secretary  
Branch Trustees (2)  
Ordinary Members of Branch Committee (5)  
Branch Delegate to National Council (1)

**Victoria No 2 Branch**

Branch President  
Branch Senior Vice-President  
Branch Junior Vice-President  
Branch Secretary  
Branch Assistant Secretary  
Branch Trustees (2)  
Ordinary Members of Branch Committee (8)  
Branch Delegates to National Council (7)

**Victoria No 4 Branch**

Branch President  
Branch Senior Vice-President  
Branch Vice-President – Pharmacists  
Branch Vice-President - Psychologists  
Branch Trustee  
Branch Trustee - Psychologist  
Branch Secretary  
Branch Assistant Secretary  
Branch Committee Members – Pharmacists (2)  
Branch Committee Member – Psychologist  
Ordinary Members of Branch Committee (9)  
Branch Delegates to National Council (3)

**SA Branch**

Branch President  
Branch Senior Vice-President  
Branch Junior Vice-President  
Branch Secretary  
Branch Assistant Secretary  
Branch Trustees (2)  
Ordinary Member of Branch Committee (5)  
Branch Delegate to National Council (1)

**WA Branch**

Branch President  
Branch Senior Vice-President  
Branch Junior Vice-President  
Branch Secretary  
Branch Assistant Secretary

Branch Trustees (2)  
Ordinary Members of Branch Committee (7)  
Branch Delegate to National Council (5)

**QLD Branch**

Branch President  
Branch Senior Vice-President  
Branch Junior Vice-President  
Branch Secretary  
Branch Assistant Secretary  
Branch Trustees (2)  
Ordinary Members of Branch Committee (5)  
Branch Delegate to National Council (1)

[4] 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  
Fair Work Australia

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**Attachment 7**  
**[2014] FWCD 3587**

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## DECISION

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

**Health Services Union**  
(R2014/58 & R2014/75)

MR ENRIGHT

MELBOURNE, 5 JUNE 2014

*Alteration of other rules of organisation.*

[1] On 1 April 2014 and 14 April 2014, the Health Services Union (the Union) lodged with the Fair Work Commission notices and declarations setting out particulars of alterations to the rules of the Health Services Union.

[2] The particulars set out alterations to Rules 48 and 48A of the Union’s rules.

[3] On 26 May 2014, a supplementary declaration was lodged by the Union in connection with the alteration to Rule 48. It provided statements addressing sub-regulations 126(1)(b), 126(2)(a) and 126(2)(c) of the *Fair Work (Registered Organisations) Regulations 2009*. On 27 May 2014 a further declaration was forwarded to the Fair Work Commission. That declaration provided additional information about the steps taken by the Union to transact the alterations to Rule 48A.

[4] On the information contained in the notices, I am satisfied the alterations have been made under the rules of the organisation.

[5] Two matters arise in relation to the substance of the alterations.

[6] I turn first to the alteration to Rule 48. That alteration will abolish the Union’s Tasmania No. 2 Branch and rename the Tasmania No. 1 Branch the “Tasmania Branch”.

[7] One consequence of the alteration is the abolition of every office within the Tasmania No. 2 Branch. The alterations contain no relevant transitional provisions. As a result, the offices will be abolished on the day the alterations are certified, due to the operation of subsection 159(3) of the *Fair Work (Registered Organisations) Act 2009* (the Act). This means that the offices will be abolished during the current term of office and the affected officers’ terms of office will be truncated.

[8] I recently noted that<sup>1</sup>:

The courts have outlined the principles relevant to the truncation of offices including:



- 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;<sup>2</sup> and
- The alterations must not have an oppressive, unreasonable or unjust effect on members or applicants for membership.<sup>3</sup>

[9] I have already stated I believe the decision was made in accordance with the rules.

[10] Offices in all Branches have four year terms. The next scheduled election for Branch offices within the Union will take place later in 2014. Nominations for that election will open shortly. Under the rules of the Union, persons elected to an office within a Branch take up their office when declared elected. Therefore, the period of truncation is relatively short.

[11] Under the rules of the Union, the decision to abolish the Branch rests with the National Council. In this instance the National Council acted to give effect to a request made by a general meeting of the Tasmania No. 2 Branch.<sup>4</sup> The affected officers are likely to have received notice of the Tasmania No. 2 Branch general meeting and to have had the opportunity to attend, speak to and vote on the motion to seek the Branch's abolition. I believe that the decision to truncate the offices, as a consequence of the abolition of the Branch, was bona fide.

[12] As to whether the alteration is oppressive, unreasonable or unjust, I agree with Delegate Carruthers that "While the duration of the possible truncation is not determinative, the relative shortness of the truncated period is nonetheless relevant to the decision at hand."<sup>5</sup>

[13] Another factor I consider relevant is the Union's stated intention that the rule alteration occur before the next Branch elections take place.<sup>6</sup> Certifying the alterations to Rule 48 will mean that members of the Tasmania No. 2 Branch are transferred to the newly named Tasmania Branch in time to participate in the forthcoming elections in that Branch. Conversely, refusing to certify the alterations to Rule 48 until the relevant terms of office had expired would mean that the affected members would be denied the opportunity to participate in elections in the Tasmania Branch for almost four years. The first outcome furthers Parliament's intention in enacting the Act.<sup>7</sup> The latter outcome would not. I believe the alteration is not oppressive, unreasonable or unjust.

[14] I turn next to consider the alteration to Part 3(d) of Rule 48A.

[15] The alteration proposed for certification states:

In the event of an appointment to fill a casual vacancy occurring on the Branch Committee of Management, the Branch Committee of Management may appoint any member of the Branch who is a member of the relevant component association to which the departing Committee member was a member to fill that vacancy.

[16] I noted in paragraph [10] that offices within Branches of the Union have four year terms. Therefore the effect of this rule is to provide for the filling of a casual vacancy for a period exceeding 12 months or three-quarters of the term of the relevant office. The alteration

to Part 3(d) of Rule 48A is therefore contrary to subsection 146(2) of the Act. It cannot be certified under section 159 of the Act.

[17] I note that the present rule similarly offends subsection 146(2) of the Act. I recommend that the Victoria No. 4 Branch takes steps to bring its rules into conformity with the Act as soon as is practicable.

[18] Other than the alteration to Part 3(d) of Rule 48A, the alterations are, in my opinion, the alterations comply with and are not contrary to the 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.



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DELEGATE OF THE GENERAL MANAGER

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<sup>1</sup> [2014] FWCD 3071; 16 May 2014; paragraph 7

<sup>2</sup> *Saint v Australia Postal and Telecommunications Union and Others* (1976) 13 ALR 649.

<sup>3</sup> *Roughan v Australasian Meat Industry Employees' Union* (1992) 36 FCR 536.

<sup>4</sup> Declaration of C. Brown lodged on 14 April 2014; paragraphs 5.

<sup>5</sup> [2013] FWCD 3311; 30 May 2013; paragraph 10. See also [2014] FWCD 3071; 16 May 2014; paragraph 10.

<sup>6</sup> See 14 April 2014 email from National Industrial Officer M. McLeay which contained the lodgement material for R2014/75; third paragraph.

<sup>7</sup> See for instance subsections 5(3)(a), (b) and (d) of the Act

**Attachment 8**  
**Resolution of Tasmania Number 1 Branch**  
**Special General Meeting**  
**31 March 2014**

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*“In accordance with Rule 51 of the registered rules of the Union this Special General Meeting of the Health Services Union, Tasmania No. 1 Branch resolves to endorse the decision of the Branch Committee of Management at its meeting on 12-14 March to increase the number of ordinary members of the Branch Committee by one to 9 Ordinary members. This increase in number is to take effect from the Branch elections scheduled to be held in 2014.”*

## ELLIOTT, Mark

---

**From:** ELLIOTT, Mark  
**Sent:** Wednesday, 25 June 2014 5:51 PM  
**To:** 'rhys.richards@aec.gov.au'  
**Subject:** HSU Branch elections - E2014/115  
**Attachments:** 051v.doc; 051v.pdf; E2014\_116\_replacement\_PI\_25jun14.pdf

Good afternoon Rhys,

As discussed please find attached revised PI and accompanying material in relation to the abovementioned matter.

In addition please find attached a consolidated copy of the HSU rules in both Word for Windows and PDF format (051v.doc and 051v.pdf respectively).

Regards,

**Mark Elliott**  
Regulatory Compliance Branch

**Fair Work Commission**  
Tel: 03 8661 7899  
Fax: 03 9655 0410  
[mark.elliott@fwc.gov.au](mailto:mark.elliott@fwc.gov.au)

11 Exhibition Street, Melbourne, Victoria 3000  
GPO Box 1994, Melbourne, Victoria 3001

[www.fwc.gov.au](http://www.fwc.gov.au)

***Please be aware that my email address has changed to [mark.elliott@fwc.gov.au](mailto:mark.elliott@fwc.gov.au), effective 1 January 2013. Please update your records accordingly.***

---

**From:** Mark McLeay [<mailto:markm@hsu.net.au>]  
**Sent:** Wednesday, 25 June 2014 1:28 PM  
**To:** Orgs  
**Cc:** ELLIOTT, Mark; Chris Brown  
**Subject:** FW: Notice and Statement of Prescribed Information for an Election (HSU Branches)

Dear General Manager

Attachment 1 in my previous email contained an error. Please replace it with the Attachment 1 included in the email.

Yours faithfully

Mark McLeay



**Mark McLeay | Senior National Industrial Officer**  
Suite 1, Level 3, 377 Sussex St, Sydney, NSW, 2000  
PO Box 20349, World Square, NSW, 2002  
ABN 68 243 768 561

HSU National acknowledges the Traditional Owners and Elders past and present across Australia. We acknowledge the Gadigal people of the Eora Nation, the Traditional Owners of the lands on which our office is located.

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---

**From:** Mark McLeay  
**Sent:** Wednesday, 25 June 2014 1:20 PM  
**To:** [orgs@fwc.gov.au](mailto:orgs@fwc.gov.au)  
**Cc:** ELLIOTT, Mark ([Mark.ELLIOTT@fwc.gov.au](mailto:Mark.ELLIOTT@fwc.gov.au)); Chris Brown  
**Subject:** Notice and Statement of Prescribed Information for an Election (HSU Branches)

Dear General Manager

Please find attached a revised Notice and Statement of Prescribed Information for an Election for HSU Branches. The Notice and Statement include:

- Chris Brown's cover letter (20140625 branch prescribed information cover letter.pdf)
- Attachment 2 – [2012]FWAD6936
- Attachment 3 – HSU rule book incorporating alterations of 23 November 2012 (R2012/204)
- Attachment 4 – VID1375/2013 Order of Jessop J
- Attachment 5 – PR972468 Arrangement for conduct of election
- Attachment 6 – PR997468 Arrangement for conduct of election
- Attachment 7 – [2104]FWCD3587
- Attachment 8 – Resolution of Tasmania Number 1 Branch Special General Meeting

The revised Notice and Statement of Prescribed Information for an Election reflect the changes to HSU rules incorporating the alterations of 31/05/2014 (R2013/500) and 05/06/2014 (R2014/58 & R2014/75).

Yours faithfully

Mark McLeay



**Mark McLeay | Senior National Industrial Officer**  
Suite 1, Level 3, 377 Sussex St, Sydney, NSW, 2000  
PO Box 20349, World Square, NSW, 2002  
ABN 68 243 768 561  
p 02 8203 6066 f 02 8203 6060 m 0409 860 459  
e [markm@hsu.net.au](mailto:markm@hsu.net.au) w [www.hsu.net.au](http://www.hsu.net.au)

HSU National acknowledges the Traditional Owners and Elders past and present across Australia. We acknowledge the Gadigal people of the Eora Nation, the Traditional Owners of the lands on which our office is located.

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ABN 68 243 768 561



16 April 2014

**Bernadette O'Neill**

General Manager  
Fair Work Commission  
orgs@fwc.gov.au

Dear General Manager,

I wrote to you on 31 March 2014 regarding our Notice and Statement of Prescribed Information for an Election. In putting together the information I neglected to include a copy of the decision and Order of his Honour Justice Jessop of the Federal Court of Australia of 6 March 2014 [(P)VID1375/2013] relating to the of Administration of the Union's Queensland Branch. A copy is attached.

The Order changes the eligibility criteria for Queensland members wishing to nominate for a position at the upcoming Branch election. In particular, I draw your attention to paragraph 5 of the Schedule included in the Order. Paragraph 5 reduces the eligibility criteria for candidates seeking election in the Queensland Branch.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Chris Brown', written in a cursive style.

**Chris Brown**  
Acting National Secretary



No: (P)VID1375/2013

Federal Court of Australia  
District Registry: Victoria  
Division: Fair Work

**HEALTH SERVICES UNION**  
Applicant

**ORDER**

**JUDGE:** Justice Jessup  
**DATE OF ORDER:** 6 March 2014  
**WHERE MADE:** Melbourne


**THE COURT DECLARES THAT:**

The Queensland Branch of the Health Services Union has ceased to function effectively and there are no effective means under the rules of the Health Services Union or of the Queensland Branch by which it can be enabled to function effectively.

**THE COURT ORDERS THAT:**

1. The Scheme contained in the provisions of the Schedule attached to these Orders, for the taking of action by the National Executive of the Applicant to enable the Queensland Branch to function effectively, is approved.

Date that entry is stamped: 6 March 2014

  
(f) Deputy District Registrar

## SCHEDULE

- (1) In this Scheme,
- (a) a reference to the Branch means the Queensland Branch of the Health Services Union;
  - (b) a reference to the Branch Committee of Management means the Branch Committee of Management of the Branch;
  - (c) a reference to the rules means the rules of the Health Services Union; and
  - (d) a reference to the National Officers means the National Officers of the Health Services Union specified in rule 19 of the rules, other than the National Secretary.

- (2) Notwithstanding anything in the rules, including rule 50,
- (a) the Branch Committee of Management shall consist of the National Officers;
  - (b) the duties and powers of the officers of the Branch specified in the first column of the below table shall be performed and exercised by the corresponding national officer identified in the second column:

<b>Branch office</b>	<b>National officer</b>
Branch President	National President
Branch Vice Presidents	National Vice President
Branch Secretary	National Assistant Secretary
Branch Assistant Secretary	Senior National Assistant Secretary
Branch Trustees	National Trustees

- (3) The National Officers do not become members of the Branch by virtue of this Scheme.
- (4) From the commencement of this scheme until the declaration of the results in the next elections held for offices in the Branch pursuant to rule 29 of the rules,

- (a) the Branch Committee of Management shall not have the power referred to in paragraph 49(f) of the rules;
- (b) rule 64 shall not apply to National Officers who perform and exercise powers of the Branch Committee of Management or of offices of the Branch pursuant to this Scheme;
- (c) so far as it applies to the Branch, in rule 65(b) and (e), and in rule 70(a)(ii), the words "five per cent" are replaced by the words "25 per cent";
- (d) rule 77(e) shall not apply to National Officers who perform and exercise powers of the Branch Committee of Management or of offices of the Branch pursuant to this Scheme.
- (5) The following modifications are made to rule 29A of the rules for the purposes of elections to be held for offices in the Branch in 2014:
- (a) in rule 29A(d)(iii), the nomination need not be signed or endorsed by any other financial member;
- (b) in rule 29A(e)(i) the word "twelve" is replaced by the word "one";
- (c) in rule 29A(e)(ii) the word "three" is replaced by the word "one".

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ABN 68 243 768 561



31 March 2014

**Bernadette O'Neill**

General Manager  
Fair Work Commission  
GPO Box 1994  
Melbourne VIC 3001

By email: [orgs@fwc.gov.au](mailto:orgs@fwc.gov.au)

Dear General Manager

**Application pursuant to section 189(1) of the Fair Work (Registered Organisations) Act 2009 - Notice and Statement of Prescribed Information for an Election**

I, Chris Brown, being the Senior National Assistant Secretary of the Health Services Union, make the following statement:

I am the Senior National Assistant Secretary of the Health Services Union. I am currently the Acting National Secretary.

I am authorised to lodge the following prescribed information concerning forthcoming elections in the New South Wales Branch, South Australia Branch, Tasmania No 1 Branch, Tasmania No 2 Branch, Victoria No 1 Branch, Victoria No 2 Branch, Victoria No 3 Branch, Queensland Branch and Western Australia Branch of the Health Services Union, and

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

The Health Services Union currently has an application to vary the Union's rules before the Fair Work Commission (R2013/500) to certify rule amendments made by the HSU National Council in November 2013. If the application is successful, it will see a change to some positions in the organisation to be elected as well as changes in some branches for the positions to be elected.

The Victoria No.4 Branch has also very recently moved to amend its rules to reduce the size of the Branch Committee of Management from 12 ordinary members to 6 ordinary members. An application for certification of this rule in time for the upcoming elections will be made shortly.

The Tasmania No 2 Branch has resolved to wind up operations and is seeking to do so prior to elections taking place. If this is successful, this will result in the Tasmania No 2 Branch being written out of the rules and no election for the Branch will be necessary.

The prescribed information required under Regulation 138 for the purposes of section 189(1) of the Act based on the current rules of the Union is as follows:

1. The name of each office or position for which an election is required is set out in Attachment A.
2. The reason for the election is that the term of the office or position has expired or is due to expire in the normal course of events (and a new office has been created).
3. The number of offices or positions for which an election is required is detailed in Attachment A which also includes information as to the number of members of each Branch as at 31 December 2013.

Rule 29 provides for the election of:

- i. Officers of a Branch
- ii. Ordinary members of a Branch Committee
- iii. Councillors of the New South Wales Branch Council; and
- iv. Branch delegates to National Council

Rule 20 provides for the number of Branch delegates to National Council to be elected.

4. The electorate for the positions detailed in Attachment A are members of the relevant Branch.
5. Nominations for positions that are subject to the direct voting system shall open on 1 June 2014 with the closing date of the nominations being 14 June 2014.
6. The day on which the roll of voters for the ballot shall close shall be on the seventh day prior to the opening of nominations.

7. The kind of voting system to be used in the conduct of the ballot shall be as described in the tables in Attachment A.

It is intended to lodge a separate application for elections for Officers of the Organisation. The rules of the Union provide that this election take place at a National Council meeting. The voting system to be used to conduct these elections is a collegiate one.

A National Council meeting has been scheduled to be held in September 2014 following Branch elections.

Please contact Mark McLeay in our Sydney office on 02 8203 6066 if you or your Officers have any enquires in relation to these matters.

A handwritten signature in black ink, appearing to read 'Chris Brown', with a stylized flourish at the end.

**Chris Brown**  
Senior National Assistant Secretary  
(Acting National Secretary)

## New South Wales Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	30332
Branch Senior Vice-President	1	Direct vote	30332
Branch Junior Vice President	1	Direct vote	30332
Branch Secretary	1	Direct vote	30332
Branch Assistant Secretary/Treasurer	1	Direct Vote	30332
Ordinary Member of the Branch Committee	5	Direct vote	30332
Member of the Branch Council *	25	Direct vote	30332
Branch delegate to National Council	21	Direct vote	30332

\* - Twenty five (25) Councillors constituted as follows:

Twenty one (21) Councillors with at least one (1) but not more than two (2) being drawn from hospitals or health services in each of the fifteen (15) local health districts (refer Note 1) provided that one (1) Councillor shall come from the Health Managers Sub Branches;

One (1) Councillor from a Private Hospital;

One (1) Councillor from a non public sector aged care facility;

One (1) Councillor from the NSW Ambulance Services; and

One (1) Councillor from the Australian Capital Territory.

Note 1 - The fifteen (15) local health districts ("LHD") as constituted by section 17, and specified in Schedule 1 of the Health Services Act 1997 (NSW), as at the date of the certification of this Rule, with these being Sydney LHD, South Western Sydney LHD, South Eastern Sydney LHD, Illawarra Shoalhaven LHD, Western Sydney LHD, Nepean Blue Mountain LHD, Northern Sydney LHD, Central Coast LHD, Hunter New England LHD, Murrumbidgee LHD, Southern NSW LHD, Western NSW LHD, Far West LHD, Mid North Coast LHD, and Northern NSW LHD.

### Queensland Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	29
Branch Senior Vice- President	1	Direct vote	29
Branch Junior Vice President	1	Direct vote	29
Branch Secretary	1	Direct vote	29
Branch Assistant Secretary	1	Direct vote	29
Branch Trustee	2	Direct vote	29
Ordinary Member of the Branch Committee	5	Direct vote	29
Branch delegate to National Council	1	Direct vote	29

### South Australia Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	871
Branch Senior Vice- President	1	Direct vote	871
Branch Junior Vice President	1	Direct vote	871
Branch Secretary	1	Direct vote	871
Branch Assistant Secretary	1	Direct vote	871
Branch Trustee	2	Direct vote	871
Ordinary Member of the Branch Committee	5	Direct vote	871
Branch delegate to National Council	1	Direct vote	871



### Tasmania No 1 Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	7921
Branch Senior Vice- President	1	Direct vote	7921
Branch Junior Vice President	1	Direct vote	7921
Branch Secretary	1	Direct vote	7921
Branch Assistant Secretary	1	Direct Vote	7921
Branch Trustee	2	Direct vote	7921
Ordinary Member of the Branch Committee	9	Direct vote	7921
Branch delegate to National Council	8	Direct vote	7921

### Tasmania No 2 Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	29
Branch Senior Vice- President	1	Direct vote	29
Branch Junior Vice President	1	Direct vote	29
Branch Secretary	1	Direct vote	29
Branch Assistant Secretary	1	Direct vote	29
Branch Trustee	2	Direct vote	29
Ordinary Member of the Branch Committee	5	Direct vote	29
Branch delegate to National Council	1	Direct vote	29

### Victoria No 1 Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	11086
Branch Senior Vice-President	1	Direct vote	11086
Branch Junior Vice President	1	Direct vote	11086
Branch Secretary	1	Direct vote	11086
Branch Assistant Secretary/Treasurer	1	Direct vote	11086
Ordinary Member of the Branch Committee	5	Direct vote	11086
Branch delegate to National Council	11	Direct vote	11086

### Victoria No 2 Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	7024
Branch Senior Vice- President	1	Direct vote	7024
Branch Junior Vice President	1	Direct vote	7024
Branch Secretary	1	Direct vote	7024
Branch Assistant Secretary	1	Direct vote	7024
Branch Trustee	2	Direct vote	7024
Ordinary Member of the Branch Committee	8	Direct vote	7024
Branch delegate to National Council	8	Direct vote	7024

### Victoria No 3 Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	3206
Branch Senior Vice- President	1	Direct vote	3206
Branch Junior Vice President	1	Direct vote	3206
Branch Secretary	1	Direct vote	3206
Branch Assistant Secretary	1	Direct vote	3206
Branch Trustee	2	Direct vote	3206
Ordinary Member of the Branch Committee	5	Direct vote	3206
Branch delegate to National Council	4	Direct vote	3206

### Victoria No 4 Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	2876
Branch Senior Vice- President *	1	Direct vote	2876
Branch Vice President *	2	Direct vote	2876
Branch Secretary	1	Direct vote	2876
Branch Assistant Secretary	1	Direct vote	2876
Branch Trustee *	1	Direct vote	2876
Ordinary Member of the Branch Committee *	12	Direct vote	2876
Branch delegate to National Council	3	Direct vote	2876

\* - one position of Junior Vice President, one Trustee position and one committee position shall be elected by and from the members of the Branch who are also eligible to be members of the Victorian Psychologists' Association; and one position of Junior Vice President and two committee positions shall

be elected by and from members of the Branch who are also eligible to be members of the Association of Hospital Pharmacists. Nominations for these positions shall be called in accordance with Rule 29 mutatis mutandis. These positions shall be called respectively "Vice President (Psychologist)", "Trustee (Psychologist)", "Committee Member (Psychologist)", "Vice President (Pharmacist)", "Committee Members (Pharmacists)".

### Western Australia Branch

Office	Number of positions	Voting System	Members as at 31 December 2013
Branch President	1	Direct vote	5687
Branch Senior Vice- President	1	Direct vote	5687
Branch Junior Vice President	1	Direct vote	5687
Branch Secretary	1	Direct vote	5687
Branch Assistant Secretary	1	Direct Vote	5687
Branch Trustee	2	Direct vote	5687
Ordinary Member of the Branch Committee	7	Direct vote	5687
Branch delegate to National Council	6	Direct vote	5687

## ELLIOTT, Mark

---

**From:** Mark McLeay [markm@hsu.net.au]  
**Sent:** Monday, 31 March 2014 5:10 PM  
**To:** Orgs  
**Subject:** Notice and Statement of Prescribed Information for an Election  
**Attachments:** 20140331 Prescribed Information for an Election .pdf

Dear General Manager

Please find attached the Notice and Statement of Prescribed Information for an Election for branches of the HSU. A separate Notice and Statement of Prescribed Information for an Election for the HSU national offices will be supplied at a later date.

If you or one of your Officers has any questions about this Statement, please contact me.

Yours faithfully

Mark McLeay

**Mark McLeay | Senior National Industrial Officer**

Suite 1, Level 3, 377 Sussex St, Sydney, NSW, 2000  
PO Box 20349, World Square, NSW, 2002  
ABN 68 243 768 561  
p 02 8203 6066 f 02 8203 6060 m 0409 860 459  
e [markm@hsu.net.au](mailto:markm@hsu.net.au) w [www.hsu.net.au](http://www.hsu.net.au)

HSU National acknowledges the Traditional Owners and Elders past and present across Australia. We acknowledge the Gadigal people of the Eora Nation, the Traditional Owners of the lands on which our office is located.

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