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Reference: VIC 09-275 - S1E1

Contact: Tony King
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Mr John Vines
Administrator
Health Services Union of Australia
208-212 Park Street
SOUTH MELBOURNE VIC 3205

Dear Mr Vines

**Health Services Union of Australia
Victoria No1 Branch elections
E2009/10032**

I refer to my letter of 31 August 2009 concerning the arrangements for me to conduct an election for various positions in your Organisation.

My declaration of the contested offices is attached.

The election is now complete.

Yours sincerely



Tony King
Returning Officer

14 December 2009

cc all successful candidates

Mr Marco Bolano
Branch Secretary
Health Services Union – Victoria No1 Branch
208-212 Park Street
SOUTH MELBOURNE VIC 3205

Post Election Report For: Health Services Union – Victoria No1 Branch
Election E2009/10032

I refer to the above election for your organisation.

Section 197(1) of Schedule 1 of the Fair Work (Registered Organisations) Act 2009 requires the AEC to provide a written report on the conduct of the election to Fair Work Australia and to the organisation or branch for whom the election was conducted. A copy of the report in relation to this election is attached.

Section 198 of Schedule 1 requires that if an organisation or branch is given a post election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report. The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

If the attached Report identifies a rule that was difficult to interpret or apply, you should forward your response to the AEC by email to 'industrial.elections@aec.gov.au' within thirty days of the date of the report.

Section 198 and the regulations also require an organisation to make the post election report and the organisation's response to the report (if applicable) available to members. Further, Regulation 141(4) of the Fair Work (Registered Organisations) Act 2009 requires an organisation or branch to publish a notice on its web site advising members that a copy of the post election report is available upon request. If a website is not available, publishing a notice in a journal or newsletter would be considered appropriate.

Please contact me if you wish to clarify any aspect of this report.

Tony King
Returning Officer

14 December 2009

POST ELECTION REPORT

Health Services Union – Victoria No1 Branch

ELECTION/S COVERED IN THIS REPORT

Election Decision No/s: E2009/10032

RULES

Rules used for the election: [051V: Incorporates alterations of 13 May 2008 (R2008/242)] Replaces rulebook dated 31/01/2008

Rules difficult to apply/interpret: None
Model Rule reference (if any): N/A

ROLL OF VOTERS

Total number of voters on the Roll: 14270
Number of apparent workplace addresses: 11
Number of non-current addresses: 9
Other matters pertaining to the roll of voters: Nil

IRREGULARITIES

Details of written allegations of irregularities, and action taken by AEC: 4/11/09 Diana Asmar v HSU [VID 797/2009] The organisation or branch has used or allowed to be used its property or resources to help a candidate against another candidate in an election.
6/11/09 Tracey J [VID 797/2009] Dismissed.
27/11/09 Mary Galati – Application for Inquiry into HSU election. [VID 853/2009]
27/11/09 Tracey J [VID 853/2009] That an advertisement be placed in newspapers circulating within the State of Victoria, in the terms of attachment B to these orders.
Mr Tony King as Returning Officer, as soon as practicable to send a letter by post to all members of the Branch in the terms of attachment A to these orders; and to preserve and keep separate any mail items received by it on or after 27/11/09 in relation to the election.
9/12/09 [VID 853/2009] Application withdrawn.

Other irregularities identified, and action taken: Unsubstantiated verbal allegations regarding unofficial ballot boxes at Frankston Hospital. Letter written to all candidates to cease any such action.

ATTACHMENTS

Declaration of Results

Tony King
Returning Officer
14 December 2009

**Health Services Union of Australia
Victoria No1 Branch**

DECLARATION OF RESULTS FOR CONTESTED OFFICES

Results of the election for the following offices conducted in accordance with the provisions of the Fair Work (Registered Organisations) Act 2009 and the rules of the organisation.

E2009/10032

Total number of persons on the roll of voters	14270
Ballot papers issued	14270
Duplicate ballot papers issued	947
TOTAL BALLOT PAPERS ISSUED	15217
Ballot papers / envelopes returned for scrutiny	8466
Less ballot papers / envelopes rejected at preliminary scrutiny	188
TOTAL BALLOT PAPERS ADMITTED TO SCRUTINY	8278
Percentage of ballot papers returned to number issued	55%
Ballot papers returned as unclaimed mail	228
Ballot papers not returned	6523

BRANCH PRESIDENT

<u>Candidates</u>	<u>Votes</u>
BARCLAY, Rhonda	2366
HUMPAGE, Rhonda	2349
CARMICHAEL, Carol	3295
Formal ballot papers	8010
Informal ballot papers	297

I declare Carol Carmichael elected.

BRANCH SENIOR VICE-PRESIDENT

<u>Candidates</u>	<u>Votes</u>
JACKS, Sheri	2352
BUTLER, Les	2369
FLYNN, Leonie	3258
Formal ballot papers	7979
Informal ballot papers	328

I declare Leonie Flynn elected.

BRANCH JUNIOR VICE-PRESIDENT

<u>Candidates</u>	<u>Votes</u>
EDEN, David John	2354
CONQUO, Donna	2351
O'BRIEN, Pat	3261
Formal ballot papers	7966
Informal ballot papers	341

I declare Pat O'Brien elected.

BRANCH SECRETARY

<u>Candidates</u>	<u>Votes</u>
GOVAN, Daniel	66
ASMAR, Diana	2378
BYRON, Doug	2357
BOLANO, Marco	3319
Formal ballot papers	8120
Informal ballot papers	187

I declare Marco Bolano elected.

BRANCH ASSISTANT SECRETARY

<u>Candidates</u>	<u>Votes</u>
LOMAS, Moira	69
SULLIVAN, Kevin	2340
ROBINSON, Joyce	2360
MARTORANA, Jamie	3256
Formal ballot papers	8025
Informal ballot papers	282

I declare Jamie Martorana elected.

BRANCH TRUSTEE (2)

<u>Candidates</u>	<u>Votes</u>
MALTEZOS, Sindy	2348
SAMAH, Eros	2331
CARROLL, Frank	2359
TORO, Maria	2355
KERR, Philip	3258
NENADOVIC, Milicia	3242
Total votes	15893
Formal ballot papers	7973
Informal ballot papers	334

I declare Philip Kerr and Milicia Nenadovic elected.

ORDINARY MEMBER OF THE BRANCH COMMITTEE (8)

<u>Candidates</u>	<u>Votes</u>
VILLANUEVA, Jimmy	2354
HARGREAVES, Andrew	2350
DICKSON, Winston D.	2341
MITCHELL, Julie-Anne	2353
MITCHELL, Velda	2339
NUGUID, Silvi	2321
ALIMI-ARSLAN, Nuriye	2326
AUSTIN, Graeme	2341
VAN AREND, Rob	2346
BANKS, Jennifer	2357
BANNON, Dolores	2340
HONDROS, Anastasia	2347
LOVELL, Ricky	2341
JOYCE, Toni	2350
RICKETTS, Bill	2340
GOUIOS, Chrisoula	2338
DAVIDSON, Brett	3254
SCIDONE, Lori	3237
WILKEN, Iva Maria	3232
COX, Terry	3242
GRAHAM, Julie	3253
SHEPHERD, Lyn	3250
BOWLES, Stuart	3243
GRECH, Joe	3237
Total votes	63432
Formal ballot papers	7979
Informal ballot papers	328

I declare Brett Davidson, Julie Graham, Lyn Shepherd, Stuart Bowles, Terry Cox, Lori Scidone, Joe Grech and Iva Maria Wilken elected.

NATIONAL COUNCIL DELEGATE (15)

<u>Candidates</u>	<u>Votes</u>
LAVERY, Marie	2346
ASMAR, Diana	2366
KERSLAKE, Janine	2336
JACKS, Sheri	2345
HARGREAVES, Andrew	2333
RANGINUI, Margaret	2335
SAMAH, Eros	2324
ALIMI-ARSLAN, Nuriye	2321
SULLIVAN, Kevin	2340
MENZIES, Don	2331
EDEN, David John	2345
RADBURN, Jeanette	2335
BARCLAY, Rhonda	2338
WANIGASEKERA, Roy	2324
WATTS, Barry	2339
THOMPSON, John	2346
HOCKLEY, Sandra	2348
CHRISTIAN, Carol	2351
LEECH, Helen	2347
MOON, Simon	2340
MORREY, Robert	2335

BYRON, Doug	2353
MCLAREN, Karen	2350
SHAW, Estelle	2337
MEEHAN, Adrian	2341
WILLS, Sandra	2344
ROUHAN, Leanne	2328
STEMMER, Joanne	2336
RENNIE, Paul	2331
WAGENVOORT, Antonia	2344
CONDOS, Joni	3236
CATHERINE, Gino	3238
WHEELHOUSE, Tammie	3249
MANTHOS, Desmond	3234
MARTORANA, Jamie	3259
PAPARAS, Jim	3238
BRAVIS, Peter	3240
AGIUS, Terry	3238
BUTLER, Melissa	3264
KING, Clive	3246
CARMICHAEL, Carol	3264
ANSET, Alicia	3241
DAVIDSON, Peter	3249
MCINTOSH, Dee	3239
BOLANO, Marco	3266
Total votes	118890
Formal ballot papers	8007
Informal ballot papers	300

I declare Marco Bolano, Melissa Butler, Carol Carmichael, Jamie Martorana, Tammie Wheelhouse, Peter Davidson, Clive King, Alicia Anset, Peter Bravis, Dee McIntosh, Gino Catherine, Jim Paparas, Terry Agius, Joni Condos and Desmond Manthos, elected.



Tony King
Returning Officer
Australian Electoral Commission
9 December 2009



Fair Work
Australia

DECISION

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

Health Services Union

(E2009/10032)

T. NASSIOS

MELBOURNE, 18 AUGUST 2009

Arrangement for conduct of election.

[1] On 13 August 2009 the National Secretary of the Health Services Union (HSU) lodged with Fair Work Australia a request for the arrangement of an election in the Victoria No.1 Branch of the HSU pursuant to an order of Justice Tracey of the Federal Court of Australia in VID 278 of 2009 on 4 August 2009. A copy of Justice Tracey's order is attached to this decision.

[2] Paragraph 2 of the Scheme that is attached to Justice Tracey's order required the National Executive of the HSU to request the General Manager of Fair Work Australia to arrange for the conduct of an election of 'all the offices in the Branch'. To the best of my knowledge, the offices of the Branch immediately before they were declared vacant in accordance with paragraph 1 of the Scheme attached to Justice Tracey's order were as follows:

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Members of the Branch Committee (8)

Additional Ordinary Member of the Branch Committee (1) appointed from the Committee of Management of the former Victoria No.5 Branch (pursuant to Rule 48B of the HSU Rules)

National Council Delegates (15)

Additional National Council Delegate (1) from the former Victoria No.5 Branch (pursuant to Rule 48B of the HSU Rules)

[3] The Victoria No.5 Branch ceased to exist on 1 February 2008 following a merger with the Victoria No.1 Branch in accordance with rules 48(a)(ii) and 48B of the HSU Rules. Rule 48B provides for a transitional period from 1 February 2008 to the completion of the Annual General Meeting of the Victoria No.1 Branch in 2010. On the merger date all of the offices in the Victoria

No.5 Branch were abolished but Rule 48B provides for the appointment, prior to the merger date, by the Branch Committee of the Victoria No.5 Branch of one of its members to be the holder of the office of an ordinary member of the Branch Committee of Management of the Victoria No.1 Branch from the merger date for the transitional period. Rule 48B further provides that, on and from the merger date, a person holding office on the day immediately preceding the merger date as National Council delegate of the Victoria No.5 Branch shall take and hold office as an additional National Council delegate of the Victoria No.1 Branch and shall hold office for the transitional period. In elections held in 2006 (in E2006/127) the Victoria No.5 Branch elected one delegate to National Council.

[4] In my view it is not practically possible for elections to be held for positions that are held by members of the former Victoria No.5 Branch. Since its merger with the Victoria No.1 Branch, there is no longer an electorate comprised of members of the Victoria No.5 Branch from which an election for a delegate to National Council could be held. In addition, it is not possible to reconstitute the former Branch Committee of Management of the Victoria No.5 Branch for the purpose of appointing a member of that former Committee to be the holder of the office of an ordinary member of the Branch Committee of Management of the Victoria No.1 Branch during the transitional period. For this reason I am not satisfied that an election can be conducted for the positions of:

Additional Ordinary Member of the Branch Committee (1) appointed from the Committee of Management of the former Victoria No.5 Branch

Additional National Council Delegate (1) from the former Victoria No.5 Branch

[5] I am satisfied that an election is required to be held in accordance with the order of Justice Tracey for the following offices:

Branch President

Branch Senior Vice-President

Branch Junior Vice-President

Branch Secretary

Branch Assistant Secretary

Branch Trustees (2)

Ordinary Members of the Branch Committee (8)

National Council Delegates (15)

[6] I am satisfied that an election for the offices in paragraph [5] of this decision is required 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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Health Services Union, in the matter of Health Services Union [2009] FCA 829 (4 August 2009)

Last Updated: 6 August 2009

FEDERAL COURT OF AUSTRALIA

Health Services Union, in the matter of Health Services Union [2009] FCA 829

INDUSTRIAL LAW – Unions/Registered Organisations - Applications under s 323 of the *Fair Work (Registered Organisations) Act 2009* (Cth) - Whether an organisation has ceased to function effectively - Whether there are effective means under the Rules of the organisation by which the organisation can be enabled to function effectively - Whether the Federal Court has jurisdiction to determine applications under s 323 in light of legislative amendments

Conciliation and Arbitration Act 1904 (Cth) s 171D
Fair Work (Registered Organisations) Act 2009 ss 323, 338, 399
Workplace Relations Act 1996 (Cth) ss 323, 338, 339

Re Application of Gallagher; Re Federated Cold Storage & Meat Preserving Employees Union of Australia (1983) 6 IR 78 referred to
Re Joske; Ex parte Shop Distributive and Allied Employees Association [1976] HCA 48; (1976) 135 CLR 194 cited

HEALTH SERVICES UNION
VID 378 of 2009

**TRACEY J
4 AUGUST 2009
MELBOURNE**

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

VID 378 of 2009

**BETWEEN: HEALTH SERVICES UNION
Applicant**

**JUDGE: TRACEY J
DATE OF ORDER: 4 AUGUST 2009
WHERE MADE: MELBOURNE**

THE COURT DECLARES THAT:

1. The Victorian No. 1 Branch ("the Branch") of the Health Services Union ("the Union") has ceased to function effectively and there are no effective means under the rules of the Union by which it can be enabled to function effectively.

THE COURT ORDERS THAT:

2. A Scheme is approved in the form attached for the taking of action by the National Executive of the Union to enable the Branch to function effectively.
3. In the event of any difficulty arising in the course of the implementation of the Scheme the Applicant, the Administrator or any person represented in the proceeding shall have liberty to apply on 72 hours' written notice.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.
The text of entered orders can be located using eSearch on the Court's website.

ATTACHMENT

SCHEME TO ENABLE THE VICTORIA No. 1 BRANCH OF THE HEALTH SERVICES UNION TO FUNCTION EFFECTIVELY

1. On the making of the Order approving the Scheme the National Executive shall forthwith declare all elected offices in the Branch vacant as of the date of the appointment of the Administrator in paragraph 6 below and from that date such offices shall be vacant.
2. The National Executive of the Union shall, in writing and within seven days of the Order of the Court request the General Manager of Fair Work Australia to arrange for the conduct of an

election of all offices in the Branch by the Australian Electoral Commission.

3. The Administrator must do all things necessary to facilitate the conduct of the election including all those things required to be done by a Committee of Management of an organisation under s 189 of the *Fair Work (Registered Organisations) Act 2009* (Cth).
4. For the purposes of paragraph 2 the said elections must be conducted:

(1) in accordance with the Rules of the Union as though those Rules had application to the said election insofar as it is practicable to apply them; and

(2) as quickly as practicable and nominations for all offices shall open on 1 October 2009 or as soon as practicable thereafter.

5. The officers elected under the Scheme shall hold office until the conclusion of the elections for offices conducted in accordance with the Rules in 2014.
6. Mr John Damien Vines OAM is appointed as Administrator of the Branch from 17 August 2009 until the declaration of the results of the elections referred to in paragraphs 2 and 4 above.
7. The Administrator shall have all of the powers of the Branch Secretary, Branch President and the Branch Committee under the Rules of the Union provided that the Administrator shall not have power to repeal, add to or amend the Rules or to determine policy of the Branch. The Administrator shall not commit the branch to any expenditure exceeding \$5,000.00 (other than routine operating expenses) without the express written consent of the National Executive or under any direction of the Court.
8. The Administrator must ensure that no individual is financially disadvantaged in the implementation of the Scheme and that the Branch is administered in a non-partisan way.
9. During the period of administration the Administrator shall not:
 - a. permit the use of the Union funds or resources for campaigning or electioneering;
 - b. permit the employees of the Branch to campaign or electioneer during their working hours; and
 - c. permit any new material to be posted on the Branch's website, other than ordinary Branch business, until the declaration of the ballot, and for the avoidance of any doubt, the website must not be used for electioneering or campaigning.

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

VID 378 of 2009

**BETWEEN: HEALTH SERVICES UNION
 Applicant**

**JUDGE: TRACEY J
DATE: 4 AUGUST 2009
PLACE: MELBOURNE**

REASONS FOR JUDGMENT

1. For over a year the Victoria No. 1 Branch of the Health Services Union has become progressively more dysfunctional. At its root, the cause of this dysfunction has been

antagonism between two groups formed by members of the Branch's Committee of Management and their supporters within the Branch membership. One group coalesces around the Branch President Ms Pauline Fegan. Ms Fegan is also a paid employee of the Branch. The other is led by the Branch Secretary Mr Jeff Jackson.

2. Disputes between the two groups have given rise to a series of events which have severely undermined the functioning of the Branch. The result has been that Branch officers have been deflected and distracted from the pursuit of the industrial interests of the members.
3. It is unnecessary to record all of the disruptive events which have occurred over the past year. Some examples will suffice:
 - o Allegations by staff members of the Branch that they have been harassed and intimidated by Ms Fegan and some of her supporters. These allegations have led to the institution of inquiries and the laying of disciplinary charges.
 - o The terminations of the employment of some staff members which were challenged in proceedings in the Australian Industrial Relations Commission.
 - o A dispute between Mr Jackson and Ms Fegan which led to staff members not being paid for some weeks.
 - o Staff "locking-out" Branch officials from the Branch Office.
 - o Meetings of the Branch's Committee of Management being disrupted by bickering and walkouts by some members.
 - o The making of allegations and counter allegations of misconduct on the part of Ms Fegan and Mr Jackson.
 - o The suspension from duty of various officers of the Branch.
4. Attempts by federal officials of the Union to mediate in the dispute have not succeeded. Various inquiries have not led to decisive remedial action. An attempt to bring matters to a head at a specially convened general meeting of the Branch was frustrated when the meeting dissolved into disorder and had to be abandoned without dealing with all of the business which it had been convened to consider. Various applications, made to this Court, have not had any impact on the underlying issues. Large sums have been spent on legal fees and inquiries with the result that the Branch is in a parlous financial state.
5. In these circumstances the Union, on 20 May 2009, made application under s 323 of Schedule 1 of the *Workplace Relations Act 1996* (Cth) ("the WR Act") for a declaration that the Branch had ceased to function effectively and orders that a scheme should be put in place which would remedy the impasse. On 22 May 2009 directions were given that notices be placed in the press advising that the application had been made and inviting any members of the union who wished to be heard in relation to the application to advise the Registry of the Court of their interest. The notices were published. A number of members responded and indicated a desire to be heard.
6. The proceeding came on for hearing this morning. The Union, Ms Fegan and Mr Jackson were all represented by counsel. The individual members who had indicated a desire to be heard were separately represented, also by counsel.
7. Senior counsel for the union advised the Court that broad agreement had been reached by all of the represented parties as to the terms of a declaration and orders which they submitted the Court should make. They were agreed that a declaration should be made that the Branch had ceased to function effectively and that there existed no effective means under the Rules of the Union by which this malaise could be overcome. A remedial scheme was proposed. Its essential elements involved all Branch offices being declared vacant and the appointment of an Administrator to manage the affairs of the Branch pending the outcome of fresh elections for all positions on the Branch Committee of Management. I was advised that an Administrator who was acceptable to all the represented parties was available and had expressed a

willingness to commence duties on 17 August 2009.

8. In my view the interests of the members of the Union attached to the Branch will best be served by urgent action. I have, therefore, determined to make the declaration sought and also to make remedial orders today. Given the urgency of the matter my reasons for so doing will, necessarily, be relatively brief.
9. The Union's application was made under s 323 of Schedule 1 to the WR Act. On 1 July 2009 Schedule 1 of the WR Act was superseded by the *Fair Work (Registered Organisations) Act 2009*. Section 323 of that Act is in the same terms as s 323 of Schedule 1 of the former Act. Sections 338 and 339 of both instruments confer jurisdiction on this Court in relation to actions brought under s 323. Although counsel were unable to refer me to any specific transitional provision which dealt expressly with the disposition of proceedings which had been commenced under s 323 of Schedule 1 but which had not been determined on 1 July 2009, it is clear enough that the legislature intended that one or other of the identical provisions would be applied in the determination of any application made under the former s 323. No party submitted that the Court lacked jurisdiction to entertain the application.
10. An application under s 323 may be made by an organisation such as the Union. The application may be for a declaration that a Branch of the organisation "has ceased to ... function effectively and there are no effective means under the Rules of the organisation or branch by which it can be ... enabled to function effectively ..."
11. The forerunner of s 323 is to be found in s 171D of the *Conciliation and Arbitration Act 1904* (Cth). This provision was declared to be constitutionally valid by the High Court in *Re Joske; Ex parte Shop Distributive and Allied Employees Association* [1976] HCA 48; (1976) 135 CLR 194 at 218, notwithstanding the broad powers which it conferred on the Court.
12. Section 171D was considered by a Full Court of this Court in *Re Application of Gallagher; Re Federated Cold Storage & Meat Preserving Employees Union of Australia* (1983) 6 IR 78. Smithers J observed (at 81) that:

"Considerable novelty may be appropriate in a scheme submitted under s 171D. It would seem that the court should be guided not by any narrow interpretation of s.171D, but should respond to the purpose of that section in the context of the Act ...

Section 171D is in the midst of the sections last mentioned and stems from the intention of parliament to revive the effective management and administration of organisations when governing bodies have become defunct or impotent or are unable to function effectively because the rules failed to speak effectively in the relevant current circumstances. Its provisions should therefore be liberally construed."

13. See to like effect per Northrop J at 91 and cf the more cautious approach of Keely J at 100-101.
14. By reason of the events which I have earlier summarised I am satisfied that the Branch has ceased to function effectively. Over the past year it has limped from one internal crisis to the next and the underlying causes of the Branch's dysfunction remain unresolved.
15. The making of a declaration under s 323(1)(a) is also conditioned on it being established that there are no effective means under the Rules by which the Branch may be enabled to function effectively. The Rules provide for a large number of Branches. Whilst those Branches, may, as a matter of history, have federated to form the Union, the Rules reflect their desire to maintain a large measure of independence. Thus Rule 44(a) provides, in part:

“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 of two-thirds of the financial members of the Union.”

16. Rule 44(b) provides that, subject to the Rules and Federal policy “nothing shall alienate the right of members assembled in the General Meeting to determine the policy of the Branch.” By Rule 45 provision is made for a national plebiscite. The circumstances in which such a plebiscite may be conducted are heavily circumscribed by procedural requirements and would take a good deal of time to implement. By Rule 49 Branch management is under the control of Branch Committees of Management. This power is only qualified by reference to any contradictory Rules or “any proper direction of the National Council or the National Executive.” The scope for curial dispute as to the propriety of a direction purportedly given under this Rule is readily apparent. Rule 71 provides for an involved process whereby Rules may be altered.
17. I was not referred to any other Rules which might have facilitated the effective resolution of the difficulties presently confronting the Branch.
18. Part of the problem derives from the Rules themselves because of the powers which they confer on the Branch President and Branch Secretary which enable them to each take action which is prejudicial to the interests of the other and create separate power centres in respect of different aspects of the Branch’s operation. Although it may, theoretically, be possible over a prolonged period for steps to be taken which might ultimately have the desired outcome, I am persuaded that there are no *effective* means under the Rules of the Union which might be employed for the purpose of ensuring a timely restoration of the effective functioning of the Branch.
19. In the absence of remedial action under s 323 there is no scope for resolution until October 2010 when the successful candidates in the next Branch elections, scheduled under the Rules, are due to take office.
20. I will, therefore, make the declaration sought in the Union’s application.
21. Section 323(2) provides that, if a declaration is made under subsection (1) the Court may, by order, approve a Scheme for the taking of action by a collective body of the organisation, inter alia, for the purpose of enabling the dysfunctional Branch to function effectively. The role of Court is, then, to *approve* a Scheme. The Court is not required to *devise* the Scheme but may examine and, if it considers it appropriate to do so, approve the Scheme proposed by an applicant or other interested person. Ancillary or consequential directions may also be made: see s 323(3). By s 323(6) any order or direction of the Court and any action taken in accordance with the order or direction “has effect in spite of anything in the rules of the organisation or a branch of the organisation”.
22. I have examined the Scheme proposed by the represented parties. I have suggested certain variations with which the parties agreed. The Scheme ultimately proposed, therefore, enjoys the universal endorsement of the represented parties. Although this consideration is not determinative it carries considerable weight in determining how I should exercise the discretion conferred on the Court by s 323(2). In my view the proposed Scheme is conducive to the end of enabling the Branch to function effectively. At the elections, for which provision is made, the membership of the Branch will have the opportunity to choose those candidates whom they consider will best pursue the interests of the membership. No doubt the members will have regard to the conduct of individual candidates who are present office holders should those persons decide to nominate for re-election. It will be a matter for the members to pass judgment on that conduct. That is not the role of the Court.

23. Mr John Vines has indicated a willingness to undertake the role of Administrator pending the conduct of elections. His appointment is supported by the Union, Ms Fegan, Mr Jackson and four of the eight individual members who appeared. The other four members did not oppose his appointment. Mr Vines has a long history in the Union movement. He also has administrative and board level experience in other organisations. He is entirely independent of the Union and those involved in the Branch's affairs. As I have already noted, he is willing and able to commence his duties within two weeks. I consider him to be an appropriate person to act as Administrator.
24. I should add for the sake of completeness that, in determining to make the orders and approve the Scheme I have had regard to the stipulations in ss 323(4) and (7).

I certify that the preceding twenty-four (24) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Tracey.

Associate:

Dated: 4 August 2009

Counsel for the Applicant: Mr R Kenzie QC and Mr R Reitano

Solicitor for the Applicant: Slater and Gordon

Counsel for Ms Fegan: Mr H Borenstein SC and Mr W Friend

Solicitor for Ms Fegan: Macpherson + Kelley

Counsel for Mr J Jackson: Mr M McKillop

Solicitor for Mr J Jackson: Minter Ellison

Counsel for various members of Mr J McKenna
the Committee of Management:

Solicitor for various members
of the Committee of
Management: Wisewoulds Solicitors

Date of Hearing: 4 August 2009

Date of Judgment: 4 August 2009

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