



21 June 2016

Mr Ian Leavers
Branch President
Police Federation of Australia - Queensland Police Branch
rfeatherstone@qpu.asn.au

Dear Mr Leavers,

Reminder of actions required when persons elected to office

The Australian Electoral Commission has provided the Fair Work Commission (the Commission) a declaration of results for the election [E2015/279]. This letter is a reminder of certain obligations imposed on organisations and persons elected to office.

Section 154D(1) of the *Fair Work (Registered Organisations) Act 2009* (the RO Act) requires the rules of organisations (and branches of organisations) to require each officer with financial management duties to undertake approved training that covers those duties within 6 months after the person begins to hold office. Please ensure that relevant officers undertake approved training within the required timeframe.

Please also ensure that all new holders of office are advised of their obligations to make disclosures regarding remuneration, non-cash benefits and material personal interests, the details of which should be provided for in your organisation's rules.

Also, section 233(2) of the RO Act requires that an organisation must notify the Commission **within 35 days of any changes** to the holders of office in the organisation. **If there are no changes a notification is not required.** If the election has resulted in **any changes** to the holders of office, the Police Federation of Australia - Queensland Police Branch must notify the Commission of these changes. In particular, please advise:

1. Person(s) who have ceased to hold office:
 - the name of the office vacated;
 - the date of the change of office holder; and
 - the name of the person vacating the office.
2. Person(s) who have commenced to hold office:
 - the name of the office now held;
 - the date of the change of office holder;
 - the name of the person now holding the office;
 - the postal address of the person (generally the postal address of the organisation); and
 - the occupation of the person now holding the office.

The notification must include a declaration by the Secretary (or other prescribed officer) that the information is a correct statement of the changes made. I have attached a template notification of changes which may assist you. If any change does not apply until a specific date, you don't need to notify until then (e.g. AGM, 1 January, 2nd Monday in March). If you have already lodged this information, please disregard this reminder.

Regards

Debbie Ball
Regulatory Compliance Branch

NOTIFICATION OF CHANGES TO RECORDS (Changes to Records in the Annual Return) required to be kept in accordance with section 230 *Fair Work (Registered Organisations) Act 2009* and regulation 147 *Fair Work (Registered Organisations) Regulations 2009*

I, [NAME], being the [OFFICER] of the [ORGANISATION NAME], declare the following:

1. I am authorised to make this declaration.
2. The following is a correct statement of the changes made to the information contained in the records required to be kept by the organisation in accordance with s.230(1)(b), (c), and (d) of the *Fair Work (Registered Organisations) Act 2009*:

[delete all that do not apply]

- On [DATE] the address of the organisation changed to [STREET ADDRESS].¹
- On [DATE] the name and/or address of a branch[es] of the organisation changed to:²
 1. [include OLD name and address and NEW name and address of every branch that has changed]
 2. ...
- A list of changes to offices and the names, postal addresses and occupations of persons holding those offices is attached to this declaration at Annexure A and forms part of this declaration.
- On [DATE] the following branch[es]:³
 - COMMENCED/CEASED operation:
 1. [include name of each new branch]
 2. ...

Signed: [SECRETARY OR OTHER AUTHORISED OFFICER]

Dated: [DATE]

[PLEASE NOTE: This declaration must be submitted to the Fair Work Commission within 35 days of the change. It can be submitted to orgs@fwc.gov.au.]

¹ s.230(1)(d); reg.147(d)

² s.230(1)(d); reg.147(a) & (d)

³ s.230(1)(d); reg.147(b) & (c)

ANNEXURE A

- Changes to Offices and Office Holders in the Organisation and its Branches [*insert as many pages as required*]:

Please note the 35 days begins at the earliest event (for instance when the officer retires) and an organisation may need to notify the events separately if the appointment or election process will take longer than 35 days.

Branch	Date of Change	Name of Office that has changed	Name of <u>Outgoing</u> Office Holder	Reason for change	Name of <u>New</u> Office Holder	Postal Address of <u>New</u> Office Holder (for privacy reasons, we recommend NOT a private address)	Occupation of <u>New</u> Office Holder
<i>National</i>	<i>1.1.2014</i>	<i>Secretary</i>	<i>Full Name</i>	<i>Retiring</i>	<i>Full Name</i>	<i>c/- the Registered Organisation, postal address of Registered Organisation</i>	<i>Paid official</i>
	<i>25.12.2013</i>	<i>President</i>	<i>vacant</i>	<i>Scheduled Election</i>	<i>Full Name</i>	<i>As above</i>	<i>mechanic</i>
...							
<i>NSW</i>	<i>1.1.2014 (resigned) 7.1.2014 (appointed)</i>	<i>President</i>	<i>Full Name</i>	<i>Resignation</i>	<i>Full Name</i>	<i>c/- the Branch, postal address of the Branch</i>	<i>mechanic</i>
		<i>Committee of Management Member</i>	<i>Full Name</i>	<i>Scheduled Election</i>	<i>Full Name</i>	<i>As above</i>	<i>mechanic</i>
		<i>Treasurer</i>	<i>Full Name</i>	<i>Scheduled Election</i>	<i>vacant</i>	<i>vacant</i>	<i>vacant</i>
...							



Post-Election Report

Fair Work (Registered Organisations) Act 2009-s197

Police Federation of Australia Qld Branch Secretary Election

ELECTION COVERED IN THIS REPORT:

Election Decision No: E2015/279

RULES

Rules used for the election: 200V: Incorporates alterations of 19/08/2015 [R2015/180])
Rules difficult to apply/interpret: None
Model Rule reference (if any): Nil

ROLL OF VOTERS

The Roll of Voters was supplied for those members eligible as at Close of Rolls, 5 February 2016.

Total number of voters on the Roll: 11484
Number of apparent workplace addresses: 1551
Number of non-current addresses: 212

IRREGULARITIES

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

A written complaint was received alleging a breach of section 190 of the Fair Work Australia (Registered Organisations) Act 2009. It was alleged a candidate in the election was being assisted by current staff within the QLD Branch of the organisation. The complainant was advised that the AEC does not have investigative powers under the Act to examine potential breaches of this section of the Act and was referred to the Fair Work Commission.

Other irregularities identified, and action taken:

It was identified on Friday 6 May 2016 that during the distribution of the initial ballot material issued on 24 April 2016 the material contained a ballot paper with a candidate order that varied from the order determined from the ballot draw conducted on 18 April 16 in accordance with the organisation's rules. The candidates were immediately advised and a notice posted on the organisation's website advising the dates for the re-issue of ballot material.

New ballot material was prepared and distributed to eligible members on 20 May 2016 in lieu of the previously issued ballot material and included an advice confirming only the new ballot material would be considered. The new ballot period closed at noon 10 June 2016.

ATTACHMENTS

Declaration of Results for Contested Office

A handwritten signature in blue ink, appearing to read 'Anthea Featherstone', with a long horizontal line extending to the right.

Anthea Featherstone
Returning Officer
14 June 2016

Police Federation of Australia Branch Secretary Election 2015

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.

Queensland Branch

Total number of names on the roll of voters	11484
Ballot papers issued	11484
Replacement ballot papers issued	4
Total Ballot Papers Issued	11488
Ballot papers / envelopes returned for scrutiny	2709
Less ballot papers / envelopes rejected at preliminary scrutiny	32
Adjusting balance	0
Total Ballot Papers Admitted to Scrutiny	2677
Percentage of ballot papers returned to number issued	23
Ballot papers returned as unclaimed mail	212
Ballot papers not returned	8567

Secretary

<u>Candidates</u>	<u>First Preference Votes</u>	<u>Votes</u>
MAXWELL, Shayne	0	738
PFUHL, Axel	0	583
BARNES, Michael	0	1350
Exhausted Votes		0
Loss/Gain by Fraction		0
Total votes	0	2671
Formal ballot papers	2671	2671
Informal ballot papers	6	6

I declare Michael Barnes elected.



Anthea Featherstone
Returning Officer
Australian Electoral Commission

13 June 2016

Police Federation of Australia Branch Secretary Election 2015

Declaration of Results for Contested Offices

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I declare Michael Barnes elected.



Anthea Featherstone
Returning Officer
Australian Electoral Commission

13 June 2016



DECISION

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

Police Federation of Australia
(E2015/279)

MR ENRIGHT

MELBOURNE, 10 DECEMBER 2015

Arrangement for conduct of election.

[1] On 25 November 2015 and 4 December 2015 the Queensland Police Branch of the Police Federation of Australia lodged with the Fair Work Commission the prescribed information in relation to an election for the following office:

Branch Secretary

[2] I am satisfied that an election for the abovenamed office 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

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DECISION

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

Police Federation of Australia
(E2015/279)

MR ENRIGHT

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Police Federation of Australia

The National Voice of Policing

Queensland State Branch

PO Box 13008

Brisbane QLD

Phone: (07) 3259-1900

Fax: (07) 3259-1950

The Registrar
Fair Work Commission
11 Exhibition Street
Melbourne 3000

Attention: Ms. Rebecca Lee

Via email: orgs@fwc.gov.au

PRESCRIBED INFORMATION FOR ELECTION

I am the officer of the Queensland Police Branch of the Police Federation of Australia and am authorised to sign this statement which is lodged in accordance with section 187 of the *Fair Work (Registered Organisations) Act 2009* (Cth).

Each office or position for which an election is required

Queensland Police Branch – Branch Secretary

The reason for the elections

The term of the position has expired or is due to expire in the normal course of events.

Electorates

The members, the Branch Secretary and the Branch Assistant Secretary – see sub-rule 39 (d) (i).

Dates and time of nominations opening and closing

The manager must fix the opening day and closing day for nominations – see sub-rule 45(a).

The closing day must be at least 28 days after notice is given under rule 47 – see sub-rule 45(b).

Nominations open at midday on the opening day and close at midday on the closing day – see sub-rule 45(c).

Day provided for in the rules as the day on which the roll of voters is to be closed

30 days before the starting time for nominations.

Voting system

Direct voting system.



Ian Leavers
Branch President
Queensland Police Branch
Police Federation of Australia



Police Federation of Australia

The National Voice of Policing

Queensland State Branch

PO Box 13008

Brisbane QLD

Phone: (07) 3259-1900

Fax: (07) 3259-1950

30th November 2015

The Registrar
Fair Work Commission
11 Exhibition Street
Melbourne 3000

Attention: Ms. Rebecca Lee

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Queensland Police Branch – Branch Secretary

The reason for the elections

The term of the position has expired or is due to expire in the normal course of events.

Electorates

The members, the Branch Secretary and the Branch Assistant Secretary – see sub-rule 39 (i).

Dates and time of nominations opening and closing

The manager must fix the opening day and closing day for nominations – see sub-rule 45(a).

The closing day must be at least 28 days after notice is given under rule 47 – see sub-rule 45(b).

Nominations open at midday on the opening day and close at midday on the closing day – see sub-rule 45(c).

Day provided for in the rules as the day on which the roll of voters is to be closed

30 days before the starting time for nominations.

Voting system

Direct voting system.



Ian Leavers
Branch President
Queensland Police Branch
Police Federation of Australia

The circular stamp contains the text: "QUEENSLAND POLICE UNION OF EMPLOYEES", "THE COMMON SEAL OF", and a small "x" at the bottom.

Date 1/12/15

19 November 2015

Mr Denis Sycz
Acting General Secretary
Queensland Police Union

By Email: dsycz@qpu.asn.au

Contact
James Stedman
Solicitor
Phone: (07) 3017 2400

Our Reference
JWP:4151646

Your Reference

Dear Denis

Re: Election of General Secretary

We refer to the above and to our discussions with Mr Mahoney of your office.

We attach:

- prescribed information for election of Branch Secretary.

We are instructed:

1. The General Secretary of the Queensland Police Union of Employees ("QPUE") is elected every four years and the notice of the election has historically been published in the QPUE journal in January.
2. The QPUE does not presently intend to publish a version of its journal in January 2016; however a journal will be published in December 2015.
3. The QPUE requires advice as to:
 - (a) whether a notice is required to be published in its next journal; and
 - (b) any steps that must be taken to ensure that the election of the General Secretary is conducted in accordance with the rules.

We advise:

QPUE rules

1. The QPUE is an organisation registered pursuant to the *Industrial Relations Act 1999* (Qld) ("the IR Act").
2. General Secretary of the QPUE is a 'position', not an office. The position has nonetheless always been the subject of election conducted in accordance with the QPUE rules.

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3. The rules of the QPUE provide for elections by both ballot and exemption. The ballot rules are the means that were historically used as there was no counterpart federal body. That historical context is now altered by the establishment of the Qld Branch of the PFA. As a consequence the QPUE rules were altered to provide for an exemption from election where an election has been conducted in the Branch for the corresponding office/position.
4. Rules 22 to 26 of the QPUE rules provides for the process of election by ballot (“the ballot rules”).
5. The provisions of the ballot rules which relate to nominations for the office of General Secretary are:

22 ELECTIONS OF OFFICERS, EXECUTIVE MEMBERS AND CONFERENCE DELEGATES.

22.1 All elections for the positions of General President, General Secretary, Assistant General Secretary, Executive Members and Conference Delegates, Vice President and Treasurer shall be conducted by either the Queensland Electoral Commission or by a Returning Officer appointed under the QPUE Rules.

22.2 All financial Members of QPUE may nominate for the position of General President, General Secretary, Assistant General Secretary, Executive Members or Conference Delegate. Provided that a full-time officer or a full-time employee may not be elected to an office other than an office stated by the rules to be a full-time elected position.

...

22.4 Every General Secretary elected after July 1, 1992 shall be elected for a term of four (4) years.

...

23 NOMINATIONS FOR ELECTIONS

23.1 In the month that nominations for a position or positions are to be called the QPUE shall cause to be published in that month's Journal a full page advice of the calling of such nominations, how members may nominate and the conditions surrounding nominations including a full print of the nomination form as at Schedule B of these rules.

23.2 Nominations shall be in accordance with Schedule B of these Rules signed by at least three financial Members as nominators and by the person accepting nomination.

23.2.2 Persons nominated for the position of General Secretary shall either be a financial member of the QPUE or a current officer of the QPUE.

...

23.6 Nominations for the office of General Secretary shall be called no later than January, 30 of every fourth year commencing January 1992 and shall be received no later than February 28 in the year that they are called.

...

24 THE BALLOT

...

24.28 *Upon the declaration of the ballot the elected General Secretary and Assistant General Secretary shall take office from the 1st day of July in the year that they are called and shall hold office until the declaration of a ballot held in accordance with these Rules appointing a successor.*

(emphasis added)

6. Rule 26A is the QPUE rules providing for exemption from elections:

26A - Counterpart Federal Body Election Exemption

- (a) *This rule shall operate from July, 2015.*
- (b) *For the purposes of this rule, the:*
- (i) *“Union” is The Queensland Police Union of Employees; and*
- (ii) *Branch” is the Queensland Police Branch of the Police Federation of Australia.*
- (c) *For the purpose of the rules of the Union the counterpart federal body of the Union is the Branch.*
- (d) *The offices of the Union (the “state office”) that correspond with the offices of the Branch (the “federal office”), due to the state office being similar to the federal office, are as follows:*

<i>The Branch (the “federal office”)</i>	<i>The Union (the “state office”)</i>
<i>Branch President</i>	<i>President</i>
<i>Branch Vice-President</i>	<i>Vice-President</i>
<i>Branch Treasurer</i>	<i>Treasurer</i>
<i>Branch Assistant Treasurer</i>	<i>Assistant Treasurer</i>
<i>Branch Far Northern Regional Representative</i>	<i>Far Northern Regional Representative</i>
<i>Branch Northern Regional Representative</i>	<i>Northern Regional Representative</i>
<i>Branch Central Regional Representative</i>	<i>Central Regional Representative</i>
<i>Branch North Coast Regional Representative</i>	<i>North Coast Regional Representative</i>
<i>Branch Southern Regional Representative</i>	<i>Southern Regional Representative</i>
<i>Branch South East Regional Representative</i>	<i>South East Regional Representative</i>
<i>Branch Metropolitan North Regional Representative</i>	<i>Metropolitan North Regional Representative</i>
<i>Branch Metropolitan South Regional Representative</i>	<i>Metropolitan South Regional Representative</i>
<i>Branch Headquarters and Support Regional Representative</i>	<i>Headquarters and Support Regional Representative</i>
<i>Branch Conference Delegate</i>	<i>Conference Delegate</i>

- (e) *The General Secretary shall:*
- (i) *make application for exemption from holding an election as soon as practicable following the declaration of a relevant election, held under the*

Fair Work (Registered Organisations) Act (Cth) (the “federal election”) for the counterpart federal body;

- (ii) *notify the membership of the Union of the making of the application for exemption by means of a publication circulated to the members free of charge; and*
 - (iii) *seek in the making of an application for exemption, that a state office be filled by a person elected in the relevant federal election to the federal office that corresponds, as provided by this rule, with the state office.*
- (f) *In the event of the exemption not being granted, or being only partially granted, the General Secretary shall forthwith proceed to file the prescribed material required to be filed in relation to the holding of a relevant election pursuant to these rules.*
- (g) *The positions of the Union (for the purposes of this rule, “the state positions”) that correspond with the positions in the Branch (for the purposes of this rule, “the federal positions”), due to the state position being similar to the federal position are as follows:*

<i>The Branch (the “federal position”)</i>	<i>The Union (the “state position”)</i>
<u><i>Branch Secretary</i></u>	<u><i>General Secretary</i></u>
<i>Branch Assistant Secretary</i>	<i>Assistant General Secretary</i>

- (h) *The persons who are elected to fill the federal position will fill the state position.*

(emphasis added)

Exemption from election scheme

7. Section 580 of the IR Act provides:

580 Exemption if federal election held

(1) *An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from holding an election for a stated office or offices (a stated office).*

(2) *The registrar may grant an exemption to an applicant for a stated office only if satisfied as follows—*

- (a) *the applicant has a counterpart federal body;*
- (b) *the body has held an election (the federal election) for an office (the federal office) under the Commonwealth (Registered Organisations) Act;*
- (c) *the applicant’s rules provide that the stated office is a corresponding office to the federal office;*
- (d) *the stated office will be filled by a person elected (the elected person) in the federal election to the federal office;*
- (e) *if the eligibility rules of the organisation and the body differ—the interests of the organisation’s members who were ineligible to vote in the federal election have not been disadvantaged.*

(3) *If an exemption is granted for a stated office—*

(a) *the elected person is taken to have been elected to the stated office; and*
 (b) *the organisation's rules for the election of the elected person to the stated office are taken to be complied with; and*
 (c) *section 441 does not apply to the rules for the election.*

(4) *In this section—*

corresponding office, *to a federal office, means an office, however called, similar to the federal office.*

(emphasis added)

8. The IR Act makes clear that organisations are able to have rules that provide for the election of officers by way of ballot and/or the election of officers by way of exemption. The act, unsurprisingly is silent on the issue of exemption for 'positions' as persons are usually appointed to positions not elected to them. This is, of course, not the case in relation to the QPUE.
9. As the IR Act is not dealing with the issue of elections for positions (only offices), section 580 set out above does not provide for how an exemption is to occur in relation to General Secretary and Assistant General Secretary. The QPUE rules (which are not constrained by the IR Act) do however provide in rule 26A (g) and (h) that an exemption from election, otherwise required under the state rules, is not required when the position (concerned) has been the subject of an election in the Branch. The person elected in the Branch to the corresponding position is consequently elected to the position in the QPUE.
10. The QIRC have certified rule 26A which provides that the person elected to fill the position of Branch Secretary will fill the position of General Secretary. That is the QPUE rule is expressed in mandatory terms and consequently no ballot is to be held.
11. There is no tension between this rule and the ballot rules (of the QPUE) as rule 26A only operates in the circumstances provided. If there is no election in the Branch then there will be a ballot in the QPUE for the positions, that is rule 26A would not operate and the balance of the QPUE election rules would. If there were any tension, then the more specific rule on the usual tenets of interpretation would apply, which gives the same result.
12. The *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act") provides for the election of holders of 'positions'.¹
13. Rule 23 of the QPUE rules, which provides for nominations, does not apply in the circumstance and consequently the QPUE is not required to publish a notice with respect to the position of General Secretary.
14. Sub-rule 22.4 provides that the General Secretary is elected for a term of four (4) years. We are instructed that the current term of office of the General Secretary commenced on 1 July 2012 in accordance with sub-rule 24.28 the General Secretary is to be elected by 30 June 2016 (four (4) years following the commencement of their term) to ensure that the QPUE will have complied with its rules.

¹ See below.

15. We note that rule 24.28 of the QPUE rules provides that the General Secretary will hold office (*sic*) until a successor is appointed (elected). The effect of the rule is that the General Secretary will remain in the position until the election is completed, even if the election cannot occur prior to 30 June 2016. This is what is colloquially referred to as 'holding over' in the office/position and permits a degree of flexibility in co-ordinating elections.

Branch rules

16. The Police Federation of Australia ("the PFA") is an organisation registered pursuant to the *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act").
17. The Branch is a branch of the PFA and conducts its affairs in accordance with Part CF2 of the PFA rules.
18. Rule 40 of the Part CF2 rules relevantly provides:

40 - ELECTIONS OF OFFICERS, BRANCH SECRETARY AND EXECUTIVE MEMBERS

...

(k) *The term of the position of the Branch Secretary is four (4) years.*

(l) *Despite sub-rule (k) the Branch Secretary elected at the inaugural elections held under Part CF1 will hold their position until their successor is declared elected in an election held in 2016, following which the member elected as Branch Secretary will hold the position until their successor is elected at a subsequent Quadrennial Election.*

19. The Part CF2 rules do not specify when in 2016 the elections must be conducted.
20. The procedure for Branch elections are set out at rules 42 to 72 of the Part CF2 rules.
21. Whilst the Fair Work Commission ("the FWC") understand that it is the unequivocal view of the PFA and of the Qld Branch that the Branch Secretary does not hold an office and rather holds a position, the FWC has not expressed a final view. Consequently, as a belts and braces approach, the Branch should arrange for the election of Branch Secretary to be conducted by the Australian Electoral Commission ('the AEC')².
22. Section 187 of the FW(RO) Act provides:

187 Organisation may ask AEC to conduct elections for positions other than offices

(1) If the rules of an organisation or branch of an organisation require an election to be held for a position other than an office in the organisation or branch, the organisation or branch, as the case may be, may request the AEC to conduct the election.

Note: For the meaning of office, see section 9.

(2) The request must be:

(a) in writing; and

(b) signed by an officer of the organisation or branch who is authorised to do so by the committee of management of the organisation or branch; and

² Which is what would have to occur if it was an office.

(c) given to the AEC.

(3) A copy of the request must also be lodged with the FWC at the same time as the prescribed information in relation to the election is lodged (see section 189).

23. The key dates for Branch elections are set out below:

- (a) prescribed information filed at least two (2) months before nominations open – see section 138(3) of the FW(RO) Regulations³;
- (b) nominations close 28 days following the calling of nominations – see rule 45(b); and
- (c) ballot closes 14 or 21 days following the opening of ballots – see rule 59.

24. To ensure that the Branch Secretary is declared elected prior to 30 June 2016, and to provide the AEC with an ample opportunity to complete all steps, we propose:

Prescribed information filed	15 February 2016
Opening of nominations	15 April 2016
Close of nominations	13 May 2016
Opening of ballot	27 May 2016
Close of ballots	17 June 2016

25. A copy of the prescribed information for the election is attached. The prescribed information should be filed with the AEC and the FWC at the same time.

26. Rule 47 of the Part CF2 rules provides for the calling of nominations:

47 - CALLING FOR NOMINATIONS

(a) *The Manager must call for nominations for the offices or the positions to be filled by notice given to Members in one of the following ways:*

- (i) *by post to each Member at the address recorded in the Branch Register;*
- (ii) *if the Branch publishes a journal or newsletter that it gives to its members free of charge, by advertisement in that journal or newsletter; or*
- (iii) *in a daily newspaper circulating in the area where the Branch's members live or work.*

(b) *The notice must state:*

- (i) *The opening day for nominations;*
- (ii) *the closing day for nominations;*
- (iii) *that nominations for an office or a position:*
 - (1) *open at midday on the opening day; and*

³ We note that the Regulation only relates to "offices" but as a belts and braces approach this timeframe should also be adopted for the election of the Branch Secretary.

- (2) *close at midday on the closing day;*
 - (iv) *who may nominate as a candidate in the election;*
 - (v) *that nominations for an office or a position must be written, signed by the nominee, be in accordance with **rule 42** and be given to the Manager before nominations close;*
 - (vi) *the starting and finishing days for a ballot to decide the result of the election if a ballot becomes necessary under **rule 50**;*
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Conclusion

30. As a consequence of rule 26A of the QPUE rules the QPUE is not required to publish a notice in relation to an election for the position of General Secretary.
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If you have any questions with respect to any of the matters above, please contact the writer.

Yours faithfully

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James Stedman
Hall Payne Lawyers

cc. Steve Mahoney

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20 MEETINGS OF THE EXECUTIVE

- 20.1 The Executive shall meet at least once in every month for the transaction of business. The General President may at any time and the General Secretary shall upon the request in writing of three (3) Executive Members convene a meeting of the Executive.
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The following allowances shall be paid to the General Secretary, Assistant General Secretary and Members of the Executive.

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Police Federation of Australia

The National Voice of Policing

Queensland State Branch

PO Box 13008

Brisbane QLD

Phone: (07) 3259-1900

Fax: (07) 3259-1950

The Registrar
Fair Work Commission
11 Exhibition Street
Melbourne 3000

Attention: Ms. Rebecca Lee

Via email: orgs@fwc.gov.au

PRESCRIBED INFORMATION FOR ELECTION

I am the officer of the Queensland Police Branch of the Police Federation of Australia and am authorised to sign this statement which is lodged in accordance with section 187 of the *Fair Work (Registered Organisations) Act 2009* (Cth).

Each office or position for which an election is required

Queensland Police Branch – Branch Secretary

The reason for the elections

The term of the position has expired or is due to expire in the normal course of events.

Electorates

The members, the Branch Secretary and the Branch Assistant Secretary – see sub-rule 39 (d) (i).

Dates and time of nominations opening and closing

The manager must fix the opening day and closing day for nominations – see sub-rule 45(a).

The closing day must be at least 28 days after notice is given under rule 47 – see sub-rule 45(b).

Nominations open at midday on the opening day and close at midday on the closing day – see sub-rule 45(c).

Day provided for in the rules as the day on which the roll of voters is to be closed

30 days before the starting time for nominations.

Voting system

Direct voting system.



Ian Leavers
Branch President
Queensland Police Branch
Police Federation of Australia



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Ian Leavers
Branch President
Queensland Police Branch
Police Federation of Australia



Date 1/12/15

19 November 2015

Mr Denis Sycz
Acting General Secretary
Queensland Police Union

By Email: dsycz@qpu.asn.au

Contact
James Stedman
Solicitor
Phone: (07) 3017 2400

Our Reference
JWP:4151646

Your Reference

Dear Denis

Re: Election of General Secretary

We refer to the above and to our discussions with Mr Mahoney of your office.

We attach:

- prescribed information for election of Branch Secretary.

We are instructed:

1. The General Secretary of the Queensland Police Union of Employees ("QPUE") is elected every four years and the notice of the election has historically been published in the QPUE journal in January.
2. The QPUE does not presently intend to publish a version of its journal in January 2016; however a journal will be published in December 2015.
3. The QPUE requires advice as to:
 - (a) whether a notice is required to be published in its next journal; and
 - (b) any steps that must be taken to ensure that the election of the General Secretary is conducted in accordance with the rules.

We advise:

QPUE rules

1. The QPUE is an organisation registered pursuant to the *Industrial Relations Act 1999* (Qld) ("the IR Act").
2. General Secretary of the QPUE is a 'position', not an office. The position has nonetheless always been the subject of election conducted in accordance with the QPUE rules.

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3. The rules of the QPUE provide for elections by both ballot and exemption. The ballot rules are the means that were historically used as there was no counterpart federal body. That historical context is now altered by the establishment of the Qld Branch of the PFA. As a consequence the QPUE rules were altered to provide for an exemption from election where an election has been conducted in the Branch for the corresponding office/position.
4. Rules 22 to 26 of the QPUE rules provides for the process of election by ballot (“the ballot rules”).
5. The provisions of the ballot rules which relate to nominations for the office of General Secretary are:

22 ELECTIONS OF OFFICERS, EXECUTIVE MEMBERS AND CONFERENCE DELEGATES.

22.1 All elections for the positions of General President, General Secretary, Assistant General Secretary, Executive Members and Conference Delegates, Vice President and Treasurer shall be conducted by either the Queensland Electoral Commission or by a Returning Officer appointed under the QPUE Rules.

22.2 All financial Members of QPUE may nominate for the position of General President, General Secretary, Assistant General Secretary, Executive Members or Conference Delegate. Provided that a full-time officer or a full-time employee may not be elected to an office other than an office stated by the rules to be a full-time elected position.

...

22.4 Every General Secretary elected after July 1, 1992 shall be elected for a term of four (4) years.

...

23 NOMINATIONS FOR ELECTIONS

23.1 In the month that nominations for a position or positions are to be called the QPUE shall cause to be published in that month's Journal a full page advice of the calling of such nominations, how members may nominate and the conditions surrounding nominations including a full print of the nomination form as at Schedule B of these rules.

23.2 Nominations shall be in accordance with Schedule B of these Rules signed by at least three financial Members as nominators and by the person accepting nomination.

23.2.2 Persons nominated for the position of General Secretary shall either be a financial member of the QPUE or a current officer of the QPUE.

...

23.6 Nominations for the office of General Secretary shall be called no later than January, 30 of every fourth year commencing January 1992 and shall be received no later than February 28 in the year that they are called.

...

24 THE BALLOT

...

24.28 *Upon the declaration of the ballot the elected General Secretary and Assistant General Secretary shall take office from the 1st day of July in the year that they are called and shall hold office until the declaration of a ballot held in accordance with these Rules appointing a successor.*

(emphasis added)

6. Rule 26A is the QPUE rules providing for exemption from elections:

26A - Counterpart Federal Body Election Exemption

- (a) *This rule shall operate from July, 2015.*
- (b) *For the purposes of this rule, the:*
- (i) *“Union” is The Queensland Police Union of Employees; and*
- (ii) *Branch” is the Queensland Police Branch of the Police Federation of Australia.*
- (c) *For the purpose of the rules of the Union the counterpart federal body of the Union is the Branch.*
- (d) *The offices of the Union (the “state office”) that correspond with the offices of the Branch (the “federal office”), due to the state office being similar to the federal office, are as follows:*

<i>The Branch (the “federal office”)</i>	<i>The Union (the “state office”)</i>
<i>Branch President</i>	<i>President</i>
<i>Branch Vice-President</i>	<i>Vice-President</i>
<i>Branch Treasurer</i>	<i>Treasurer</i>
<i>Branch Assistant Treasurer</i>	<i>Assistant Treasurer</i>
<i>Branch Far Northern Regional Representative</i>	<i>Far Northern Regional Representative</i>
<i>Branch Northern Regional Representative</i>	<i>Northern Regional Representative</i>
<i>Branch Central Regional Representative</i>	<i>Central Regional Representative</i>
<i>Branch North Coast Regional Representative</i>	<i>North Coast Regional Representative</i>
<i>Branch Southern Regional Representative</i>	<i>Southern Regional Representative</i>
<i>Branch South East Regional Representative</i>	<i>South East Regional Representative</i>
<i>Branch Metropolitan North Regional Representative</i>	<i>Metropolitan North Regional Representative</i>
<i>Branch Metropolitan South Regional Representative</i>	<i>Metropolitan South Regional Representative</i>
<i>Branch Headquarters and Support Regional Representative</i>	<i>Headquarters and Support Regional Representative</i>
<i>Branch Conference Delegate</i>	<i>Conference Delegate</i>

- (e) *The General Secretary shall:*
- (i) *make application for exemption from holding an election as soon as practicable following the declaration of a relevant election, held under the*

Fair Work (Registered Organisations) Act (Cth) (the “federal election”) for the counterpart federal body;

- (ii) *notify the membership of the Union of the making of the application for exemption by means of a publication circulated to the members free of charge; and*
 - (iii) *seek in the making of an application for exemption, that a state office be filled by a person elected in the relevant federal election to the federal office that corresponds, as provided by this rule, with the state office.*
- (f) *In the event of the exemption not being granted, or being only partially granted, the General Secretary shall forthwith proceed to file the prescribed material required to be filed in relation to the holding of a relevant election pursuant to these rules.*
- (g) *The positions of the Union (for the purposes of this rule, “the state positions”) that correspond with the positions in the Branch (for the purposes of this rule, “the federal positions”), due to the state position being similar to the federal position are as follows:*

<i>The Branch (the “federal position”)</i>	<i>The Union (the “state position”)</i>
<u><i>Branch Secretary</i></u>	<u><i>General Secretary</i></u>
<i>Branch Assistant Secretary</i>	<i>Assistant General Secretary</i>

- (h) *The persons who are elected to fill the federal position will fill the state position.*

(emphasis added)

Exemption from election scheme

7. Section 580 of the IR Act provides:

580 Exemption if federal election held

(1) *An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from holding an election for a stated office or offices (a stated office).*

(2) *The registrar may grant an exemption to an applicant for a stated office only if satisfied as follows—*

- (a) *the applicant has a counterpart federal body;*
- (b) *the body has held an election (the federal election) for an office (the federal office) under the Commonwealth (Registered Organisations) Act;*
- (c) *the applicant’s rules provide that the stated office is a corresponding office to the federal office;*
- (d) *the stated office will be filled by a person elected (the elected person) in the federal election to the federal office;*
- (e) *if the eligibility rules of the organisation and the body differ—the interests of the organisation’s members who were ineligible to vote in the federal election have not been disadvantaged.*

(3) *If an exemption is granted for a stated office—*

(a) *the elected person is taken to have been elected to the stated office; and*
 (b) *the organisation's rules for the election of the elected person to the stated office are taken to be complied with; and*
 (c) *section 441 does not apply to the rules for the election.*

(4) *In this section—*

corresponding office, *to a federal office, means an office, however called, similar to the federal office.*

(emphasis added)

8. The IR Act makes clear that organisations are able to have rules that provide for the election of officers by way of ballot and/or the election of officers by way of exemption. The act, unsurprisingly is silent on the issue of exemption for 'positions' as persons are usually appointed to positions not elected to them. This is, of course, not the case in relation to the QPUE.
9. As the IR Act is not dealing with the issue of elections for positions (only offices), section 580 set out above does not provide for how an exemption is to occur in relation to General Secretary and Assistant General Secretary. The QPUE rules (which are not constrained by the IR Act) do however provide in rule 26A (g) and (h) that an exemption from election, otherwise required under the state rules, is not required when the position (concerned) has been the subject of an election in the Branch. The person elected in the Branch to the corresponding position is consequently elected to the position in the QPUE.
10. The QIRC have certified rule 26A which provides that the person elected to fill the position of Branch Secretary will fill the position of General Secretary. That is the QPUE rule is expressed in mandatory terms and consequently no ballot is to be held.
11. There is no tension between this rule and the ballot rules (of the QPUE) as rule 26A only operates in the circumstances provided. If there is no election in the Branch then there will be a ballot in the QPUE for the positions, that is rule 26A would not operate and the balance of the QPUE election rules would. If there were any tension, then the more specific rule on the usual tenets of interpretation would apply, which gives the same result.
12. The *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act") provides for the election of holders of 'positions'.¹
13. Rule 23 of the QPUE rules, which provides for nominations, does not apply in the circumstance and consequently the QPUE is not required to publish a notice with respect to the position of General Secretary.
14. Sub-rule 22.4 provides that the General Secretary is elected for a term of four (4) years. We are instructed that the current term of office of the General Secretary commenced on 1 July 2012 in accordance with sub-rule 24.28 the General Secretary is to be elected by 30 June 2016 (four (4) years following the commencement of their term) to ensure that the QPUE will have complied with its rules.

¹ See below.

15. We note that rule 24.28 of the QPUE rules provides that the General Secretary will hold office (*sic*) until a successor is appointed (elected). The effect of the rule is that the General Secretary will remain in the position until the election is completed, even if the election cannot occur prior to 30 June 2016. This is what is colloquially referred to as 'holding over' in the office/position and permits a degree of flexibility in co-ordinating elections.

Branch rules

16. The Police Federation of Australia ("the PFA") is an organisation registered pursuant to the *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act").
17. The Branch is a branch of the PFA and conducts its affairs in accordance with Part CF2 of the PFA rules.
18. Rule 40 of the Part CF2 rules relevantly provides:

40 - ELECTIONS OF OFFICERS, BRANCH SECRETARY AND EXECUTIVE MEMBERS

...

(k) *The term of the position of the Branch Secretary is four (4) years.*

(l) *Despite sub-rule (k) the Branch Secretary elected at the inaugural elections held under Part CF1 will hold their position until their successor is declared elected in an election held in 2016, following which the member elected as Branch Secretary will hold the position until their successor is elected at a subsequent Quadrennial Election.*

19. The Part CF2 rules do not specify when in 2016 the elections must be conducted.
20. The procedure for Branch elections are set out at rules 42 to 72 of the Part CF2 rules.
21. Whilst the Fair Work Commission ("the FWC") understand that it is the unequivocal view of the PFA and of the Qld Branch that the Branch Secretary does not hold an office and rather holds a position, the FWC has not expressed a final view. Consequently, as a belts and braces approach, the Branch should arrange for the election of Branch Secretary to be conducted by the Australian Electoral Commission ('the AEC')².
22. Section 187 of the FW(RO) Act provides:

187 Organisation may ask AEC to conduct elections for positions other than offices

(1) If the rules of an organisation or branch of an organisation require an election to be held for a position other than an office in the organisation or branch, the organisation or branch, as the case may be, may request the AEC to conduct the election.

Note: For the meaning of office, see section 9.

(2) The request must be:

(a) in writing; and

(b) signed by an officer of the organisation or branch who is authorised to do so by the committee of management of the organisation or branch; and

² Which is what would have to occur if it was an office.

(c) given to the AEC.

(3) A copy of the request must also be lodged with the FWC at the same time as the prescribed information in relation to the election is lodged (see section 189).

23. The key dates for Branch elections are set out below:

- (a) prescribed information filed at least two (2) months before nominations open – see section 138(3) of the FW(RO) Regulations³;
- (b) nominations close 28 days following the calling of nominations – see rule 45(b); and
- (c) ballot closes 14 or 21 days following the opening of ballots – see rule 59.

24. To ensure that the Branch Secretary is declared elected prior to 30 June 2016, and to provide the AEC with an ample opportunity to complete all steps, we propose:

Prescribed information filed	15 February 2016
Opening of nominations	15 April 2016
Close of nominations	13 May 2016
Opening of ballot	27 May 2016
Close of ballots	17 June 2016

25. A copy of the prescribed information for the election is attached. The prescribed information should be filed with the AEC and the FWC at the same time.

26. Rule 47 of the Part CF2 rules provides for the calling of nominations:

47 - CALLING FOR NOMINATIONS

(a) *The Manager must call for nominations for the offices or the positions to be filled by notice given to Members in one of the following ways:*

- (i) *by post to each Member at the address recorded in the Branch Register;*
- (ii) *if the Branch publishes a journal or newsletter that it gives to its members free of charge, by advertisement in that journal or newsletter; or*
- (iii) *in a daily newspaper circulating in the area where the Branch's members live or work.*

(b) *The notice must state:*

- (i) *The opening day for nominations;*
- (ii) *the closing day for nominations;*
- (iii) *that nominations for an office or a position:*
 - (1) *open at midday on the opening day; and*

³ We note that the Regulation only relates to "offices" but as a belts and braces approach this timeframe should also be adopted for the election of the Branch Secretary.

- (2) *close at midday on the closing day;*
 - (iv) *who may nominate as a candidate in the election;*
 - (v) *that nominations for an office or a position must be written, signed by the nominee, be in accordance with **rule 42** and be given to the Manager before nominations close;*
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Hall Payne Lawyers

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30th November 2015

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Dates and time of nominations opening and closing

The manager must fix the opening day and closing day for nominations – see sub-rule 45(a).

The closing day must be at least 28 days after notice is given under rule 47 – see sub-rule 45(b).

Nominations open at midday on the opening day and close at midday on the closing day – see sub-rule 45(c).

Day provided for in the rules as the day on which the roll of voters is to be closed

30 days before the starting time for nominations.

Voting system

Direct voting system.



Ian Leavers
Branch President
Queensland Police Branch
Police Federation of Australia

The seal is circular with the text "QUEENSLAND POLICE UNION OF EMPLOYEES" around the perimeter. In the center, it reads "THE COMMON SEAL OF" with a small "x" below it.

Date 1/12/15

19 November 2015

Mr Denis Sycz
Acting General Secretary
Queensland Police Union

By Email: dsycz@qpu.asn.au

Contact
James Stedman
Solicitor
Phone: (07) 3017 2400

Our Reference
JWP:4151646

Your Reference

Dear Denis

Re: Election of General Secretary

We refer to the above and to our discussions with Mr Mahoney of your office.

We attach:

- prescribed information for election of Branch Secretary.

We are instructed:

1. The General Secretary of the Queensland Police Union of Employees ("QPUE") is elected every four years and the notice of the election has historically been published in the QPUE journal in January.
2. The QPUE does not presently intend to publish a version of its journal in January 2016; however a journal will be published in December 2015.
3. The QPUE requires advice as to:
 - (a) whether a notice is required to be published in its next journal; and
 - (b) any steps that must be taken to ensure that the election of the General Secretary is conducted in accordance with the rules.

We advise:

QPUE rules

1. The QPUE is an organisation registered pursuant to the *Industrial Relations Act 1999* (Qld) ("the IR Act").
2. General Secretary of the QPUE is a 'position', not an office. The position has nonetheless always been the subject of election conducted in accordance with the QPUE rules.

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3. The rules of the QPUE provide for elections by both ballot and exemption. The ballot rules are the means that were historically used as there was no counterpart federal body. That historical context is now altered by the establishment of the Qld Branch of the PFA. As a consequence the QPUE rules were altered to provide for an exemption from election where an election has been conducted in the Branch for the corresponding office/position.
4. Rules 22 to 26 of the QPUE rules provides for the process of election by ballot (“the ballot rules”).
5. The provisions of the ballot rules which relate to nominations for the office of General Secretary are:

22 ELECTIONS OF OFFICERS, EXECUTIVE MEMBERS AND CONFERENCE DELEGATES.

22.1 All elections for the positions of General President, General Secretary, Assistant General Secretary, Executive Members and Conference Delegates, Vice President and Treasurer shall be conducted by either the Queensland Electoral Commission or by a Returning Officer appointed under the QPUE Rules.

22.2 All financial Members of QPUE may nominate for the position of General President, General Secretary, Assistant General Secretary, Executive Members or Conference Delegate. Provided that a full-time officer or a full-time employee may not be elected to an office other than an office stated by the rules to be a full-time elected position.

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22.4 Every General Secretary elected after July 1, 1992 shall be elected for a term of four (4) years.

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23.1 In the month that nominations for a position or positions are to be called the QPUE shall cause to be published in that month's Journal a full page advice of the calling of such nominations, how members may nominate and the conditions surrounding nominations including a full print of the nomination form as at Schedule B of these rules.

23.2 Nominations shall be in accordance with Schedule B of these Rules signed by at least three financial Members as nominators and by the person accepting nomination.

23.2.2 Persons nominated for the position of General Secretary shall either be a financial member of the QPUE or a current officer of the QPUE.

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23.6 Nominations for the office of General Secretary shall be called no later than January, 30 of every fourth year commencing January 1992 and shall be received no later than February 28 in the year that they are called.

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24.28 *Upon the declaration of the ballot the elected General Secretary and Assistant General Secretary shall take office from the 1st day of July in the year that they are called and shall hold office until the declaration of a ballot held in accordance with these Rules appointing a successor.*

(emphasis added)

6. Rule 26A is the QPUE rules providing for exemption from elections:

26A - Counterpart Federal Body Election Exemption

- (a) *This rule shall operate from July, 2015.*
- (b) *For the purposes of this rule, the:*
- (i) *“Union” is The Queensland Police Union of Employees; and*
- (ii) *Branch” is the Queensland Police Branch of the Police Federation of Australia.*
- (c) *For the purpose of the rules of the Union the counterpart federal body of the Union is the Branch.*
- (d) *The offices of the Union (the “state office”) that correspond with the offices of the Branch (the “federal office”), due to the state office being similar to the federal office, are as follows:*

<i>The Branch (the “federal office”)</i>	<i>The Union (the “state office”)</i>
<i>Branch President</i>	<i>President</i>
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<i>Branch Headquarters and Support Regional Representative</i>	<i>Headquarters and Support Regional Representative</i>
<i>Branch Conference Delegate</i>	<i>Conference Delegate</i>

- (e) *The General Secretary shall:*
- (i) *make application for exemption from holding an election as soon as practicable following the declaration of a relevant election, held under the*

Fair Work (Registered Organisations) Act (Cth) (the “federal election”) for the counterpart federal body;

- (ii) *notify the membership of the Union of the making of the application for exemption by means of a publication circulated to the members free of charge; and*
 - (iii) *seek in the making of an application for exemption, that a state office be filled by a person elected in the relevant federal election to the federal office that corresponds, as provided by this rule, with the state office.*
- (f) *In the event of the exemption not being granted, or being only partially granted, the General Secretary shall forthwith proceed to file the prescribed material required to be filed in relation to the holding of a relevant election pursuant to these rules.*
- (g) *The positions of the Union (for the purposes of this rule, “the state positions”) that correspond with the positions in the Branch (for the purposes of this rule, “the federal positions”), due to the state position being similar to the federal position are as follows:*

<i>The Branch (the “federal position”)</i>	<i>The Union (the “state position”)</i>
<i><u>Branch Secretary</u></i>	<i><u>General Secretary</u></i>
<i>Branch Assistant Secretary</i>	<i>Assistant General Secretary</i>

- (h) *The persons who are elected to fill the federal position will fill the state position.*

(emphasis added)

Exemption from election scheme

7. Section 580 of the IR Act provides:

580 Exemption if federal election held

(1) *An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from holding an election for a stated office or offices (a stated office).*

(2) *The registrar may grant an exemption to an applicant for a stated office only if satisfied as follows—*

- (a) *the applicant has a counterpart federal body;*
- (b) *the body has held an election (the federal election) for an office (the federal office) under the Commonwealth (Registered Organisations) Act;*
- (c) *the applicant’s rules provide that the stated office is a corresponding office to the federal office;*
- (d) *the stated office will be filled by a person elected (the elected person) in the federal election to the federal office;*
- (e) *if the eligibility rules of the organisation and the body differ—the interests of the organisation’s members who were ineligible to vote in the federal election have not been disadvantaged.*

(3) *If an exemption is granted for a stated office—*

(a) *the elected person is taken to have been elected to the stated office; and*
 (b) *the organisation's rules for the election of the elected person to the stated office are taken to be complied with; and*
 (c) *section 441 does not apply to the rules for the election.*

(4) *In this section—*

corresponding office, *to a federal office, means an office, however called, similar to the federal office.*

(emphasis added)

8. The IR Act makes clear that organisations are able to have rules that provide for the election of officers by way of ballot and/or the election of officers by way of exemption. The act, unsurprisingly is silent on the issue of exemption for 'positions' as persons are usually appointed to positions not elected to them. This is, of course, not the case in relation to the QPUE.
9. As the IR Act is not dealing with the issue of elections for positions (only offices), section 580 set out above does not provide for how an exemption is to occur in relation to General Secretary and Assistant General Secretary. The QPUE rules (which are not constrained by the IR Act) do however provide in rule 26A (g) and (h) that an exemption from election, otherwise required under the state rules, is not required when the position (concerned) has been the subject of an election in the Branch. The person elected in the Branch to the corresponding position is consequently elected to the position in the QPUE.
10. The QIRC have certified rule 26A which provides that the person elected to fill the position of Branch Secretary will fill the position of General Secretary. That is the QPUE rule is expressed in mandatory terms and consequently no ballot is to be held.
11. There is no tension between this rule and the ballot rules (of the QPUE) as rule 26A only operates in the circumstances provided. If there is no election in the Branch then there will be a ballot in the QPUE for the positions, that is rule 26A would not operate and the balance of the QPUE election rules would. If there were any tension, then the more specific rule on the usual tenets of interpretation would apply, which gives the same result.
12. The *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act") provides for the election of holders of 'positions'.¹
13. Rule 23 of the QPUE rules, which provides for nominations, does not apply in the circumstance and consequently the QPUE is not required to publish a notice with respect to the position of General Secretary.
14. Sub-rule 22.4 provides that the General Secretary is elected for a term of four (4) years. We are instructed that the current term of office of the General Secretary commenced on 1 July 2012 in accordance with sub-rule 24.28 the General Secretary is to be elected by 30 June 2016 (four (4) years following the commencement of their term) to ensure that the QPUE will have complied with its rules.

¹ See below.

15. We note that rule 24.28 of the QPUE rules provides that the General Secretary will hold office (*sic*) until a successor is appointed (elected). The effect of the rule is that the General Secretary will remain in the position until the election is completed, even if the election cannot occur prior to 30 June 2016. This is what is colloquially referred to as 'holding over' in the office/position and permits a degree of flexibility in co-ordinating elections.

Branch rules

16. The Police Federation of Australia ("the PFA") is an organisation registered pursuant to the *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act").
17. The Branch is a branch of the PFA and conducts its affairs in accordance with Part CF2 of the PFA rules.
18. Rule 40 of the Part CF2 rules relevantly provides:

40 - ELECTIONS OF OFFICERS, BRANCH SECRETARY AND EXECUTIVE MEMBERS

...

- (k) *The term of the position of the Branch Secretary is four (4) years.*
- (l) *Despite sub-rule (k) the Branch Secretary elected at the inaugural elections held under Part CF1 will hold their position until their successor is declared elected in an election held in 2016, following which the member elected as Branch Secretary will hold the position until their successor is elected at a subsequent Quadrennial Election.*

19. The Part CF2 rules do not specify when in 2016 the elections must be conducted.
20. The procedure for Branch elections are set out at rules 42 to 72 of the Part CF2 rules.
21. Whilst the Fair Work Commission ("the FWC") understand that it is the unequivocal view of the PFA and of the Qld Branch that the Branch Secretary does not hold an office and rather holds a position, the FWC has not expressed a final view. Consequently, as a belts and braces approach, the Branch should arrange for the election of Branch Secretary to be conducted by the Australian Electoral Commission ('the AEC')².
22. Section 187 of the FW(RO) Act provides:

187 Organisation may ask AEC to conduct elections for positions other than offices

(1) If the rules of an organisation or branch of an organisation require an election to be held for a position other than an office in the organisation or branch, the organisation or branch, as the case may be, may request the AEC to conduct the election.

Note: For the meaning of office, see section 9.

- (2) The request must be:*
- (a) in writing; and*
 - (b) signed by an officer of the organisation or branch who is authorised to do so by the committee of management of the organisation or branch; and*

² Which is what would have to occur if it was an office.

(c) given to the AEC.

(3) A copy of the request must also be lodged with the FWC at the same time as the prescribed information in relation to the election is lodged (see section 189).

23. The key dates for Branch elections are set out below:

- (a) prescribed information filed at least two (2) months before nominations open – see section 138(3) of the FW(RO) Regulations³;
- (b) nominations close 28 days following the calling of nominations – see rule 45(b); and
- (c) ballot closes 14 or 21 days following the opening of ballots – see rule 59.

24. To ensure that the Branch Secretary is declared elected prior to 30 June 2016, and to provide the AEC with an ample opportunity to complete all steps, we propose:

Prescribed information filed	15 February 2016
Opening of nominations	15 April 2016
Close of nominations	13 May 2016
Opening of ballot	27 May 2016
Close of ballots	17 June 2016

25. A copy of the prescribed information for the election is attached. The prescribed information should be filed with the AEC and the FWC at the same time.

26. Rule 47 of the Part CF2 rules provides for the calling of nominations:

47 - CALLING FOR NOMINATIONS

(a) *The Manager must call for nominations for the offices or the positions to be filled by notice given to Members in one of the following ways:*

- (i) *by post to each Member at the address recorded in the Branch Register;*
- (ii) *if the Branch publishes a journal or newsletter that it gives to its members free of charge, by advertisement in that journal or newsletter; or*
- (iii) *in a daily newspaper circulating in the area where the Branch's members live or work.*

(b) *The notice must state:*

- (i) *The opening day for nominations;*
- (ii) *the closing day for nominations;*
- (iii) *that nominations for an office or a position:*
 - (1) *open at midday on the opening day; and*

³ We note that the Regulation only relates to "offices" but as a belts and braces approach this timeframe should also be adopted for the election of the Branch Secretary.

- (2) *close at midday on the closing day;*
 - (iv) *who may nominate as a candidate in the election;*
 - (v) *that nominations for an office or a position must be written, signed by the nominee, be in accordance with **rule 42** and be given to the Manager before nominations close;*
 - (vi) *the starting and finishing days for a ballot to decide the result of the election if a ballot becomes necessary under **rule 50**;*
 - (vii) *that only a person who was a Member 30 days before the opening time for nominations may vote in the election; and*
 - (viii) *that the ballot will be decided by a first-past-the-post system of voting.*
- (c) *Without limitation to sub-rule (b) the Manager may provide a nomination form for the purposes of nominating.*
27. The notice under rule 47 will be published on the direction of the Manager (in this instance the AEC) and will specify the dates for the opening and closing of nominations.
28. The notice calling for nominations cannot be published prior to the opening and closing dates for nominations being determined by the AEC.
29. The prescribed information could however be filed more than two months before the proposed date for the opening of nominations with a view to aligning the timing of the election notice with the timing of the 2016 journals.

Conclusion

30. As a consequence of rule 26A of the QPUE rules the QPUE is not required to publish a notice in relation to an election for the position of General Secretary.
31. The next term of the General Secretary ought to commence on or before 1 July 2016 to comply with rule 22.4 of the QPUE rules.
32. The position of General Secretary will be filled upon the declaration of the election of the Branch Secretary of the Qld Branch in accordance with rule 26A of the QPUE rules.
33. The prescribed information for the position of Branch Secretary should be filed with the AEC and FWC by February to ensure that the next term of office commences by 1 July 2016.
34. The notice to members calling for nominations for the position of Branch Secretary can not be given to members⁴ (by journal⁵ or otherwise⁶) until after the AEC has been appointed to conduct the election.

⁴ Members of the Qld Branch.

⁵ Consideration should be given to whether the Journal needs to be branded for this purpose as a joint journal, albeit the property rights in the journal are to be the rights of the QPUE

⁶ Notice may also be given by posting to Qld Branch members or in a newspaper.

35. Nothing prevents the prescribed information being filed earlier if that will assist in co-ordinating the giving of the notice to members with when journals are to be produced in 2016.

If you have any questions with respect to any of the matters above, please contact the writer.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J Stedman', is written over a horizontal line.

James Stedman
Hall Payne Lawyers

cc. Steve Mahoney

- (e) Despite the other provisions of this rule, where the Union is required by law to alter its rules, only a majority of the Executive is required to determine to make that alteration and the alterations may be certified by the Registrar.

20 MEETINGS OF THE EXECUTIVE

- 20.1 The Executive shall meet at least once in every month for the transaction of business. The General President may at any time and the General Secretary shall upon the request in writing of three (3) Executive Members convene a meeting of the Executive.
- 20.2 A Quorum shall be half of the Executive by number plus one.
- 20.3 The General President may grant leave of absence to Executive Members at the absolute discretion of the General President.
- 20.4 In addition to monthly meetings, should issues arise that the General President deems it necessary for the Executive to address, the General President may organize an electronic meeting of the Executive to deal with those matters.
- 20.5 The General President may call for a secret ballot to determine any motion moved by the Executive at its meeting at their absolute discretion.

21 EXPENSES FOR THE EXECUTIVE, GENERAL SECRETARY AND ASSISTANT GENERAL SECRETARY

The following allowances shall be paid to the General Secretary, Assistant General Secretary and Members of the Executive.

- 21.1 All expenses including Business Class Travel, meals and accommodation whilst on official QPUE Business.
- 21.2 Where a Member uses their private motor vehicle, an allowance at the current allowable rate per kilometre, as per the Australian Taxation Guidelines.
- 21.3 An amount of \$100 per day for Executive Meetings, Branch Meetings, Deputations, Reviews, Disciplinary Hearings and preparation for Disciplinary Hearings and all other recognised meetings of the QPUE excluding Conference. This allowance shall not be available to the General President, General Secretary or Assistant General Secretary.
- As from July 1, 2012, this amount will increase by the same percentage as the annual QPS Enterprise Bargaining wage rise. The increase to the allowance will be applicable from the date of certification of the Enterprise Agreement.
- 21.4 An amount of \$40 per day additional out of pocket expenses when on tour.
- 21.5 The Executive is authorised to incur reasonable expenses to be provided by such Executive in the field of meeting refreshments and reciprocal entertainment.

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- 22.1 All elections for the positions of General President, General Secretary, Assistant General Secretary, Executive Members and Conference Delegates, Vice President and Treasurer shall be conducted by either the Queensland Electoral Commission or by a Returning Officer appointed under the QPUE Rules.
- 22.2 All financial Members of QPUE may nominate for the position of General President, General Secretary, Assistant General Secretary, Executive Members or Conference Delegate. Provided that a full-time officer or a full-time employee may not be elected to an office other than an office stated by the rules to be a full-time elected position.
- 22.3 Every General President elected after March 1, 1995 shall be elected for a term of four (4) years subject to Rule 26.5.
- 22.4 Every General Secretary elected after July 1, 1992 shall be elected for a term of four (4) years.
- 22.5 Every Assistant General Secretary elected after July 1, 1994 shall be elected for a term of four (4) years.
- 22.6 The following regional representatives who are the Executive Members shall be elected for a four (4) year term from July 1, 1995, subject to Rule 26.5 and shall hold office until a successor is appointed.
- 22.6.1 One financial member to be elected by financial members attached to the stations listed under Northern Region for the election of Conference Delegates.

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19 November 2015

Mr Denis Sycz
Acting General Secretary
Queensland Police Union

By Email: dsycz@qpu.asn.au

Contact
James Stedman
Solicitor
Phone: (07) 3017 2400

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<i>Branch Conference Delegate</i>	<i>Conference Delegate</i>

- (e) *The General Secretary shall:*
- (i) *make application for exemption from holding an election as soon as practicable following the declaration of a relevant election, held under the*

Fair Work (Registered Organisations) Act (Cth) (the “federal election”) for the counterpart federal body;

- (ii) *notify the membership of the Union of the making of the application for exemption by means of a publication circulated to the members free of charge; and*
 - (iii) *seek in the making of an application for exemption, that a state office be filled by a person elected in the relevant federal election to the federal office that corresponds, as provided by this rule, with the state office.*
- (f) *In the event of the exemption not being granted, or being only partially granted, the General Secretary shall forthwith proceed to file the prescribed material required to be filed in relation to the holding of a relevant election pursuant to these rules.*
- (g) *The positions of the Union (for the purposes of this rule, “the state positions”) that correspond with the positions in the Branch (for the purposes of this rule, “the federal positions”), due to the state position being similar to the federal position are as follows:*

<i>The Branch (the “federal position”)</i>	<i>The Union (the “state position”)</i>
<u><i>Branch Secretary</i></u>	<u><i>General Secretary</i></u>
<i>Branch Assistant Secretary</i>	<i>Assistant General Secretary</i>

- (h) *The persons who are elected to fill the federal position will fill the state position.*

(emphasis added)

Exemption from election scheme

7. Section 580 of the IR Act provides:

580 Exemption if federal election held

(1) *An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from holding an election for a stated office or offices (a stated office).*

(2) *The registrar may grant an exemption to an applicant for a stated office only if satisfied as follows—*

- (a) *the applicant has a counterpart federal body;*
- (b) *the body has held an election (the federal election) for an office (the federal office) under the Commonwealth (Registered Organisations) Act;*
- (c) *the applicant’s rules provide that the stated office is a corresponding office to the federal office;*
- (d) *the stated office will be filled by a person elected (the elected person) in the federal election to the federal office;*
- (e) *if the eligibility rules of the organisation and the body differ—the interests of the organisation’s members who were ineligible to vote in the federal election have not been disadvantaged.*

(3) *If an exemption is granted for a stated office—*

(a) *the elected person is taken to have been elected to the stated office; and*
 (b) *the organisation's rules for the election of the elected person to the stated office are taken to be complied with; and*
 (c) *section 441 does not apply to the rules for the election.*

(4) *In this section—*

corresponding office, *to a federal office, means an office, however called, similar to the federal office.*

(emphasis added)

8. The IR Act makes clear that organisations are able to have rules that provide for the election of officers by way of ballot and/or the election of officers by way of exemption. The act, unsurprisingly is silent on the issue of exemption for 'positions' as persons are usually appointed to positions not elected to them. This is, of course, not the case in relation to the QPUE.
9. As the IR Act is not dealing with the issue of elections for positions (only offices), section 580 set out above does not provide for how an exemption is to occur in relation to General Secretary and Assistant General Secretary. The QPUE rules (which are not constrained by the IR Act) do however provide in rule 26A (g) and (h) that an exemption from election, otherwise required under the state rules, is not required when the position (concerned) has been the subject of an election in the Branch. The person elected in the Branch to the corresponding position is consequently elected to the position in the QPUE.
10. The QIRC have certified rule 26A which provides that the person elected to fill the position of Branch Secretary will fill the position of General Secretary. That is the QPUE rule is expressed in mandatory terms and consequently no ballot is to be held.
11. There is no tension between this rule and the ballot rules (of the QPUE) as rule 26A only operates in the circumstances provided. If there is no election in the Branch then there will be a ballot in the QPUE for the positions, that is rule 26A would not operate and the balance of the QPUE election rules would. If there were any tension, then the more specific rule on the usual tenets of interpretation would apply, which gives the same result.
12. The *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act") provides for the election of holders of 'positions'.¹
13. Rule 23 of the QPUE rules, which provides for nominations, does not apply in the circumstance and consequently the QPUE is not required to publish a notice with respect to the position of General Secretary.
14. Sub-rule 22.4 provides that the General Secretary is elected for a term of four (4) years. We are instructed that the current term of office of the General Secretary commenced on 1 July 2012 in accordance with sub-rule 24.28 the General Secretary is to be elected by 30 June 2016 (four (4) years following the commencement of their term) to ensure that the QPUE will have complied with its rules.

¹ See below.

15. We note that rule 24.28 of the QPUE rules provides that the General Secretary will hold office (*sic*) until a successor is appointed (elected). The effect of the rule is that the General Secretary will remain in the position until the election is completed, even if the election cannot occur prior to 30 June 2016. This is what is colloquially referred to as 'holding over' in the office/position and permits a degree of flexibility in co-ordinating elections.

Branch rules

16. The Police Federation of Australia ("the PFA") is an organisation registered pursuant to the *Fair Work (Registered Organisations) Act 2009* (Cth) ("the FW(RO) Act").
17. The Branch is a branch of the PFA and conducts its affairs in accordance with Part CF2 of the PFA rules.
18. Rule 40 of the Part CF2 rules relevantly provides:

40 - ELECTIONS OF OFFICERS, BRANCH SECRETARY AND EXECUTIVE MEMBERS

...

(k) *The term of the position of the Branch Secretary is four (4) years.*

(l) *Despite sub-rule (k) the Branch Secretary elected at the inaugural elections held under Part CF1 will hold their position until their successor is declared elected in an election held in 2016, following which the member elected as Branch Secretary will hold the position until their successor is elected at a subsequent Quadrennial Election.*

19. The Part CF2 rules do not specify when in 2016 the elections must be conducted.
20. The procedure for Branch elections are set out at rules 42 to 72 of the Part CF2 rules.
21. Whilst the Fair Work Commission ("the FWC") understand that it is the unequivocal view of the PFA and of the Qld Branch that the Branch Secretary does not hold an office and rather holds a position, the FWC has not expressed a final view. Consequently, as a belts and braces approach, the Branch should arrange for the election of Branch Secretary to be conducted by the Australian Electoral Commission ('the AEC')².
22. Section 187 of the FW(RO) Act provides:

187 Organisation may ask AEC to conduct elections for positions other than offices

(1) If the rules of an organisation or branch of an organisation require an election to be held for a position other than an office in the organisation or branch, the organisation or branch, as the case may be, may request the AEC to conduct the election.

Note: For the meaning of office, see section 9.

(2) The request must be:

(a) in writing; and

(b) signed by an officer of the organisation or branch who is authorised to do so by the committee of management of the organisation or branch; and

² Which is what would have to occur if it was an office.

(c) given to the AEC.

(3) A copy of the request must also be lodged with the FWC at the same time as the prescribed information in relation to the election is lodged (see section 189).

23. The key dates for Branch elections are set out below:
- (a) prescribed information filed at least two (2) months before nominations open – see section 138(3) of the FW(RO) Regulations³;
 - (b) nominations close 28 days following the calling of nominations – see rule 45(b); and
 - (c) ballot closes 14 or 21 days following the opening of ballots – see rule 59.
24. To ensure that the Branch Secretary is declared elected prior to 30 June 2016, and to provide the AEC with an ample opportunity to complete all steps, we propose:
- | | |
|-------------------------------------|------------------|
| Prescribed information filed | 15 February 2016 |
| Opening of nominations | 15 April 2016 |
| Close of nominations | 13 May 2016 |
| Opening of ballot | 27 May 2016 |
| Close of ballots | 17 June 2016 |
25. A copy of the prescribed information for the election is attached. The prescribed information should be filed with the AEC and the FWC at the same time.
26. Rule 47 of the Part CF2 rules provides for the calling of nominations:

47 - CALLING FOR NOMINATIONS

- (a) *The Manager must call for nominations for the offices or the positions to be filled by notice given to Members in one of the following ways:*
- (i) *by post to each Member at the address recorded in the Branch Register;*
 - (ii) *if the Branch publishes a journal or newsletter that it gives to its members free of charge, by advertisement in that journal or newsletter; or*
 - (iii) *in a daily newspaper circulating in the area where the Branch's members live or work.*
- (b) *The notice must state:*
- (i) *The opening day for nominations;*
 - (ii) *the closing day for nominations;*
 - (iii) *that nominations for an office or a position:*
 - (1) *open at midday on the opening day; and*

³ We note that the Regulation only relates to "offices" but as a belts and braces approach this timeframe should also be adopted for the election of the Branch Secretary.

- (2) *close at midday on the closing day;*
 - (iv) *who may nominate as a candidate in the election;*
 - (v) *that nominations for an office or a position must be written, signed by the nominee, be in accordance with **rule 42** and be given to the Manager before nominations close;*
 - (vi) *the starting and finishing days for a ballot to decide the result of the election if a ballot becomes necessary under **rule 50**;*
 - (vii) *that only a person who was a Member 30 days before the opening time for nominations may vote in the election; and*
 - (viii) *that the ballot will be decided by a first-past-the-post system of voting.*
- (c) *Without limitation to sub-rule (b) the Manager may provide a nomination form for the purposes of nominating.*
27. The notice under rule 47 will be published on the direction of the Manager (in this instance the AEC) and will specify the dates for the opening and closing of nominations.
28. The notice calling for nominations cannot be published prior to the opening and closing dates for nominations being determined by the AEC.
29. The prescribed information could however be filed more than two months before the proposed date for the opening of nominations with a view to aligning the timing of the election notice with the timing of the 2016 journals.

Conclusion

30. As a consequence of rule 26A of the QPUE rules the QPUE is not required to publish a notice in relation to an election for the position of General Secretary.
31. The next term of the General Secretary ought to commence on or before 1 July 2016 to comply with rule 22.4 of the QPUE rules.
32. The position of General Secretary will be filled upon the declaration of the election of the Branch Secretary of the Qld Branch in accordance with rule 26A of the QPUE rules.
33. The prescribed information for the position of Branch Secretary should be filed with the AEC and FWC by February to ensure that the next term of office commences by 1 July 2016.
34. The notice to members calling for nominations for the position of Branch Secretary can not be given to members⁴ (by journal⁵ or otherwise⁶) until after the AEC has been appointed to conduct the election.

⁴ Members of the Qld Branch.

⁵ Consideration should be given to whether the Journal needs to be branded for this purpose as a joint journal, albeit the property rights in the journal are to be the rights of the QPUE

⁶ Notice may also be given by posting to Qld Branch members or in a newspaper.

35. Nothing prevents the prescribed information being filed earlier if that will assist in co-ordinating the giving of the notice to members with when journals are to be produced in 2016.

If you have any questions with respect to any of the matters above, please contact the writer.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J Stedman', is written over a horizontal line.

James Stedman
Hall Payne Lawyers

cc. Steve Mahoney



Police Federation of Australia

The National Voice of Policing

Queensland State Branch

PO Box 13008

Brisbane QLD

Phone: (07) 3259-1900

Fax: (07) 3259-1950

The Registrar
Fair Work Commission
11 Exhibition Street
Melbourne 3000

Attention: Ms. Rebecca Lee

Via email: orgs@fwc.gov.au

PRESCRIBED INFORMATION FOR ELECTION

I am the officer of the Queensland Police Branch of the Police Federation of Australia and am authorised to sign this statement which is lodged in accordance with section 187 of the *Fair Work (Registered Organisations) Act 2009* (Cth).

Each office or position for which an election is required

Queensland Police Branch – Branch Secretary

The reason for the elections

The term of the position has expired or is due to expire in the normal course of events.

Electorates

The members, the Branch Secretary and the Branch Assistant Secretary – see sub-rule 39 (d) (i).

Dates and time of nominations opening and closing

The manager must fix the opening day and closing day for nominations – see sub-rule 45(a).

The closing day must be at least 28 days after notice is given under rule 47 – see sub-rule 45(b).

Nominations open at midday on the opening day and close at midday on the closing day – see sub-rule 45(c).

Day provided for in the rules as the day on which the roll of voters is to be closed

30 days before the starting time for nominations.

Voting system

Direct voting system.



Ian Leavers
Branch President
Queensland Police Branch
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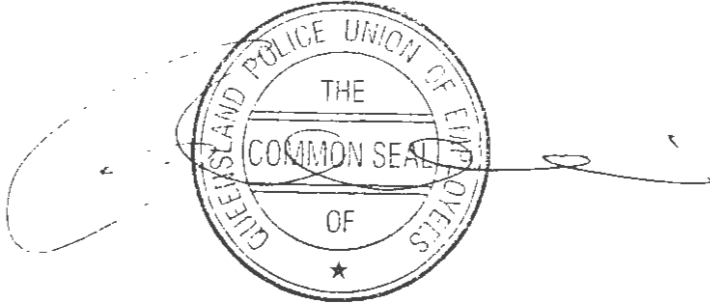
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The reason for the elections

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Electorates

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