

## ENFORCEABLE UNDERTAKING

# Undertaking to the General Manager of the Fair Work Commission given under section 316C the *Fair Work (Registered Organisations) Act 2009* by the Australian Education Union regarding the Western Australian and Northern Territory Branches

Date: 15 October 2026

## PARTIES

1. This enforceable undertaking (**EU**) is given by the Australian Education Union (**AEU**) to the General Manager of the Fair Work Commission (**General Manager**) pursuant to section 316C of the *Fair Work (Registered Organisations) Act 2009* (**RO Act**) and Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* (**Regulatory Powers Act**).

## BACKGROUND

2. This EU has been entered into due to recent non-compliance of section 189 of the RO Act by the AEU and some of its branches regarding the elections for offices. Section 189 requires an organisation or branch to lodge 'prescribed information' with the Fair Work Commission (**Commission**) in relation to an election that is to be conducted by the Australian Electoral Commission (**AEC**). Subsection 189(1) requiring prescribed information to be lodged at least two months before the day nominations open, or by a later day allowed by the General Manager, is a civil penalty provision.
3. On 27 November 2025, the AEU and the General Manager of the Commission entered into a separate enforceable undertaking, also about non-compliance with section 189, in relation to Queensland Branch elections in matter E2025/98. In that matter, the prescribed information regarding the election for Branch officers should have been lodged (at the latest) by November 2023 but was not lodged until 26 May 2025 – approximately 17 months late. That enforceable undertaking was successfully completed by the AEU on 28 September 2026, following a brief extension in relation to one of the undertakings.
4. Between February and May 2026, the Commission conducted an investigation regarding elections for the second Federal Executive Member representing the Western Australian Branch (**WA Branch**) (INV2026/5) and found that no prescribed information had been lodged by the organisation with the Commission for an election to be conducted by the AEC according to the requirements under sections 182 and 189 of the RO Act.

5. In relation to the Northern Territory Branch (**NT Branch**), the Commission, in conducting an audit of its scheduled election alert program, identified that the NT Branch had failed to lodge prescribed information with the Commission to arrange an election for the offices of Branch Conference Delegates representing Sub-Branches (**Branch Conference Delegates**), and had apparently not done so for over twenty (20) years. Although these offices were filled, this process was not by an election conducted by the AEC in accordance with the requirements of sections 182 and 189 of the RO Act.
6. Section 230 of the RO Act requires an organisation to keep, among other things, a register of its members showing the name and postal address of each member. Section 230 is a civil penalty provision.

### *The structure of the AEU*

7. The AEU is a federally-registered organisation of employees, covering members connected to the education industry. The AEU has a branch in each state and territory – these being the Western Australian Branch, New South Wales Teachers Federation (NSWTF) Branch, ACT Branch, Victorian Branch, Tasmanian Branch, South Australian Branch, Queensland Branch, and Northern Territory Branch.
8. AEU branches have counterpart state-registered associations in Queensland and Western Australia which operate in the state industrial relations jurisdiction.
9. The relevant counterpart Western Australian state-registered association is the State School Teachers' Union of WA (**SSTUWA**). The NT Branch, being an Australian territory, does not have a state-registered association.
10. The AEU's rulebook (the **rules**) includes rules governing the operation of each of its federally-registered branches, including the WA and NT Branches.

## **RELEVANT LEGISLATION AND AEU RULES**

### *Relevant statutory obligations under the RO Act*

11. **Section 182** of the RO Act relevantly provides that:
  - a) Each election for an office in an organisation, or branch of an organisation, must be conducted by the AEC. The expenses of conducting such an election are to be borne by the Commonwealth.
  - b) Subsection (1) does not apply in relation to an election for an office in an organisation or branch while an exemption granted to the organisation or branch, as the case may be, under section 186 is in force...
12. **Section 189** of the RO Act relevantly provides that:
  - (1) An organisation or branch of an organisation must lodge with the FWC the prescribed information in relation to an election that is to be conducted by the AEC.

- (2) The prescribed information must be lodged before the prescribed day or such later day as the General Manager allows.

Civil penalty: 60 penalty units.

- (3) If:

- a) The prescribed information is lodged with the FWC by the organisation or branch (whether or not before the prescribed day or the later day allowed by the General Manager); and
- b) The General Manager is satisfied that an election is required to be held under the rules of the organisation or branch; ...

The General Manager must arrange for the conduct of the election by the AEC.

13. **Regulation 138** of the *Fair Work (Registered Organisations) Regulations 2009* defines the 'prescribed day' as being a day that is at least two (2) months before the day nominations open.
14. Registered organisations and their branches must comply with their election-related rules. The lodgement with the Commission of prescribed information, occurring at least two (2) months prior to the opening of nominations, and an election decision being issued by the Commission is the trigger for the AEC to conduct an election. Failure to lodge prescribed information by the 'prescribed day' is a contravention of a civil penalty provision.
15. **Section 191** of the RO Act relevantly provides that:
- a) The returning officer conducting the election may give written request to an officer or employee of the organisation or branch to make available the register of members, or part of the register, kept by the organisation under section 230, to the returning officer for the purposes of the ballot.
  - b) An officer or employee of the organisation or branch commits an offence if he or she fails to comply with the returning officer's request.

Penalty: 30 penalty units

16. **Subsection 230(1)** of the RO Act relevantly provides that:

An organisation must keep the following records:

- a) a register of its members, showing the name and postal address of each member and showing whether the member became a member under an agreement entered into under rules made under subsection 151(1);
- b) a list of the offices of the organisation and each branch;
- c) a list of the names, postal addresses and occupations of the persons holding the offices;

- d) such other records as are prescribed under regulation 147.

Civil penalty: 60 penalty units

17. **Subsection 230(2)** of the RO Act relevantly provides that:

An organisation must:

- a) within 28 days after the person becomes a member, enter their name and postal address to the register of members;
- b) within 28 days after a person ceases to be a member, remove their name and address from the register; and
- c) within 28 days of the organisation being notified that there is a change in the particulars shown on the register, enter the change to the register.

Civil penalty: 60 penalty units

18. A register of members must be accurate. Changes include adding and removing members and updating particulars shown on the register. The failure to keep an accurate register of members, among other things, directly affects the accuracy of the roll of voters for an election.

***AEU and WA Branch rules regarding Federal Executive Members***

19. Federal rule 35(2) provides that each branch's entitlement to the number of Executive Members is determined in accordance with the following formula:

| Number of financial members in the Branch assigned to the General Division | Number of Federal Executive Members |
|----------------------------------------------------------------------------|-------------------------------------|
| Up to 15,000 financial members                                             | 1                                   |
| Each additional 15,000 financial members of part thereof                   | 1                                   |

20. Federal rule 35(3) provides that the total number of financial members assigned to the General Division of a branch as at 30 June in any one year shall be deemed to be the number of financial members assigned to the General Division in that branch for the purpose of determining the number of Executive Members during the succeeding year.
21. Federal rule 35(1)(d) and (e) relevantly provide that the election for the Federal Executive Members from the various branches shall occur biennially. Federal rule 35(1A) further provides that Federal Executive

Members shall take office on 1 March following their election and hold office until their successors are declared elected.

22. Federal rule 35(6A) specifies that in the event that a branch becomes entitled to an additional Federal Executive Member, that office shall be filled by election and the person elected shall hold office until the 'next normal two-yearly election' of the Federal Executive Members.
23. WA Branch rule 12(1) states that the first Federal Executive Member representing the Branch shall be held by the Branch President. A Branch is entitled to an additional Federal Executive Member when the membership of its General Division exceeds 15,000 members as at 30 June. Prescribed information for an election for a Federal Executive Member is required to be lodged by the organisation when the Branch is entitled to more than one Federal Executive member, which is when the Branch has more than 15,000 financial members in its General Division, unless the branch has a relevant exemption.
24. No exemptions exist in relation to the Federal Executive Delegates from Western Australia.

***NT Branch rules regarding Branch Conference Delegates***

25. NT Branch rule 6(a) specifies that the Branch Conference is the supreme governing body of the Branch being constituted by (i) members of the Branch Executive and (ii) Sub-Branch Delegates. Branch rules 8 and 112 provide that each sub-branch is entitled to representation by one delegate per twenty (20) members or part thereof, with these Delegates to be elected annually via secret ballot of the financial members of the relevant sub-branch region in February and March of each year.

**CONTRAVENTIONS OF SECTION 189: WA BRANCH FEDERAL EXECUTIVE MEMBER ELECTIONS**

26. With effect from 30 June 2022, when the WA Branch's General Division membership was reported as exceeding 15,000 members, the WA Branch became entitled to a second Federal Executive Member. Prescribed information should therefore have been lodged by the organisation for an election for that additional office to be conducted by the AEC.
27. The AEU did not lodge prescribed information for an election at that time. Instead, the WA Branch Executive made its own arrangements and purported to elect its representative without AEC involvement. The same circumstances reoccurred when the WA Branch was again eligible for a second Federal Executive Member, with no prescribed information being lodged.
28. On 1 September 2025, the AEU lodged prescribed information for elections that were soon to occur including the two-yearly Federal Executive Delegate elections (E2025/147). The AEU omitted the second Federal Executive Delegate from the WA Branch in this prescribed information, despite the WA Branch having more than 15,000 members.

29. The AEU discovered this error in January 2026 following the completion of the Federal Officer elections and it informed the Commission.
30. Prescribed information was then lodged on 27 January 2026. Late lodgement and non-lodgement of prescribed information is a contravention of section 189 of the RO Act.
31. The membership figures for the General Division of the WA Branch as at 30 June, the Branch's associated entitlement to Federal Executive Members, and whether prescribed information was required to be lodged in the relevant years were as follows:

| Date for determining membership numbers – Federal rule 35(3) | WA Branch membership from General Division | WA Branch entitlement to the number of Federal Executive Members | Whether prescribed information was required to be lodged                                                                                                                                                  |
|--------------------------------------------------------------|--------------------------------------------|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 30 June 2022                                                 | 15,093                                     | 2                                                                | YES, even though it was not an odd-numbered year to lodge PI for the scheduled election<br><br><b>No PI was lodged</b>                                                                                    |
| 30 June 2023                                                 | 14,974                                     | 1                                                                | No, not required                                                                                                                                                                                          |
| 30 June 2024                                                 | 16,422                                     | 2                                                                | YES, even though it was not an odd-numbered year to lodge PI for the scheduled election.<br><br><b>No PI was lodged</b>                                                                                   |
| 30 June 2025                                                 | 16,083                                     | 2                                                                | YES, but PI lodged on 1 September 2025 for scheduled election E2025/147 omitted the Federal Executive Member from WA Branch.<br><br><b>PI was subsequently lodged late</b> on 27 January 2026 in E2026/12 |

32. According to the Commission's records, the January 2026 lodgement is the first prescribed information lodged by the AEU requesting an election for the second Federal Executive Member from the WA Branch.
33. In relation to the AEU Federal Executive Member elections, the AEU contravened section 189 on three occasions:
  - a) after 30 June 2022 when the WA Branch membership exceeded 15,000 in a non-scheduled election year and prescribed information was not lodged as required under Federal rule 35(6A). The person

elected as the second Federal Executive Member from the WA Branch would have held their office until 29 February 2024;

- b) after 30 June 2024 when the WA Branch membership again exceeded 15,000 in a non-scheduled election year and prescribed information was not lodged as required under Federal rule 35(6A); and
- c) when prescribed information for other Federal Executive Members was lodged on 1 September 2025 in E2025/147 but omitted to include the second Federal Executive Member from the WA Branch. Prescribed information was subsequently lodged late, on 27 January 2026, in E2026/12.

## **CONTRAVENTIONS OF SECTION 189: NT BRANCH CONFERENCE DELEGATES**

- 34. Upon reviewing the offices of the NT Branch and the records related to its elections, it became apparent to the Commission that the AEU and its NT Branch had not lodged, and apparently had never lodged in the period since at least 2003 (the extent of readily available Commission records), prescribed information to seek an election of Branch Conference Delegates from the relevant Sub-Branches to the NT Branch Conference.
- 35. The current registered rules of the NT Branch, and all previous versions of the Branch rules (back to at least Rulebook R2003/70 certified on 13 May 2003), prescribe the election of Branch Conference Delegates by secret ballot of financial members conducted in February and March of each year. Section 182 of the RO Act requires elections to be conducted by the AEC.
- 36. It became apparent that the offices were filled using a process other than an AEC-conducted election in accordance with sections 182 and 189 of the RO Act, in circumstances where the NT Branch does not, and did not, hold any exemption under section 186 of the RO Act (or previous relevant legislation) from having its elections conducted by the AEC.
- 37. Non-compliance with election requirements is serious. Holding elections in accordance with the legislation is a fundamental requirement for registered organisations. Those election requirements are also essential to the compact, or agreement, between the organisation's members that governs how the organisation operates and how its members interact as set out in the organisation's rules.

## **ACKNOWLEDGEMENTS BY THE AEU**

- 38. The AEU, and in particular its Federal office, has fully cooperated with the Commission's investigation of these matters and has demonstrated a commitment to meeting its obligations under the RO Act and its own rules.
- 39. The AEU admits that:

- a) prescribed information for the election of a Federal Executive Member from the WA Branch (in addition to the office held by the Branch President) was not lodged in the period July 2022 to December 2025;
- b) the WA Branch Executive purported to elect the second Federal Executive Member to office without an election being conducted by the AEC under the rules of the Branch;
- c) at all relevant times, the AEU did not hold an exemption from AEC-conducted elections for offices in the WA Branch;
- d) prior to 1 December 2025, prescribed information had apparently never been lodged for an election of NT Branch Conference Delegates by the AEC, and that the elections were arranged directly by the Branch through an alternative election process conducted at each school; and
- e) at all relevant times, the NT Branch did not hold an exemption from AEC-conducted elections in relation to any of its offices.

#### **REMEDIAL ACTION TAKEN AND PROPOSED TO BE TAKEN BY THE AEU**

40. The AEU has already taken the following steps in response to the identified issues to prevent recurrence of non-compliance:
- a) Establishment of a National Governance and Compliance Committee made up of representatives of the Federal office and each of the Branches, which will be an advisory committee, providing ongoing, cross-branch oversight of governance and compliance risks and a mechanism for consistent practice.
  - b) Establishment of a Governance and Compliance Calendar setting out recurring statutory obligations, internal governance requirements, and key deadlines regarding legislative obligations for:
    - (i) the preparation and lodgement of financial statements;
    - (ii) officer and related-party disclosure statements;
    - (iii) annual returns;
    - (iv) prescribed information for elections;
    - (v) training for new officers; and
    - (vi) review of membership registers.

- c) Requirement for each Branch to submit to the Federal office a copy of their register of members at the time that they provide their membership figures, i.e. as at 30 June and 31 December each year, which the Federal office will use:
  - (i) to improve the accuracy and verifiability of reported membership figures;
  - (ii) to assist in identifying discrepancies between reported member numbers and actual membership;
  - (iii) to support compliance with the AEU rules, including Federal rules 12 (financial membership), 15 (register of members) and 18 (when membership ceases, and giving effect to this); and
  - (iv) to provide a consistent and auditable record at each reporting period.
- d) Confirmed it will provide ongoing governance and financial training for all elected officers of the AEU and ensuring that all elected officers understand their financial and governance responsibilities as officers.
- e) Confirmed it will track the completion of training for officers through the AEU's Governance and Compliance Calendar.
- f) Agreed that each Branch will provide the Federal office with a copy of the AEC Nominations Certification Report when Federal office holders are elected by the Branches, to strengthen Federal office knowledge and oversight of Branch elections of members to the Federal Executive.
- g) Commenced a process of addressing apparent ambiguities contained in the AEU rules relating to the elections identified in the Commission's investigation in INV2026/5. For example, clarifying rules in relation to Branch Secretary eligibility to hold office as a Federal Executive Member, the timing of elections when Branches have increased entitlement Federal Executive Members in a non-scheduled election year, and considering a 'validation of acts' rule in the Federal rules. It is intended that proposed rule changes will be considered at the AEU Federal Conference in February 2027 so that they can be completed before the next scheduled election in 2027.

## **ACKNOWLEDGEMENT BY THE GENERAL MANAGER OF THE COMMISSION**

- 41. The General Manager is committed to upholding high standards of accountability of organisations and their office holders to their members, promoting compliance and ensuring the democratic functioning and control of organisations and branches. The Commission is dedicated to embedding within organisations a culture of good governance and voluntary compliance with the law.
- 42. The General Manager acknowledges the AEU and the Branches' co-operation, admissions and its commitment to improve and strengthen its procedures and its compliance with the RO Act.

43. The General Manager also acknowledges that the steps set out above, and the undertakings outlined below, indicate the AEU and the Branches' commitment to educate its officers and staff in governance, and to implement systems and processes directed towards achieving ongoing compliance with the RO Act.

## ENFORCEABLE UNDERTAKINGS

44. The AEU undertakes, for the purposes of section 316C of the RO Act and Part 6 of the *Regulatory Powers Act*, that:

| Undertaking                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Timeframe                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|
| 1. The AEU and its Western Australia and Northern Territory Branches will:<br><br>(a) provide a copy of this EU to each member of their committee of management;<br><br>(b) prominently publish on their respective websites (including the SSTUWA website in the case of the Western Australian Branch), a link to this EU and communicate the website link to members;<br><br>and<br><br>(c) provide the Commission with a copy of the relevant webpage links and communication(s) to members. | Within <b>seven (7) days</b> of the date of commencement of the EU.                                                     |
| 2. The Western Australia Branch Secretary will contact the Commission to make arrangements for staff of the Commission to provide training to the WA Branch Executive through its 'Governance to You' program concerning the Branch's obligations and the duties of officers under the RO Act. (This training is separate and distinct from the section 293K approved training required to be completed by all officers with financial management responsibilities).                             | To contact the Commission with prospective dates within <b>3 weeks (21 days)</b> of the date of commencement of the EU. |
| 3. The Northern Territory Branch Secretary will contact the Commission to make arrangements staff of the Commission to provide training to the NT Branch Executive through its 'Governance to You' program concerning the Branch's obligations and the duties of officers under the RO Act. (This training is separate and distinct from the section                                                                                                                                             | To contact the Commission with prospective dates within <b>3 weeks (21 days)</b> of the date of commencement of the EU. |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 293K approved training required to be completed by all officers with financial management responsibilities).                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                        |
| 4. All Branch Executive members of the Western Australian and Northern Territory Branches will complete the abovementioned 'Governance to You' program.                                                                                                                                                                                                                                                                                                                                | By <b>20 December 2026</b> .<br><br>In relation to the Executive members from Northern Territory Branch, the officers to be declared elected in <b>E2026/59</b> which is currently being conducted by the AEC, must be part of the cohort to complete the 'Governance to You' program. |
| 5. The AEU and its Northern Territory Branch will engage with the Commission regarding the extent to which rule alterations are required in relation to the election of Branch Conference Delegates and associated issues such as the functioning of Branch Conference. Any decision to undertake alterations must be preceded by a request for advice and assistance on proposed rule alteration by the Rules Team of the Registered Organisations Services Branch of the Commission. | Within <b>8 weeks (56 days)</b> from the date of commencement of the EU.                                                                                                                                                                                                               |
| 6. The AEU will clarify in its rules: <ul style="list-style-type: none"> <li>• eligibility to be elected to the Federal Executive;</li> <li>• the timing of the election and when the officer takes office in circumstances where a Branch has an increased entitlement to the number of Federal Executive Members;</li> </ul> and consider inserting a 'validation of acts' rule in the AEU Federal rules.                                                                            | Proposed rule alterations to be considered at the AEU Federal Conference in February 2027 and, if approved, lodge with the Commission within 14 days.                                                                                                                                  |

### No Inconsistent Statements

45. The AEU must not make, and must use its best endeavours to ensure that its officers, employees or agents do not make, any statement or otherwise imply, either orally or in writing, anything that is inconsistent with admissions or acknowledgements contained in this EU.

### COMMENCEMENT

46. This EU comes into effect when:

- a) it is executed by the AEU; and
- b) the General Manager accepts the EU (the Commencement Date).

### Acknowledgments

47. The AEU acknowledges that:

- a) The General Manager will make this EU publicly available, including by publishing it on the Commission's website.
- b) If the AEU contravenes any of the terms of this EU, the General Manager may apply to any of the Courts set out in subsection 316C(4) of the RO Act, for orders under section 115 of the Regulatory Powers Act.

### Executed as an Enforceable Undertaking

48. Executed by the AEU pursuant to section 316C of the RO Act and Part 6 of the Regulatory Powers Act by, and on its behalf by its Federal Secretary on 15 October 2026.



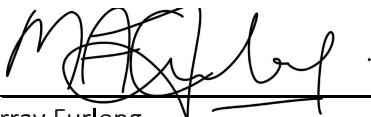
Signature

Nicole Calnan  
Federal Secretary  
Australian Education Union

Accepted by the General Manager, Fair Work Commission pursuant to section 316C of the RO Act and Part 6 of the Regulatory Powers Act on:

21 October 2026

Date



Murray Furlong  
General Manager  
Fair Work Commission