

## 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 Community and Public Sector Union regarding the Western Australian Prison Officers' Union Branch, SPSF Group

Date: 21 December 2023

#### PARTIES

1. This enforceable undertaking (EU) is given by the Community and Public Sector Union (CPSU) 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

##### *The structure of the CPSU*

2. The CPSU is a federally registered organisation of members employed in the Commonwealth, State and Territory public sectors. The CPSU comprises two groups, the Public Sector, Professional, Scientific Research, Technical, Communications, Aviation and Broadcasting Union (PSU Group), and the State Public Services Federation (SPSF Group). Although there is a degree of autonomy described within the rules of each of its branches, the CPSU is the single legal entity accountable for compliance with the obligations of all of its branches in accordance with the RO Act.
3. The SPSF Group has six branches including the Western Australian Prison Officers' Union Branch (the WAPOU Branch). The focus of the conduct leading to this EU occurred within the Branch which had commenced operation on 4 November 2013.<sup>1</sup>

##### *Elections under the RO Act*

4. Pursuant to the RO Act, elections for offices in a registered organisation are to be conducted by the Australian Electoral Commission (AEC), unless the organisation or branch holds an exemption under section 186 of the RO Act. The CPSU and the WAPOU Branch do not hold an election exemption.

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<sup>1</sup> [2013] FWCD 8461

5. The CPSU is required to lodge prescribed information under section 189 of the RO Act in relation to its elections, which are required to be conducted by the AEC. Section 189 of the RO Act is a civil penalty provision.
6. Subsection 233(2) of the RO Act requires the CPSU to lodge, within a prescribed period, a notification of any change made to the records it is required to keep, including a list of the names of office holders.
7. The conduct of elections by the WAPOU Branch are governed by the rules of the SPSF Group (Chapter C rules)<sup>2</sup> and the WAPOU Branch's rules (Schedule B rules).<sup>3</sup> The rules require that casual vacancies for offices in the WAPOU Branch must be filled by elections conducted by the AEC (by secret postal ballot), except where the Branch Council may appoint a person to fill the vacancy under rule 44 of the Chapter C rules.

## THE CONDUCT

8. In 2022 a disclosure was made to the former Registered Organisations Commission<sup>4</sup> (ROC) relating to alleged misconduct by the WAPOU Branch in conducting elections. The ROC conducted an initial investigation and subsequent formal inquiry into internal elections conducted by the WAPOU Branch between 2016 and 2020.<sup>5</sup> The CPSU fully cooperated with the ROC.
9. The CPSU acknowledges contraventions of the RO Act and its rules associated with the conduct of internal elections by the WAPOU Branch and has requested that the General Manager consider entering into this EU.
10. The CPSU admits that between 2016 and 2020 the WAPOU Branch conducted at least fifteen (15) elections for its office holders in a manner that was not permitted by the CPSU's rules, and in doing so the WAPOU Branch contravened provisions of the RO Act, including section 189, that require elections for offices to be conducted by the AEC.
11. The conduct of these elections gave rise to harms and invalidities, or the risk of harms and invalidities, including:
  - i. wrongly misrepresenting to its members on at least one occasion that an election had been endorsed by the former ROC, when it had not been so endorsed;

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<sup>2</sup> CPSU – SPSF Group Chapter C rules (Chapter C rules) certified 06/12/2023 [R2023/80]

<sup>3</sup> Comprising Schedule B to the Chapter C rules, described as 'Schedule B - SPSF Group Rules for the Western Australian Prison Officers' Union (WAPOU) Branch' (the Schedule B rules). A separate rulebook has been proposed for the WAPOU Branch but has not yet been certified.

<sup>4</sup> Between 1 May 2017 and 5 March 2023 the regulator was the Registered Organisations Commission (ROC). At other relevant times, the regulator was the General Manager of the Fair Work Commission. A reference in this EU to '**the regulator**' refers to the ROC or the General Manager at the relevant points in time, respectively.

<sup>5</sup> The formal inquiry transferred to the General Manager of the Commission in March 2023

- ii. that the internal elections were routinely arranged and administered by a WAPOU Branch office-holder contrary to rule 16.1(a) of the Chapter C rules that required elections to be conducted by an independent returning officer;
  - iii. that the internal elections were conducted using an online electronic voting system that did not comply with the requirements for elections under the RO Act, including in ensuring secret postal ballots of the members;
  - iv. that an election conducted in 2020 using the online electronic voting system had to be invalidated because the WAPOU Branch became aware of the casting of multiple votes by at least one Branch member;
  - v. that the WAPOU Branch conducted a second ballot by post (but not a secret postal ballot) that was conducted and administered by an independent, external person who was not authorised or entitled to act as an election returning officer
  - vi. a risk that members of the CPSU had, or will have, less confidence in the fairness and propriety of the fifteen elections having regard to the extent of non-compliance
  - vii. undermining of the proper democratic processes set out by the RO Act and the CPSU's rules, and
  - viii. reputational damage to the WAPOU Branch and the broader CPSU.
12. In thirteen (13) of the 15 elections<sup>6</sup>, the WAPOU Branch could have filled offices by appointment by the Branch Council as permitted in accordance with rule 44 of the Chapter C rules, but it did not do so. If the WAPOU Branch had filled offices by appointment under the rules it would not have been required to lodge prescribed information with the regulator. However, regardless of how the offices were filled, the CPSU would still have been required to notify changes of office as required by subsection 233(2) of the RO Act and failed to do so in any of the 15 elections conducted.

## ADMISSIONS AND REPRESENTATIONS

13. The CPSU admits and acknowledges that between 2016 and 2020 it has on at least 15 occasions contravened each of:
- i. section 189 of the RO Act, by failing to lodge prescribed information to have the WAPOU Branch's elections conducted by the AEC
  - ii. section 233(2) of the RO Act, by failing to notify to the regulator the change to office holders of the WAPOU Branch following the internal elections

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<sup>6</sup> Insufficient information was available to establish whether the remaining two offices could have been filled by appointment

- iii. section 230 of the RO Act, by failing properly to update its records about the persons holding offices in the WAPOU Branch, and
  - iv. the Chapter C rules and the Schedule B rules, by failing to follow permitted processes to fill casual vacancies within the WAPOU Branch.
14. The CPSU acknowledges that the contraventions are serious and comprise a failure of good governance and democratic controls within the WAPOU Branch.
15. The CPSU has made submissions to the regulator in respect of the non-compliant conduct. In particular, it has submitted that:
  - i. when the WAPOU Branch undertook an internal election in circumstances where the Branch Council could properly have filled the casual vacancy by appointment, the WAPOU Branch did so because it considered an election process to be the more open and democratic method by which to fill the vacant offices;
  - ii. the WAPOU Branch was unaware of its obligations under the RO Act to have Branch casual vacancy elections conducted by the AEC, nor was it aware of the CPSU's rules relating to this obligation;
  - iii. the CPSU did not knowingly contravene the provisions, and
  - iv. the CPSU expresses remorse and contrition for the conduct by the WAPOU Branch and takes responsibility for ensuring that such conduct not be repeated.
16. The General Manager acknowledges the CPSU's submissions and its stated commitment to elevate and strengthen its compliance framework across the CPSU, its Groups and Branches. The CPSU submissions indicated that it has implemented the following steps:
  - i. Applied to the General Manager to alter its rules to simplify and clarify its election related rules;
  - ii. Established a formal Governance and Compliance Standing Committee within the Federal Executive of the SPSF Group;
  - iii. Included 'Governance and Compliance Matters' as a standing agenda item in all SPSF Group Federal Executive meetings;
  - iv. Appointed a SPSF Group National Industrial and Research Officer to oversee the implementation and coordination of the SPSF Group Branches governance and compliance framework and obligations, and
  - v. Appointed a dedicated Compliance Coordinator for the WAPOU Branch who is responsible for collecting and maintaining records relating to the WAPOU Branch's compliance obligations.

## ENFORCEABLE UNDERTAKINGS

17. The CPSU undertakes for the purposes of section 316C of the RO Act and Part 6 of the Regulatory Powers Act that it will:
- i. by 30 April 2024 arrange for all SPSF Group Branch officers to complete the General Manager's e-learning module on elections, which can be accessed here: [E-Learning Centre](#) and, within 2 weeks of that date, will provide the General Manager with confirmation of which officers have, and have not, completed the training;
  - ii. by no later than 28 June 2024 complete a comprehensive review of the Schedule B rules, which will focus on developing new WAPOU Branch rules (WAPOU Branch Rulebook) that provide for a more streamlined governance structure that simplifies and clarifies the WAPOU Branch's compliance obligations, particularly those related to the administration of the WAPOU Branch's elections and the lodgement of notifications of change to the organisation's records ;
  - iii. by no later than 28 June 2024 lodge with the General Manager a request for an advice and assistance in relation to the proposed amended rules for a stand-alone WAPOU Branch Rulebook in line with other Branches within the SPSF Group;
  - iv. within two (2) weeks of receiving final advice and assistance from the General Manager, commence the rule altering procedure required under the rules to lodge an application under section 159 of the RO Act with the General Manager to replace the current Schedule B rules with stand-alone WAPOU Branch Rulebook having regard to any agreed alterations arising from the request for an advice and assistance;
  - v. by no later than 28 June 2024, establish a national training and development platform to provide all SPSF Group officers with access to practical governance and compliance training and support materials. This initiative is intended to facilitate the establishment and maintenance of robust, transparent and efficient compliance systems and processes within the SPSF Group Branches (Fair Work Commission (Commission) staff will be available to assist with the development of these materials if desired); and
  - vi. arrange for a copy of this EU to be posted on the website of the SPSF Group and its Branches. The website posts are to be accompanied by a statement from an office holder of the Federal Council of the SPSF Group assuring the entire membership of the SPSF Group that each currently serving elected official of the SPSF Group has been elected or appointed in accordance with the relevant rules and / or the RO Act.

## No Inconsistent Statements

18. The CPSU 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 Enforceable Undertaking.

## COMMENCEMENT

19. This EU comes into effect when:
- i. It is executed by the CPSU; and
  - ii. the General Manager accepts the EU (the Commencement Date).

## Acknowledgments

20. The CPSU acknowledges that:
- i. The General Manager will make this EU publicly available, including by publishing it on the Commission's website.
  - ii. The CPSU may withdraw or vary the EU at any time, but only with the written consent of the General Manager or an authorised person appointed by the General Manager. The General Manager, or an authorised person appointed by the General Manager, may cancel the EU by giving written notice to the CPSU.
  - iii. if the CPSU contravenes any of the terms of this EU,  

the General Manager may apply to any of the Courts set out in section 316C(4) of the RO Act,  
for orders under section 115 of the Regulatory Powers Act.

## Executed as an Enforceable Undertaking

21. Executed by the CPSU pursuant to section 316C of the RO Act and Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) by, and on its behalf by Karen Batt, Joint National Secretary, Community and Public Sector Union.



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**Signature**

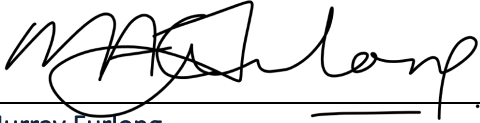
**Name** Karen Batt, Joint National Secretary  
Community and Public Sector Union

Accepted by the General Manager, Fair Work Commission pursuant to section 316C of the RO Act and Part 6 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) on:

21/12/2023

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Date



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Murray Furlong

General Manager  
Fair Work Commission