

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 Nursing and Midwifery Federation regarding the
Western Australian Branch

Date: 18 August 2025

PARTIES

1. This enforceable undertaking (**EU**) is given by the Australian Nursing and Midwifery Federation (**ANMF**) to the General Manager of the Fair Work Commission (**General Manager**) pursuant to s. 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 ANMF

2. The ANMF is a federally registered organisation of members engaged in the nursing or midwifery industry. The ANMF has eight (8) branches, being the New South Wales Branch, QNMU Branch, South Australian Branch, Victorian Branch, Tasmanian Branch, Australian Capital Territory Branch, Northern Territory Branch, and Western Australian Branch.
3. The focus of the conduct leading to this EU occurred within the Western Australian Branch (the **Branch**) in relation to its financial reporting obligations.

THE CONDUCT

4. The Fair Work Commission (the **Commission**) conducted a protected disclosure investigation regarding, among other matters, whether the Branch breached its financial reporting obligations under the RO Act.
5. In relation to the Branch's financial report for the year ending 30 June 2024 (**2024 FR**), the Commission identified several matters which amounted to apparent non-compliance with statutory obligations under the RO Act.

First potential aspect of statutory non-compliance

6. In relation to the 2024 FR, on 29 November 2024 the Branch provided its members (via its website) with documents which relevantly included:

- (i) a Branch Council statement¹ signed by both the Acting Branch Secretary and the Branch President (who has since resigned) which specifically stated that 'On 29 November 2024 the Branch Council...passed [a] resolution in relation to the general purpose financial report...' and
- (ii) an operating report which stated, above the signatures and the date 29 November 2024, that it was 'Signed in accordance with a resolution of Branch Council'.

- 7. It is accepted by the ANMF that no Branch Council meeting was conducted on the 29 November 2024 and consequently, no resolutions could have been passed. Given that the essential steps required to be taken by the Branch Council to pass resolutions had not occurred, the documents provided to members on 29 November 2024 purported to represent the true financial report, could not be considered compliant with the obligation in s.253 of the RO Act for the Branch to prepare an accurate General Purpose Financial Report (**GPFR**), and provide it to its members under s.265 of the RO Act.
- 8. In summary, members of the Branch were effectively being advised by the publication of the 2024 FR on 29 November 2024, that it was compliant with the RO Act and had been the subject of a Branch Council resolution when neither of those two propositions were accurate. The provision of accurate financial reporting information to members of the Branch is essential for transparency and the democratic functioning of the Branch.
- 9. The inaccurate Branch Council statement and operating report were promptly removed on 4 December 2024, once the Branch was notified of its error.

Second potential aspect of statutory non-compliance

- 10. In relation to the full financial report that was later lodged with the Commission after a Branch Council meeting had actually been held, the designated officer's certificate required under s.268 to accompany the financial report, stated that the full report was provided to the members on 11 December 2024, but the Commission's investigation revealed that the full report was provided to the members on another date (12 December 2024).
- 11. The accuracy of financial information formally lodged by the Branch is important because the Commission relies on the designated officers certificate required under s.268 as evidence of compliance and uses that evidence to publish the financial reports of federally registered organisations.
- 12. Throughout the investigation the Branch was cooperative and admitted these potential aspects of statutory non-compliance. Information obtained during the Commission's investigation demonstrated

¹ This is also known as the committee of management statement, which forms part of the General Purpose Financial Report as 'any other reports or statements required by the reporting guidelines (see s. 255)', see subparagraph 253(2)(c) of the RO Act.

that the Branch was having difficulties in its day-to-day operations with two Branch Secretaries resigning in quick succession during the six months after the end of the 30 June 2024 financial year.

13. The Branch and the ANMF acknowledge that the erroneous information contained in the initial financial reporting documents and the missed statutory deadlines are of serious concern and must be addressed in a systemic way in order to avoid a recurrence of non-compliance. This is particularly the case given the Branch's previous conduct, which is set out below.

Potential contraventions of the RO Act

14. As a result of our investigation, the Commission identified that the Branch did not meet its statutory obligations under ss. 253(1), 254(1) and 265(5) of the RO Act, which are civil remedy and penalty provisions.

253(1) – *As soon as practicable after the end of each financial year, a reporting unit must cause a general purpose financial report to be prepared, in accordance with the Australian Accounting Standards, from the financial records kept under subsection 252(1) in relation to the financial year.*

Civil penalty: 100 penalty units

254(1) – *As soon as practicable after the end of each financial year, the committee of management of a reporting unit must cause an operating report to be prepared in relation to the financial year.*

Civil penalty: 100 penalty units

265(5) – *Copies of the full report must be provided (free of charge to its members) within... the period of 5 months starting at the end of the financial year.*

Civil penalty: 100 penalty units

15. The Branch is likely to have contravened ss. 253 and 254 by completing the 2024 FR 11 days after it was due.
16. The Branch is likely to have contravened s.265 by not providing members with a full financial report that was complete and correct until 5½ months after the financial year had ended, i.e. 12 days after the legislative deadline.
17. It was open to the Branch to seek an extension of time for some of these steps, but it failed to do so.

PREVIOUS CONDUCT

18. Relevantly, the ANMF acknowledges that the Branch has previously been found to have engaged in a pattern of non-compliance with its financial reporting obligations, which resulted in the ANMF, and the former WA Branch Secretary being the subject of Federal Court litigation.
19. In the matter of *Registered Organisations Commissioner v Australian Nursing and Midwifery Federation and Mark Olson* [2018] FCA 1735 and *Registered Organisations Commissioner v Australian Nursing and Midwifery Federation and Mark Olson* (No 2) [2018] FCA 2004, the ANMF admitted to contraventions by the Branch of:
 - i. subsection 253(1) of the RO Act on three occasions, by failing to prepare a GPFR as soon as practicable for the financial years ending 30 June 2010, 30 June 2011 and 30 June 2012;
 - ii. subsection 265(5) of the RO Act on three occasions, by failing to provide to the Branch members copies of a 'Complying Report' (such as a compliant full report) by the required date for the financial years ending 30 June 2010, 30 June 2011 and 30 June 2012; and
 - iii. subsection 266(1) of the RO Act on three occasions, by failing to provide to present a full report to a general meeting of members or to a meeting of the committee of management for the financial years ending 30 June 2010, 30 June 2011 and 30 June 2012.
20. The Court also found that the second respondent (Mark Olson as the Branch Secretary at the time) contravened his officer duties under s. 285(1) of the RO Act by failing to ensure the timely preparation, circulation and lodgement of the full reports. The Court found that Mr Olson had failed to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were an officer in the Branch's circumstances and occupied the office of Branch Secretary with its responsibilities.
21. In that matter, the Court imposed a civil penalty totalling \$29,250 on the ANMF (as the legal entity that the Branch belongs to) for breaching financial reporting obligations and a civil penalty of \$6,630 on Mr Olson for breaching his officer duties (total penalty of \$35,880).

ADMISSIONS BY THE ANMF AND THE BRANCH

22. The Commission commends the acknowledgements and concessions made by the ANMF and the Branch.
23. When put to them, the ANMF and the Branch conceded – promptly and unequivocally – that:
 - i. There was no Branch Council meeting held on 29 November 2024 to pass the resolutions required to prepare the GPFR and the operating report;

- ii. The Branch missed the legislated timeframe to prepare the GPFR and operating report, which were due no later than 30 November 2024. The Branch instead passed the requisite resolutions and prepared the Branch Council statement (as part of the GPFR) and operating report on 11 December 2024;
- iii. The Branch missed the legislated timeframe to provide a copy of the full report to members on a date no later than 30 November 2024.
- iv. The Branch also s acknowledged that designated officer's certificate lodged with the full report stated that the full report was provided to members on 11 December 2024, however it was not uploaded to the Branch website until the following day; and
- v. The oversight concerning the date the full report was provided to members has since been rectified with a corrected designated officer's certificate.

REMEDIAL ACTION ALREADY TAKEN BY THE ANMF AND THE BRANCH

24. The ANMF has implemented additional measures to ensure governance and compliance with the RO Act. These include:
- i. the Federal Executive resolving to appoint a Governance and Compliance Officer (**GCO**) at the Federal level to ensure that the ANMF has a coordinated and consistent approach across all branches in relation to reporting requirements but also noted that branches need dedicated internal resources to deal with governance and compliance matters to work in collaboration with the Federal GCO who commenced in June 2024;
 - ii. forming a National Governance and Compliance Committee (**GCC**) which consists of Federal and Branch Secretaries, Federal GCO and Branch GCOs (where these are in place) to meet regularly to facilitate the sharing of information, ideas, methodology, concerns etc;
 - iii. a commitment to seeking legal advice where necessary or appropriate in relation to its compliance obligations:
 - iv. implementing a system to notify elected officers of financial training requirements upon their election and to record evidence of training undertaken:
 - v. educating elected officers, compliance officers and finance officers on the reporting timeline for financial reports, both via the GCC and through individual meetings and correspondence:
 - vi. developing a National Compliance Calendar to assist Branches reporting to the ANMF's Federal Office and the Federal Office in reporting to the Commission on time, with a commitment to update the calendar and to continually look at ways of enhancing it with additional information and features:

- vii. a commitment to reviewing and updating the relevant ANMF's policies, taking into account the latest Commission guidelines, decisions and model rules:
- viii. commencing a Privacy Impact Assessment relating to the obtaining, storage, use, sharing and disposal of member information, so that it is consistent with the Privacy Act and recommendations of the office of the Australian Information Commissioner: and
- ix. considering rule changes to ensure compliance with relevant obligations and consistency with ANMF practice.

25. More recently, on 30 May 2025, the Federal Executive resolved to reaffirm its commitment to meeting requirements for ongoing financial and governance training for all elected officers of the ANMF, noting that (i) the Federal GCO will advise each Branch of their requirements to undertake financial training following elections and (ii) all Branch Secretaries are required to notify the Federal GCO when training has been completed.

26. The Branch has also taken the following steps:

- i. committed to employing a Governance, Policy Writing, and Compliance Officer whose role will be to ensure that governance, policies and procedures are up-to-date, and that reporting deadlines are consistently met within the required timeframes (while acknowledging that officers of the Branch bear the ultimate responsibility for ensuring that compliance obligations are met);
- ii. engaged with the Federal CGO and Senior Finance Officer to establish clear timelines for the steps involved in reporting for the financial year ending 30 June 2025 and is utilising the Commission's online compliance calculator to assist it in this regard; and
- iii. arranged to appoint new auditors to carry out the financial auditing for the financial report ending 30 June 2025, with those auditors to be fully briefed on the financial reporting structure and timelines under the RO Act.

ACKNOWLEDGEMENT BY THE GENERAL MANAGER OF THE COMMISSION

- 27. The General Manager is committed to, among other things, promoting high standards of accountability of organisations and their office holders to their members, promoting compliance with the financial reporting and accountability requirements of the RO Act, and embedding within organisations a culture of good governance and voluntary compliance with the law.
- 28. The General Manager acknowledges the ANMF and Branch's co-operation, admissions and its commitment to elevate and continue to strengthen its financial reporting procedures and general compliance with the RO Act across the ANMF and its branches.

29. The General Manager also acknowledges that the steps set out above indicate the commitment of the ANMF and the Branch to implement systems and processes directed towards achieving ongoing compliance with the RO Act, particularly in relation to financial reporting and the completion of approved financial training by officers.

ENFORCEABLE UNDERTAKINGS

30. The ANMF undertakes, for the purposes of s. 316C of the RO Act and Part 6 of the Regulatory Powers Act, that:

Undertaking	Timeframe
ANMF and the WA Branch publish a copy of this EU on their respective websites accessible by ANMF and WA Branch members	On commencement of the EU
The WA Branch Secretary will contact the Commission to make arrangements for all Branch officers (i.e. Branch Secretary, Branch President, Branch Vice President, all Branch Executive Members and all Branch Councillors) to undertake training provided by the Registered Organisations Services Branch (ROSB) of the Commission through its 'Governance to You' program concerning the Branch's obligations and the duties of officers with respect to financial reporting	Within 3 weeks of the commencement of the EU
All Branch officers must complete that training program provided by ROSB	Within 12 weeks from the date the Branch Secretary contacts the Commission to make the abovementioned arrangements
The ANMF and WA Branch will provide a copy of the ANMF National Compliance Calendar and an equivalent Branch compliance calendar showing the steps required in the preparation, auditing, presentation and lodgement of the upcoming financial report for year ending 30 June 2025, and the Branch's expected timeframes for the completion of each step	Within 3 weeks of the commencement of the EU
The Branch will ensure that each and every step of the 2025 FR process is completed in compliance with the RO Act	

No Inconsistent Statements

31. The ANMF 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

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

Acknowledgments

33. The ANMF acknowledges that:
- i. The General Manager will make this EU publicly available, including by publishing it on the Commission's website.
 - ii. If the ANMF contravenes any of the terms of this EU, the General Manager may apply to any of the Courts set out in s. 316C(4) of the RO Act, for orders under s. 115 of the Regulatory Powers Act.

Executed as an Enforceable Undertaking

34. Executed by the ANMF pursuant to s. 316C of the RO Act and Part 6 of the Regulatory Powers Act by, and on its behalf by Annie Butler, Federal Secretary, Australian Nursing and Midwifery Federation.



Signature

Annie Butler
Federal Secretary
Australian Nursing and Midwifery Federation

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

20 August 2025

Date



Murray Furlong
General Manager
Fair Work Commission