



THE WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

LEVEL 17, 111 ST GEORGES TERRACE  
PERTH WA 6000

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4 October 2022

Mr Daniel Stojanoski  
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PERTH WA 6000

**By e-mail:** [daniel.stojanoski@slatertgordon.com.au](mailto:daniel.stojanoski@slatertgordon.com.au)

Dear Mr Stojanoski

**APPLICATION NO. PRES 9 of 2022**

**Joshua Dekuyer**

**v.**

**The Australian Rail, Tram and Bus Industry Union of Employees, West Australian  
Branch**

Please find enclosed a copy of the Reasons for Decision which issued in this matter.

Yours sincerely

A handwritten signature in cursive script that reads "I Gibson".

Isla Gibson  
ASSOCIATE TO CHIEF COMMISSIONER S J KENNER

**enc.**

**ORDER PURSUANT TO S.66  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2022 WAIRC 00697

**CORAM** : CHIEF COMMISSIONER S J KENNER

**HEARD** : THURSDAY, 15 SEPTEMBER 2022

**DELIVERED** : TUESDAY, 4 OCTOBER 2022

**FILE NO.** : PRES 9 OF 2022

**BETWEEN** : JOSHUA DEKUYER  
Applicant

AND

THE AUSTRALIAN RAIL, TRAM AND BUS  
INDUSTRY UNION OF EMPLOYEES, WEST  
AUSTRALIAN BRANCH  
Respondent

Catchwords : Industrial law (WA) – Order pursuant to s 66 – Election for office holders – Waiver of rules – Changes to branch structure of federal organisation - Orders issued

Legislation : *Fair Work (Registered Organisations) Act 2009* (Cth)  
*Industrial Relations Act 1979* (WA)

Result : Order issued

**Representation:**

Counsel:

Applicant : Mr M Ritter SC of counsel and with him Mr D Stojanoski of counsel

Respondent : Mr M Ritter SC of counsel and with him Mr D Stojanoski of counsel

Solicitors:

Applicant : Slater and Gordon  
Respondent : Slater and Gordon

**Case(s) referred to in reasons:**

The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v (Not Applicable) [2014] WAIRC 00438; (2014) 94 WAIG 687; [2014] WAIRC 00399; (2014) 94 WAIG 696

*Reasons for Decision*

- 1 On 15 September 2022 I made an order under s 66 of the *Industrial Relations Act 1979* (WA) to the effect that the respondent's rules in relation to the conduct of elections for office bearers be waived and that current office holders hold office until 31 December 2022: [2022] WAIRC 00672. I indicated at the time of making the orders that I would publish short reasons in due course. These are those reasons.
- 2 Briefly, the background to the application relates to changes to the branch structure of the federally registered Australian Rail, Tram and Bus Industry Union, an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth). The ARTBIU, under its rules, has two branches in Western Australia, the West Australian Branch and the West Australian PTA Branch. Membership of either branch is dependent on the nature of the work performed by the member concerned.
- 3 As a result of proceedings in the Fair Work Commission, determined on 3 March 2022, the rules of the ARTBIU were altered to merge the two existing West Australian branches into a single branch, to be known as the Western Australia Branch. A new Part XVII has been inserted into the rules of the ARTBIU to reflect this change in structure. The merger will take effect on 1 January 2023.
- 4 Because of the above, the respondent intends to make an application to the Commission to amend its registered Rules to recognise the merger. As a part of this process, it intends to apply to amend its name to become the 'Australian Rail, Tram and Bus Industry Union of Employees, Western Australian Branch', to come into effect on 1 January 2023, in accordance with transitional rules contained within the new Part XVII of the amended ARTBIU rules. Transitional provisions provide that until 1 January 2023, the West Australian PTA Branch and the West Australian Branch, will continue to operate.
- 5 As a result of the federal branch merger, members of the former two branches will become members of the new federal branch effective on 1 January 2023. Additionally, elections for office bearers of the new, merged ARTBIU Western Australia Branch, are presently being undertaken and such office holders will take office on the commencement of the new merged branch.
- 6 Against this background, the West Australian PTA Branch of the ARTBIU, is the counterpart federal body of the respondent, following declarations and orders to this effect made by the Full Bench of the Commission in *The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch v (Not Applicable)* [2014] WAIRC 00438; (2014) 94 WAIG 687; [2014] WAIRC 00399; (2014) 94 WAIG 696. Following the declarations and orders being made,

a certificate under s 71 of the *Act* was issued in December 2014, to the effect that persons holding office in the West Australian PTA Branch of the ARTBIU, shall be office holders in corresponding offices of the respondent. A consequential amendment to the rules of the respondent giving effect to the s 71 certificate, was made at around that time. It is intended because of the changes to the federal organisation's rules and the change to the federal branch structure, that a new s 71 certificate be sought.

- 7 As noted above, an election for office bearers of the proposed new federal branch is presently underway. Those elected to office will assume their offices on 1 January 2023, with the intention that along with changes to the respondent's Rules, and if a new s 71 certificate is obtained, those elected to office in the new federal branch, will be taken to be elected as office holders in the corresponding offices of the proposed newly named, State organisation.
- 8 Due to these structural changes in the ARTBIU, the Australian Electoral Commission will not be conducting an election to fill the office bearer positions in the West Australian PTA Branch, on the basis that the branch will shortly cease to exist. Accordingly, the present application to waive the requirements of the respondent's rules to hold a separate election for the State organisation office bearers was made. It was made on the grounds that given the proposed changes to occur in the federal branch structure, and the intended proposed consequential amendments to the Rules of the respondent, it would be impractical, and a waste of resources of the respondent, for it to be required to conduct a separate State election under the *Act*, for what will be only a very short period until the new structure comes into effect on 1 January 2023. It was contended that members of the respondent will still be able to participate in the current election process, consistent with the objects of the *Act*, especially s 6(f), in voting for the election of office bearers in the new Western Australian Branch of the ARTBIU. It was submitted that the orders sought are a practical and cost effective means of managing the structural changes about to occur.
- 9 Having considered the terms of the application which set out the above changes in detail, the evidence in support, from the affidavit of the applicant, and the submissions of the parties to the proceedings, I was satisfied that consistent with s 66 of the *Act*, the applicant has standing to bring these proceedings; the orders sought were consistent with the objects of the *Act* in relation to registered organisations and their democratic control; and the equity, good conscience and substantial merits of the case lay with their making.