



## **ANMF (Vic Branch) response to AEC Post election report**

Australian Nursing and Midwifery Federation  
VIC Branch  
Scheduled Election  
E2023/51

The Victorian Branch of the ANMF acknowledges receipt of the Australian Electoral Commission written report on the conduct of the election.

The report identifies:

1. an ambiguity in the ANMF Federal Rules, in relation to Rule 87.1 and Rule 50.
2. That 10% of returned ballots were informal, compared with a common benchmark of less than 2%.

The Victorian Branch of the ANMF, in accordance with s. 198 of the Fair Work (Registered Organisations) Act 2009, makes the following response report.

### **Part 1 Scrutineers**

#### **87 - SCRUTINEERS**

- 87.1 A candidate in any Branch election or in any Branch plebiscite or any member of the Branch Council may, if they so desire, appoint a scrutineer who is a financial member of the Federation to represent the candidate or member of the Branch Council at the ballot. The person appointing a scrutineer shall before the commencement of the ballot, notify the Returning officer in writing of the name of such scrutineer. The provisions of sub-rules 50.1.1, 50.1.2, 50.1.3 and 50.1.4 shall apply in relation to the operation of this rule.

#### **50 - SCRUTINEERS**

- 50.1 Any candidate in any election or, in any plebiscite any member of Federal Council or a Branch Council, may appoint a scrutineer who is a financial member of the Federation to represent the candidate or member of Federal Council or a Branch Council in the counting of the ballot.
- 50.1.1 A scrutineer shall be entitled to be present throughout the ballot and may query the inclusion or exclusion of any vote in the count but the Returning Officer shall have final determination of any votes so queried.

- 50.1.2 A scrutineer shall not be entitled to remove, mark alter or deface any ballot paper or other document used in connection with the election.
- 50.1.3 A scrutineer shall not interfere with or attempt to influence any member at the time such member is casting their vote.
- 50.1.4 Ballot papers shall not be opened except in the presence of the scrutineers unless they or a scrutineer shall fail to attend after proper notice in writing has been given by the Returning Officer of the time and date of the closing of the ballot.

To our knowledge the ambiguity had not presented in previous elections. Rule 87.1 requires the appointing of a scrutineer “before the commencement of the ballot” while Rule 50.1 speaks of appointing scrutineers “in the counting of the ballot”. This generates an ambiguity as to when scrutineers must be appointed, before the ballot, or before the counting of the ballot.

## Part 2 Informal Ballots

That 10% of returned ballots were informal, and a major cause of that was that they were marked with ticks or numbers. The ballot paper instructions required that they be marked with crosses.

In accordance with, with Rule 49.2.12(b) below, such votes could not be accepted by the AEC as valid votes.

- 49.2.12 Any vote in respect of an election shall be informal if:
  - 49.2.12 (a) the ballot paper is received by the Returning Officer after the notified hour on the closing date.
  - 49.2.12 (b) the contents of the ballot paper as marked by the voter do not comply with the instructions printed on it.
  - 49.2.12 (c) the returning officer is unable to determine the bona fides of the ballot pursuant to sub-rule 49.2.11(b).

The AEC recommends a ‘vote saving’ rule be added, where the vote can still be counted provided the intention is clear.

## Branch actions

To the extent that, as a Branch, within the confines of federal registered rules, we can address the identified issues we intend to take that action.

The Branch uploaded the AEC Report to its website on 30 January 2024.

The ANMF (Victorian Branch) wrote to the AEC on 3 January 2024 advising that:

1. We had considered the post-election report in relation to rule 87.1.

2. We had received preliminary legal advice about the interpretation of rules 87.1 and 49.2.12 (b).
3. The Branch agrees with the approach adopted by the Returning Officer in construing the rule 87.1, by reference to rule 50.1.1.
4. The matters raised in the report have been referred to the ANMF Federal Executive for consideration of a possible rule alteration and for discussion of the experience of other Branches of the Federation.
5. The Rule changes as proposed by the AEC and discussed with legal counsel were an agenda item on the first 2024 Federal Executive meeting held 1 March 2024.
6. Changes to the Rules arising from the report are supported by the Federal Executive, have been drafted and will be the subject of a Federal Council ballot the week commencing 25 March 2024.

In accordance with Regulation 141(4) of the Fair Work (Registered Organisations) Regulations 2009, the Branch has published a notice on its website advising members that a copy of the Post Election Report and this response is available.