

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

**CITATION** : 2020 WAIRC 00391

**CORAM** : CHIEF COMMISSIONER P E SCOTT

**HEARD ON THE PAPERS** : FRIDAY, 3 JULY 2020

**DELIVERED** : FRIDAY, 3 JULY 2020

**FILE NO.** : PRES 2 OF 2020

**BETWEEN** : BRUCE MARTIN  
Applicant

AND

INDEPENDENT EDUCATION UNION OF WESTERN  
AUSTRALIA, UNION OF EMPLOYEES  
Respondent

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**CatchWords** : Industrial Law (WA) – Application under s 66 of the *Industrial Relations Act 1979* (WA) to permit non-observance of rules – Deferral of date of Annual General Meeting – Dismissal of Secretary and COVID-19 disruption caused delays – National body granted extension of time to hold Annual General Meeting – Reasons for delay beyond union’s control and unforeseeable.

**Legislation** : *Industrial Relations Act 1979* (WA) s 66(2)

**Result** : Order Issued

**Representation:**

Counsel:

Applicant : Mr C Fordham (of counsel), and with him Mr D Stojanoski (of counsel)

Respondent :

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*Reasons for Decision*

- 1 The applicant, Bruce Martin, is a member and the President of the Independent Education Union of Western Australia, Union of Employees (the Union). The Union is an organisation registered under Part II, Division 4 of the *Industrial Relations Act 1979* (WA) (the Act). The application seeks an order the effect of which would be to remove the requirement for strict compliance with r 13(1) of the Union's Rules to enable it to hold its Annual General Meeting (AGM) in July 2020. Rule 13(1) requires that the AGM be held no later than six months following the end of the Union's financial year (r(2)(b)). The financial year ended on 31 December 2019.
- 2 Mr Martin says that there are two reasons for the Union being unable to organise to hold the AGM within the required time. The first is the recent disruptions connected with the COVID-19 pandemic. The second is the sudden departure of the Union's Secretary, on 25 May 2020. The Secretary is the Chief Executive Officer and is responsible for the day to day operation of the Union. Neither of those circumstances nor their consequences for arranging the meeting was reasonably foreseeable. The parties have provided details of the circumstances and their effect on the Union.
- 3 Mr Martin is also the President of the State Branch of the federally registered organisation, the Independent Education Union of Australia, WA Branch. The parties agree that the State Branch is also required to hold its AGM no later than 30 June each calendar year. For reasons of efficiency, the practice has been that the Union and the State Branch have held their AGMs concurrently each year. The Registered Organisations Commission has granted an extension of time to the State Branch to hold its AGM before 31 July 2020, for the same reasons as the applicant puts to this Commission in respect of the Union.

**Consideration**

- 4 Section 66(2) of the Act provides that '[t]he Chief Commissioner may make such order or give such directions relating to the rules of the organisation, their observance or non-observance or the manner of their observance, either generally or in the particular case, as the Chief Commissioner considers to be appropriate'. The provision goes on to set out the matters which may be included but which do not limit the generality of that power.
- 5 I have considered the circumstances the parties have set out. Those circumstances have clearly made it difficult for the Union to meet its obligation under r 13(1). Those circumstances were not reasonably foreseeable and there is no suggestion that the failure of the Union to comply with r 13(1) was within its control.
- 6 I note that the WA Branch has received an extension of time in which to hold its own AGM, and that it is both normal practice and for good reason that the AGMs of the two organisations are held at around the same time
- 7 In all of the circumstances, I am satisfied that it is appropriate to authorise the Union to not observe r 13(1) by 30 June 2020 and to issue an order to allow it to conduct its AGM by the end of July 2020. I intend to order accordingly.