



DECISION

Fair Work (Registered Organisations) Act 2009

s.18(b) RO Act - Application for registration by an association of employees

Application by United Nurses of Australia (D2024/8))

VICE PRESIDENT GIBIAN

SYDNEY, 16 OCTOBER 2025

Application for registration for an association of employees – Purported association of nurses – Objections to application filed by various unions – Applicant directed to file submissions and evidence upon which it seeks to rely in support of its application – Two unions applied for the application for registration to be dismissed under s 587(1)(c) of the Fair Work Act 2009 (Cth) on grounds it does not have reasonable prospects of success – Whether purported association formed and operating as an association – Whether association a federally registrable employee association – Whether rules make provision as required by the Fair Work (Registered Organisations) Act 2009 (Cth) – Whether association has demonstrated it has sufficient members and had properly resolved to seek registration – Application for registration dismissed.

Introduction

[1] A body referring to itself as the United Nurses of Australia (the **UNA**) has applied for registration as an organisation pursuant to s 18(b) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (the **RO Act**). The UNA claims to be a “federally registrable association of employees” for the purposes of s 18B of the RO Act. The UNA says that it is an association of nurses and that it is open to employees engaged in the nursing industry or midwifery industry who are registered, qualified or trained as a nurse or midwife.

[2] This decision deals with applications made by the Australian Nursing and Midwifery Federation (the **ANMF**) and the Health Services Union (the **HSU**) under s 587(1)(c) of the *Fair Work Act 2009* (Cth) (the **FW Act**) asking the Commission to dismiss the UNA’s application on grounds that it does not have reasonable prospects of success. To understand the circumstances in which the applications are brought, it is necessary to set out some of the procedural history of the matter. The decision will then turn to consider the relevant provisions of the RO Act governing the registration of an association as an organisation and the bases upon which the ANMF and the HSU with the support of other unions submit that the UNA’s application has no reasonable prospects of success.

Procedural background

[3] In accordance with regulation 22 of the *Fair Work (Registered Organisations) Regulations 2009* (Cth) (the **RO Regulations**), a notice of the application was published in the Commonwealth Gazette. Objections to the UNA’s application were received from the HSU,

the ANMF, the Australian Workers' Union (the **AWU**), the United Workers Union (the **UWU**) and the Community and Public Sector Union (the **CPSU**) on 16 December 2024, 20 December 2024 and 2 January 2025. The objections are made on various grounds, including that the UNA does not have at least 50 members, the rules of the UNA do not make provision as required by the RO Act, the UNA had not resolved to become registered, registration would not further the objects of the RO Act and persons who could be its members would more conveniently belong to other organisations which would more effectively represent those members.

[4] In addition to its application, the UNA filed a copy of what purported to be its rules, a document headed "Australian Nurses United Meeting Agenda" dated 23 June 2024, two declarations by the secretary of the UNA, Jimmy Parel, and another meeting agenda document bearing the date August 2024. On 14 January 2025, the UNA filed a document entitled "Response to Objections". The document refers to an array of material, including extracts of media articles and other reports in relation to misconduct, or alleged misconduct, by officials in other unions, and makes a range of allegations about the ANMF and officials of the ANMF. That document was the subject of an application for confidentiality orders.¹

[5] On 16 January 2025, a directions hearing/case management conference was conducted in relation to the application. Following the conference, the Commission issued the following direction:

[1] The United Nurses of Australia (Applicant) is to file with the Commission, and serve on the parties, an outline of written submissions, witness statements or other evidentiary material upon which it wishes to rely in support of its application for registration and to demonstrate that the requirements for the Commission to grant an application for registration are met by 4:00pm (AEDT) on Friday, 7 February 2025.

[6] The application was listed for further case management/directions hearing on 14 February 2025. The UNA did not file any further submissions or evidence on or before 7 February 2025 in accordance with the direction. Rather, on 13 February 2025, Mr Parel sent two emails to my chambers. The emails contained various further allegations of misconduct or corruption on the part of past or present officials of certain unions, further responses to the objections received by the Commission and submissions relating to the asserted desirability of union competition. The email messages did not contain any further evidence in support of the application other than links to some media articles.

[7] A further directions/case management conference was conducted on 14 February 2025. At the case management conference, the ANMF indicated that it intended to apply for the Commission to dismiss the UNA's application under s 587(1)(c) of the FW Act. The Commission subsequently issued directions on 17 February 2025 requiring that any application pursuant to s 587 of the FW Act be filed and served on or before 5 March 2025 and for the respective parties to file any submissions or evidence in relation to any such application. On 18 February 2025, Mr Parel sent an email to my chambers purporting to provide a revised list of members of the UNA.

[8] On 5 March 2025, the ANMF filed an application seeking an order that the application by the UNA be dismissed under s 587(1)(c) and (3)(b) of the FW Act. The grounds set out in the application are as follows:

The application has no reasonable prospects of success in that:

1. The Applicant is not a federally registrable employee association within the meaning of s.18B(1) of the *Fair Work (Registered Organisations) Act 2009* (Cth) (“the RO Act”).
2. If, which is denied, the Applicant is a federally registrable association within the meaning of s.18B of the RO Act it has not satisfied the following criteria set out in s.19 of the Act: s.19(1)(b), (f), (h).
3. As to the criterion in s.19(1)(f) the rules of the association fail to make provision as required by s.140, 141(1)(b)(ii), (iii), (iv), (v), (vi), (viii), (x), (xi), s.141(1)(c), s.141(1)(ca), s.142(1)(c), s.143, s.144, s.146 and s.149 of the RO Act.
4. No valid application has been made.

[9] It subsequently became clear that the reference in ground 2 of the application should be a reference to s 19(1)(d) instead of s 19(1)(b) in addition to s 19(1)(f) and (h). The ANMF filed written submissions in support of its application under s 587 of the FW Act. The UWU and AWU filed written submissions in support of the ANMF’s application. The HSU filed a separate application under s 587(1)(c) of the Act on the same day also seeking orders that the UNA’s application be dismissed on grounds that it has no reasonable prospects of success. The HSU filed written submissions together with its application.

[10] On 26 March 2025, in an email sent to my chambers by Mr Parel, the UNA provided submissions in relation to the applications made by the ANMF and the HSU albeit outside of the timeframe set out in the directions issued by the Commission. It must be said that the submissions are lengthy and somewhat rambling. The submission refers to rights set out in the International Covenant for Civil and Political Rights, describes experiences Mr Parel says he had in seeking assistance from the ANMF in relation to workplace issues, makes various complaints in relation to the ANMF’s response to the COVID-19 pandemic, makes assertions in relation to the motives of the ANMF in opposing the UNA becoming registered as an organisation and the conduct of ANMF officials and its lawyers. By way of example, in relation to the COVID-19 pandemic, the email asserts:

I am a nurse working at a public hospital ED, and I believe Australia was caught off guard by the covid pandemic. I was a humble worker in the public system. The management and governments kept changing plans and ideas on a daily basis.

To me it seems like they are all naively clueless or didn’t care. I was made to wear N95 mask, gown, gloves and a face shield all the time, although it was only a respiratory virus. We were forced to take untested vaccines and quite ironically made to isolate when we were not at work.

On top of everything the management was slowly trying to make me and the other nurses more than the required (in accordance to the Patient Care Act) .

Management tried to convince us(nurses) that ratio is not applicable in the pandemic and the stage 3 restrictions means they can change the ratio. The management gave us 4-5 patients in E D. ANMF was very supportive of the management’s decision. Of Course none of them (managers, Lisa Fitzpatrick or Paul Gilbert) needed to come to come to shift work, wearing all the extra layers of (supposed protection) and mask and face shield. UNA still considers these materials were part of a corruption scandal(contract) rather to protect the workers.

ANMF has completely accepted the decision and went along with it. ANMF’s industrial organisers came out in full uniform and talked to us passionately about the struggles the management, government and the community are facing and told us it is the time we (nurses)

have to tighten our belts and work harder just like any other patriots.(then they went back to their offices and isolated themselves or enjoyed the snacks delivered at the members expense.

[11] More relevantly to the applications under s 587 of the FW Act, Mr Parel's email submitted as follows:

The ANMF's motion to dismiss UNA's application under section 587(1)(c) of the Fair Work Act is premature and unfounded, as it improperly seeks to short-circuit the proper consideration of the application. The threshold for dismissal under this provision requires that the application has **no reasonable prospects of success**—a high bar that is not met in this instance.

1. Substantive Issues Require Full Consideration

The **Fair Work Commission (FWC) is required to properly assess** (which were done in good faith with the FWC) whether UNA satisfies the requirements for registration under the **Fair Work (Registered Organisations) Act 2009 (Cth) (ROAct)**. Dismissing the application without a full examination would **deny UNA procedural fairness and prevent a proper determination on the merits**.

2. "No Reasonable Prospects" is a High Standard

The **absence of reasonable prospects** implies that an application must be so **fundamentally flawed** that it is doomed to fail. The **mere presence of legal or factual challenges** does not satisfy this test. UNA's application is based on legitimate grounds that warrant consideration, and the **ANMF's objections should be resolved through the normal adjudicative process** rather than an early dismissal.

3. Precedent Supports Allowing Consideration of Registration Applications

The FWC has consistently upheld the **importance of assessing applications on their merits** rather than dismissing them at a preliminary stage. There is **no clear authority** to suggest that UNA's application is entirely without merit, meaning that a full hearing should proceed.

4. Policy Considerations Favor Allowing the Application to Proceed

The **RO Act is designed to promote fairness and representation within the workplace relations framework**. Dismissing the application at this stage **risks stifling competition and diversity in worker representation**, which contradicts the principles underpinning the Act.

Since UNA's application presents **arguable legal and factual issues** that require determination, it **cannot be said to have "no reasonable prospects of success."** The **ANMF's request for dismissal is premature**, and the application should be allowed to proceed to a full hearing in accordance with **the principles of natural justice and procedural fairness**.

[12] The email goes on to endeavour to address some of the requirements for registration in ss 18, 18B and 19 of the RO Act.

[13] On 2 April 2025, the ANMF, the AWU and the HSU filed submissions in reply. On 14 April 2025, Mr Parel sent a further email to my chambers on behalf of the UNA containing further submissions. The email commences as follows:

Dear Mr President,

The community leaders were to stone a poor woman to death for adultery. Jesus stood up and said, "Anyone here who has never sinned should throw the first stone at her." Then Jesus stooped down again and wrote on the ground. When they heard this, they began to leave one by

one. The older men left first, and then the others. Jesus was left alone with the woman standing there in front of him. He looked up again and said to her, "Where did they all go? Did no one judge you guilty?" She answered, "No one, sir." Then Jesus said, "I don't judge you either. You can go now, but don't sin again."

Now we are going to explain how hypocritical, ill informed, intellectually disabled (with selective understanding capacity) all these union "officials"(unelected) are. Cannot actually blame them

because

American novelist Upton Sinclair once said ""It's difficult to get a man to understand something when his salary depends on his not understanding it"

The people who should be doing all this talking should be the union leaders like Lisa Fitzpatrick for anmf and Ronnie Hayden for AWU, not these unelected bureaucrats, the unproductive white collar workers who have a disdain towards the productive, hard working blue collar shift workers. For example ANMF has nearly 200 employees along with the parasitic law firm that has absolutely nothing to do with the welfare of the members. They are simply eating the unions from inside.

Please don't ask me after watching the play- who is Romeo to Juliet.

AWU is a very corrupt organisation. Let me explain.

[14] The email continues by referring to Federal Court proceedings involving the AWU, various matters alleged to have been raised concerning the AWU during the Trade Union Royal Commission conducted by the Honourable JD Heydon, speculates that Australia may be a "flawed democracy" and asserts discontent with the actions of the Australian Competition and Consumer Commission, including that it is failing to break up monopolies and duopolies, overregulating small business and failing to take effective action to enforce competition law, address price gouging or "big tech" companies.

[15] A hearing was held on 28 April 2025 to hear the applications made by the ANMF and the HSU. During the hearing, two emails were sent by Mr Parel to my chambers purporting to set out proposed changes to the rules of the UNA. The first email set out changes to the rules which Mr Parel says had been approved by the UNA and the second email set out further changes which were in the process of being considered by the UNA but had not yet been approved. Those emails were admitted as evidence at the hearing. A hearing book was additionally prepared in advance of the hearing and contains the documents filed in this matter until the date of the hearing.

Applications to dismiss the UNA's application

[16] The ANMF and HSU applications for an order to dismiss the UNA's application for registration is made on the basis that the application has no reasonable prospects of success under s 587(1)(c) of the FW Act. Section 587 provides as follows:

587 Dismissing applications

(1) Without limiting when the FWC may dismiss an application, the FWC may dismiss an application if:

- (a) the application is not made in accordance with this Act; or
- (b) the application is frivolous or vexatious; or
- (c) the application has no reasonable prospects of success.

Note: For another power of the FWC to dismiss an application for a remedy for unfair dismissal made under Division 5 of Part 3-2, see section 399A.

(2) Despite paragraphs (1)(b) and (c), the FWC must not dismiss an application under section 365, 536LU or 773, or an application under section 527F that does not consist solely of an application for a stop sexual harassment order, on the ground that the application:

- (a) is frivolous or vexatious; or
- (b) has no reasonable prospects of success.

(3) The FWC may dismiss an application:

- (a) on its own initiative; or
- (b) on application.

[17] The capacity of the Commission to dismiss an application before it arises under s 587(1)(c) if, and only if, the application has “no reasonable prospects of success”. Even if the Commission is satisfied that an application has no reasonable prospects of success, the presence of the word “may” in the introductory words to s 587(1) indicates that there is a residual discretion as to whether to dismiss the application.

[18] The phrase “no reasonable prospects of success”, as a threshold for summarily determining proceedings, is found in other statutory regimes. Most relevantly, s 31A of the *Federal Court of Australia Act 1976* (Cth) provides (in part):

31A Summary judgment

...

(2) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:

- (a) the first party is defending the proceeding or that part of the proceeding; and
- (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.

(3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:

- (a) hopeless; or
- (b) bound to fail;

for it to have no reasonable prospect of success.

[19] It is well-understood that s 31A is intended to relax the stringency of the common law tests for the summary dismissal of proceedings described, most notably, in *General Steel Industries Inc v Commissioner for Railways* [1964] HCA 69; (1964) 112 CLR 125.² In *Spencer v Commonwealth* [2010] HCA 28; (2010) 241 CLR 118, Hayne, Crennan, Kiefel and Bell JJ explained in relation to s 31A:³

In this respect, s 31A departs radically from the basis upon which earlier forms of provision permitting the entry of summary judgment have been understood and administered. Those earlier provisions were understood as requiring formation of a certain and concluded determination that a proceeding would necessarily fail. That this was the basis of earlier decisions may be illustrated by reference to two decisions of this Court often cited in connection with questions of summary judgment: *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 and *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125.

...

In many cases where a plaintiff has no reasonable prospect of prosecuting a proceeding, the proceeding could be described (with or without the addition of intensifying epithets like “clearly”, “manifestly” or “obviously”) as “frivolous”, “untenable”, “groundless” or “faulty”. But none of those expressions (alone or in combination) should be understood as providing a sufficient chart of the metes and bounds of the power given by s 31A. Nor can the content of the word “reasonable”, in the phrase “no reasonable prospect”, be sufficiently, let alone completely, illuminated by drawing some contrast with what would be a “frivolous”, “untenable”, “groundless” or “faulty” claim.

Rather, full weight must be given to the expression as a whole. The Federal Court may exercise power under s 31A if, and only if, satisfied that there is “no reasonable prospect” of success. Of course, it may readily be accepted that the power to dismiss an action summarily is not to be exercised lightly. But the elucidation of what amounts to “no reasonable prospect” can best proceed in the same way as content has been given, through a succession of decided cases, to other generally expressed statutory phrases, such as the phrase “just and equitable” when it is used to identify a ground for winding up a company. At this point in the development of the understanding of the expression and its application, it is sufficient, but important, to emphasise that the evident legislative purpose revealed by the text of the provision will be defeated if its application is read as confined to cases of a kind which fell within earlier, different, procedural regimes.

[20] The observations in *Spencer* are apt to be applied to the exercise of power under s 587(1)(c) of the FW Act.⁴ Although the power to summarily dismiss proceedings on that ground is not to be exercised lightly, the conclusion that a proceeding has “no reasonable prospects of success” does not demand an affirmative conclusion that a proceeding would necessarily fail. What is required is a practical judgment as to whether the applicant has a “real” as distinct from “fanciful” prospect of being successful.⁵ The circumstances in which an application may be dismissed because they have “no reasonable prospects of success” are not limited to cases able to be described as “frivolous”, “untenable” or “groundless”.⁶

[21] The ANMF submits that it seeks that the Commission dismiss the UNA’s application on grounds that it has no reasonable prospects of success in somewhat unusual circumstances. It emphasised that directions have been made for the UNA to file with the Commission all of the evidence and submissions upon which it seeks to rely in support of the application. In various respects, the ANMF and the other unions submit that the UNA has not proved that it satisfies the requirements for registration under the RO Act. As I understand the submission, the ANMF submits that it is appropriate for the Commission to conclude that the UNA’s application has no reasonable prospects of success because the UNA has not, on the material filed to date, proved facts that must be demonstrated to obtain registration.

[22] It is not possible to completely accept the manner in which the question is posed by the ANMF. The ANMF seeks that the Commission dismiss the UNA’s application at a preliminary stage. Although the UNA was directed to file any evidence and submissions upon which it seeks to rely in support of its application for registration, the proceedings have not reached a final hearing. In considering whether the application should be dismissed under s 587(1)(c), it is not appropriate to consider whether the UNA has proved it is entitled to registration. The question is whether, looking forward, there is a real prospect that the UNA will be able to satisfy the requirements for registration. However, in considering whether there is a reasonable prospect that the UNA will be able to demonstrate it is eligible to be registered, it is relevant that it has already been directed to prepare any material upon which it seeks to rely in support of its

application for registration. It has had an ample opportunity to demonstrate that it is capable of putting material before the Commission to demonstrate that it is able to be registered.

Requirements for registration as an organisation

[23] The UNA has applied to be registered as an association under s 18(b) of the RO Act. Section 18 permits certain types of associations to apply for registration as an organisation and provides as follows:

18 Employer and employee associations may apply

Any of the following associations may apply for registration as an organisation:

- (a) a federally registrable association of employers;
- (b) a federally registrable association of employees;
- (c) a federally registrable enterprise association.

[24] Relevantly, the meaning of the expression “federally registrable association of employees” in s 18(b) is defined in s 18B which provides:

18B Federally registrable employee associations

(1) An association of employees is *federally registrable* if:

- (a) it is a constitutional corporation; or
- (b) some or all of its members are federal system employees.

(3) An association of employees is not *federally registrable* if it has a member who is not one of the following:

- (a) an employee;
- (b) a person specified in subsection (4);
- (c) an independent contractor who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be an employee eligible for membership of the association;
- (d) an officer of the association.

(4) The persons specified for the purpose of paragraph (3)(b) are persons (other than employees) who:

- (a) are, or are able to become, members of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* of New South Wales; or
- (b) are employees for the purposes of the *Industrial Relations Act 1999* of Queensland; or
- (c) are employees for the purposes of the *Industrial Relations Act 1979* of Western Australia; or
- (d) are employees for the purposes of the *Industrial and Employee Relations Act 1994* of South Australia.

(5) An association of employees is not *federally registrable* if:

- (a) it is only a body corporate because it is or has been registered under this Act (whether before or after the commencement of this subsection); and
- (b) it is not the case that some or all of the association’s members are federal system employees.

[25] The criteria for registration of an association other than an enterprise association are set out in s 19 of the RO Act as follows:

19 Criteria for registration of associations other than enterprise associations

(1) The FWC must grant an application for registration made by an association (other than an enterprise association) that, under section 18, may apply for registration as an organisation if, and only if:

- (a) the association:
 - (i) is a genuine association of a kind referred to in paragraph 18(a) or (b); and
 - (ii) is an association for furthering or protecting the interests of its members; and
- (b) in the case of an association of employees—the association is free from control by, or improper influence from, an employer or by an association or organisation of employers; and
- (c) in the case of an association of employers—the members who are employers have, in the aggregate, throughout the 6 months before the application, employed on an average taken per month at least 50 employees; and
- (d) in the case of an association of employees—the association has at least 50 members who are employees; and
- (e) the FWC is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Act and the Fair Work Act; and
- (f) the rules of the association make provision as required by this Act to be made by the rules of organisations; and
- (g) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
- (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and
- (i) the registration of the association would further Parliament’s intention in enacting this Act (see section 5) and the object set out in section 3 of the Fair Work Act; and
- (j) subject to subsection (2), there is no organisation to which members of the association might belong or, if there is such an organisation, it is not an organisation:
 - (i) to which the members of the association could more conveniently belong; and
 - (ii) that would more effectively represent those members.

(2) If:

- (a) there is an organisation to which the members of the association might belong; and
- (b) the members of the association could more conveniently belong to the organisation; and
- (c) the organisation would more effectively represent those members than the association would;

the requirements of paragraph (1)(j) are taken to have been met if the FWC accepts an undertaking from the association that the FWC considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of the organisation and the eligibility rules of the association.

(3) Without limiting the matters that the FWC may take into account in considering, under subparagraph (1)(j)(ii), the effectiveness of the representation of an organisation or association, the FWC must take into account whether the representation would be consistent with Parliament's intention in enacting this Act (see section 5) and the object set out in section 3 of the Fair Work Act.

(4) In applying paragraph (1)(e), the FWC must have regard to whether any recent conduct by the association or its members would have provided grounds for an application under section 28 had the association been registered when the conduct occurred.

(5) The FWC must not, under this section, grant an application for registration of an association of employers or employees registered under a State or Territory industrial law if the association has a federal counterpart.

[26] The consequence of these provisions may be summarised as follows. In order to apply for registration, there must be an association which answers the description of being, relevantly, a “federally registrable association of employees” for the purposes of s 18(b). A “federally registrable association of employees” must be an association of employees which answers the description in s 18B. If an application for registration is made by a “federally registrable association of employees”, s 19(1) requires that the Commission must grant the application if, and only, if the each of the elements in that subsection are met.

[27] The first ground of the ANMF's application is that the UNA is not a federally registrable employee association within the meaning of s 18B(1) of the RO Act. The second ground of the ANMF's application is that, if the UNA is a federally registrable association, it has not satisfied the criteria set out in s 19(1)(d), (f), (h) of the RO Act. Section 19(1)(d) requires that an association has at least 50 members who are employees. Section 19(1)(f) requires that for registration, an association must have rules as required by the RO Act. Section 19(1)(h) requires that a majority of members have passed a resolution in support of registration in accordance with the rules of the association. The third ground is that, as to the criterion in s 19(1)(f), the rules of the association fail to make provisions as required by ss 140, 141(1)(b)(ii), (iii), (iv), (v), (vi), (viii), (x) and (xi), 141(1)(c), 141(1)(ca), 142(1)(c), 143, 144, 146 and 149.

[28] The HSU has made a separate application that the UNA's application be dismissed on grounds that it does not have reasonable prospects of success. The HSU's submissions indicate simply that it supports the submissions of the ANMF. The UWU and the AWU also indicate that those unions support the submissions of the ANMF. The AWU makes a distinct submission in support of the position of the ANMF. It submits that the Commission should not be satisfied that the UNA would conduct its affairs in a way that meets the obligations of an organisation under the RO Act and the FW Act for the purposes of s 19(1)(e) or that its registration would further Parliament's intention in enacting the RO Act and the object set out in s 3 of the FW Act for the purposes of s 19(1)(i).

Is there an association able to apply for registration?

[29] The first ground advanced by the ANMF is that the UNA is not a federally registrable employee association and was unable to apply for registration as an organisation for the purposes of s 18(b) of the RO Act. The ANMF refers to the decision of Williams SDP in *Re Society of Australian Surgeons* (2003) 122 IR 447. That decision considered, among other things, the operation of what was then ss 188 and 189 of the *Workplace Relations Act 1996*

(Cth).⁷ Those provisions are the historical equivalents of what are now ss 18 and 19 of the RO Act. In relation to the requirements to be met at the time of application and at the time of the consideration of an application by the Commission, Williams SDP said:⁸

Since 1 March 1989, however, a distinction appears to have been made in the legislation between making an application for registration and being granted registration. Section 188 of the Act provides that specified kinds of associations “may apply for registration”. Section 189 prescribes the criteria that such an association must satisfy in order to obtain registration. The time for determining whether an applicant association has met the requirements of s 189 and is, therefore, entitled to registration would generally be the time at which the Commission is deciding to grant or refuse to grant registration. However, the time at which an applicant association must fall within one or other of the descriptions of the kinds of associations that may apply for registration is the time at which the application for registration is made, namely the time at which such application is lodged in the Registry. If, at that time, the applicant association is not an association of the kind described in s 188, then it cannot make an application. Any application which such an association purports to make would be invalid.

Three, and only three, types of associations are now permitted to apply for registration as an organisation. Broadly, they may be described as associations of employers, associations of employees and enterprise associations of employees. Unless, at the time that it lodged its registration application, the SAS fell within one or other of the categories of associations described in s 188 of the Act, its application is invalid.

[30] Section 18(b) of the RO Act, at least when read with s 18B, has the same effect as what was previously s 188(1)(b) of the *Workplace Relations Act 1996* (Cth). Section 18 of the RO Act is in substantially the same form as s 188 of the *Workplace Relations Act 1996* (Cth) save that the provisions were later restructured such that the description of the three categories of associations able to become registered are dealt with in ss 18A, 18B and 18C rather than within s 18 itself.⁹ Section 18(b) of the RO Act continues to provide that a “federally registrable association of employees” may apply for registration as an organisation. The applicant must be a “federally registrable association of employees” at the time of the application for there to be a valid application before the Commission.

[31] The first submission made by the ANMF in relation to the first ground of its application is that the evidence does not disclose that the UNA was ever formed as an association at all and there is no evidence that there was, at least at the time of the application, an association of any description in existence. Whether an association was validly formed is a prerequisite jurisdictional fact to it being capable of registration and, as such, the Commission is entitled to determine that matter.¹⁰ As such, if this submission of the ANMF is correct, there is no valid application before the Commission and the UNA is unable to become registered irrespective of the other matters raised by the ANMF and the remaining unions.

[32] The requirements for the formation of an unincorporated association have been considered in a range of authorities. In *Federated Clerks Union of Australia v Wool Selling Brokers Officers Association of Australia* (1950) 67 CAR 232, for example, the Commonwealth Court of Conciliation and Arbitration was, in the course of determining an application for deregistration of an organisation, required to deal with an argument that the organisation in question had not been originally an association capable of registration because, at the date of its application for registration, there had in fact been no association. Foster J said:¹¹

An association of persons exists when a number of persons agree to act together in association for some objective and in fact do so act whether with a written constitution or not. No formalities are required to exist or be observed but agreement to associate must be clearly proved.

[33] In *Re Application by Emergency Medical Services Protection Association (NSW)* [2013] NSWIRComm 35; (2013) 233 IR 400, Haylen J conducted a detailed survey of relevant authorities in considering whether the relevant association had been established and was able to apply for registration under the *Industrial Relations Act 1996* (NSW). His Honour summarised the state of the law as follows:¹²

Essentially, all that is required for the formation of an unincorporated association is a group of people with a common purpose: as found in *Kibby*, a form of combination of persons with a common interest or purpose with a degree of organisation or continuity, will suffice. No public notice of the meeting is required. These matters will be discussed later in this decision under the heading “Was the Applicant Organisation Validly Formed”.

[34] The authority referred to in that passage is the decision of Mandie J in *Kibby v Registrar of Titles* [1999] 1 VR 861 in which his Honour said:¹³

In the light of the judicial statements to which I have referred and the ordinary meaning of the words contained in the said definition, I consider that the essence of an “association” may be described as some form of combination of persons (with a common interest or purpose) with a degree of organisation and continuity at least sufficient to distinguish the combination from an amorphous or fluctuating group of individuals and with some clear criteria or method for the identification of its members.

I do not think that a name or title, or the existence of a written constitution or rules governing the combination, or the existence of some form of contract between the members, is an essential characteristic, but clearly the existence of one or more of these would go a long way towards satisfying the need for some degree of organisation and continuity and for the satisfactory identification of members. Likewise, the existence of office-bearers, a committee and a bank account are relevant to a degree of organisation. The absence of all of these features makes it unlikely, but not impossible, that an association has been formed or is being carried on.

[35] In a general sense, all that is needed for the formation of an association is that a group of people with a common purpose come together to form a body to achieve that purpose. The body must have a sufficient degree of organisation and coherence and criteria or method for determining membership. However, there are not hard and fast rules as to the formalities that must be followed to establish an association.

[36] The ANMF submits that there must, at the least, be a time at which an association was formed, that is, when a group of people with a common purpose formed in combination with a degree of organisational continuity. The ANMF submits that there is no evidence of the formation of an association known as the UNA. It again refers to the fact that a direction was made for the UNA to file any submissions, witness statements or other evidentiary material in support of its application. The ANMF submit that, given the lack of evidence, the Commission cannot be satisfied that the UNA is an association that was formed.

[37] It is correct to say that there is no evidence before the Commission in relation to the formation of the UNA. The application contains various assertions as to the existence and

purposes of the UNA. In answer to the question “Is the association a genuine association of employees that seeks to further or protect the interests of its members?”, the application says:

United Nurses of Australia (UNA) is an association of Nurses. We are a genuine association of Nurses that seeks to further and protect the interests of its members. Nurses have formed the UNA for nurses to amplify our voice, the voice of the worker. To support, advise and advocate for employees to achieve the best workplace outcomes guided by a set of clear organisational goals and ethics.

[38] Attached to the application is a copy of what are asserted to be the rules of the association. There is no evidence before the Commission as to the how or when the rules were considered or adopted by the members of the UNA or any decision-making body of the UNA, if such a body exists.

[39] There is little evidence in relation to the operation of a body known as the UNA. The first is a document entitled “Australian Nurses United Meeting Agenda” and bearing the date 13 June 2024. Under the heading “Action Items”, the following matters are listed:

- Reviewal and approval of rulebook
- Continuation of the registration process
- Approval of the name, United Nurses of Australia
- Designation and approval of roles
- Working towards better salaries, free parking, and other benefits for nurses

[40] It is unclear if this is the meeting at which it is said that the rules and name of the association were adopted. No list of attendees or minutes of such a meeting are in evidence if a meeting did occur on that day. There is no evidence that a meeting in fact occurred on that day, much less what occurred at the meeting.

[41] The second is a document entitled “United Nurses of Australia” and “Meeting Agenda: Endorsement of Application for Fair Work Commission Approval” and bearing the date 24 August 2024. The purpose of the meeting is recorded to be “Endorsement of the application for approval by the Fair Work Commission”. Provision is made in the agenda for a motion to endorse the application. No list of attendees has been provided or minutes of the meeting, although there are the names of individuals identified to be the President, Vice President, Secretary, Treasurer and two Executive Committee Members. Again, there is no evidence that a meeting in fact occurred on that day or what occurred at the meeting.

[42] In these circumstances, the state of the evidence is unsatisfactory. If the only question was whether a group of people have come together to form a body for a common purpose, I might be willing to infer that this occurred at some point. However, I am not satisfied that the UNA formed in a manner that permits it to operate as a coherent body. In *Re Society of Australian Surgeons*, Williams SDP commented:¹⁴

It is not enough, however, that the SAS was in fact formed. It must have existed at the time of its registration application. In my view, there must have been, between the date of its formation and the date of its registration application, a degree of organisation and continuity sufficient to demonstrate that it was operating. In this case, it would appear that, during the relevant period, the SAS did little other than to seek to and purport to enrol persons as members and to put together and lodge an application for registration. No further meetings of members were held.

No decision-making bodies were established. No decisions other than those related to the pursuit of an application for registration appear to have been made on behalf of either the SAS or its members. No industrial activity appears to have been conducted on behalf of members. No issues appear to have been taken up on behalf of members, either individually or collectively.

[43] As pointed out by the ANMF and the other unions, there are a host of reasons why it is not possible to be satisfied that the UNA has been established and had a sufficient degree of organisation and continuity to demonstrate that it was operating at the time of the application for registration.

[44] On the assumption that the rules which accompanied the application are the rules of the UNA, it is apparent that the UNA has no members. Rule 5.3 provides that application for membership must be submitted on the “official UNA application form”, will be reviewed by a “designated Membership Committee” for eligibility and adherence to the rules and that admission fees, if applicable, must be paid “before membership is granted”. There is no evidence that there is an “official UNA application form” or a body which is the “designated Membership Committee”. Mr Parel informed the Commission that the UNA had not received any membership dues from persons identified as members pending registration. Although the UNA has provided a list of persons it says are members of the association, I am not satisfied that any of those persons are, in fact, members of the association in accordance with its purported rules.

[45] There is also no basis upon which the Commission could be satisfied that the office holders or decision-making bodies of the UNA have been established or operate in accordance with the rules. Rule 9.1 provides that the Central Council will be the governing body between Annual General body meetings and responsible for overseeing the strategic direction, operations, and finances of the UNA. Rule 9.1 lists the members of the Central Council. The President, Vice President and Honorary Secretary are to be elected “by the UNA General body from among Active Member delegates”. No provision is made for a “UNA General body” or for “Active Member delegates”. The Honorary Treasurer is to be elected by the “National Council” and additional committee members are to be approved by the “National Congress”. There is no provision either for a “National Council” or “National Congress”. The application purports to identify individuals who were President, Vice President, Secretary, Treasurer and two “Executive Committee Member”. It will be apparent that no mechanisms exist by which the identified individuals could have been elected to those positions.

[46] The consequence is that, on the evidence, there are no functional organs of the UNA and no persons properly holding office. There is no evidence before the Commission that the UNA has engaged in any activities other than the two meeting agendas provided to the Commission. In the circumstances, I am not satisfied that an association exists that has been properly formed and is operating in a manner that permits it to make an application for registration under s 18(b) of the RO Act. There is no evidence of any functioning body or decision-making organs of the association, that the association has members who were properly admitted under its rules or that it has engaged in any activities giving rise to a sufficient degree of organisation and continuity to constitute an association capable of making an application for registration.

[47] It became apparent from the submissions made by Mr Parel that the UNA has misunderstood the process according to which an association may become registered as an

organisation under the RO Act. It appears that Mr Parel, and perhaps some other people who work as nurses, want to create a new union. Mr Parel appears to have been under the apprehension that he should, as a first step, seek to register an association as an organisation and only then formally enrol members, establish decision-making bodies and institute rules which comply with the requirements of the RO Act. For example, Mr Parel informed the Commission that the UNA had not taken any membership dues as yet because it was not registered as an organisation. The rules provided with the application appear to have been put forward as potential rules to be adopted if registration occurs, rather than representing the rules in accordance with which the UNA has operated to date.

[48] The RO Act operates in a quite different way. Section 18 provides that certain kinds of associations may apply to become registered. The association must have been established and exist in order to apply for registration. It may be that an association could form for the purposes of seeking to become registered under the RO Act. However, the requirements for registration make clear that there must be an association which exists and is in operation. For example, s 19(1)(d) requires that the association must have at least 50 members who are employees, s 19(1)(f) requires that the rules of the association must make provision as required by the RO Act and s 19(1)(h) requires that a majority of members are present at a general meeting, or an absolute majority of the committee of management, have passed a resolution in favour of registration as an organisation. The UNA has not, at present, been formed in a manner that permits it to apply for registration.

[49] The difficulty with the formation and operation of the UNA as an association identified by the ANMF is not a matter that can be cured in the context of this application. The acceptance of the first ground of the ANMF's application is sufficient to support the conclusion that the application for registration by the UNA should be dismissed under s 587(1)(c) of the FW Act on grounds that it does not have reasonable prospects of success.

[50] The ANMF also submits that, if the UNA is an operating association, it is not a "federally registrable employee association". The ANMF submits that an association is not federally registrable for the purposes of s 18B of the RO Act if it has as members, or permits membership by, persons who is not a federal system employees except as permitted to s 18B(3). In this respect, the ANMF refers to the decision of the Full Court in *Australian Education Union v Lawler* [2008] FCAFC 135; (2008) 169 FCR 327.¹⁵ The ANMF say the UNA is not federally registrable because its rules provide for persons to be eligible for membership who are not employees. The ANMF notes that the rules of the UNA contain provision for student members and honorary members and do not contain a rule ensuring the automatic termination of membership if a person ceases to be eligible.

[51] Given the conclusions I have otherwise reached in relation to the formation and operation of the UNA, it is unnecessary to consider this submission. The submission may require consideration of s 171A of the RO Act. That section was introduced after the decision in *Australian Education Union v Lawler* and provides for a person's membership of a registered organisation to immediately cease if the person is not, or is no longer, a person of a kind mentioned, relevantly, in s 18B(3). It may be that s 171A does not assist an application for registration to satisfy the description of being a federally registrable employee association for the purposes of s 18B. However, that matter was not subject of argument and the better course is not to express a view about that question.

Requirements for an application for registration to be granted

[52] The second and third grounds in the application made by the ANMF concern whether there are reasonable prospects of the UNA being able to satisfy the criteria set out in s 19(1)(d), (f), (h) of the RO Act. The AWU also submits that the Commission could not be satisfied that the requirements in s 19(1)(e) or (i) are, or will be, met. As I have recorded, s 19 provides that the Commission must grant an application for registration if, and only if, the requirements set out in that section are met. Each of the requirements in s 19(1) must be met. If there are no reasonable prospects that the UNA will be able to satisfy any one of the requirements, that will provide a basis for concluding that the application has no reasonable prospects of success. I will consider each of the subsections of s 19 referred to by the ANMF.

Section 19(1)(d)

[53] Section 19(1)(d) provides that, in the case of an association of employees, the association must have at least 50 members who are employees. The ANMF submits that there is no evidence before the Commission that the UNA has at least 50 members who are employees. It says that the list of persons who are said to be members contained in the application, and the amended list which was provided subsequently, is not evidence of this fact. The ANMF submits that there is no evidence what those persons do, whether they are employees or are students or honorary members or that the persons named are nurses who are “currently practicing in Australia”.

[54] I accept that the evidence presently before the Commission is not sufficient to demonstrate that the UNA has 50 members who are employees. Although it has provided a list of names, there is no basis upon which the Commission could simply infer that the persons named are all employees and eligible for membership of the UNA. The UNA has had an opportunity to file evidence in relation to its membership. It could easily have filed evidence showing the employment status of each of the persons it asserts are members showing that they are currently practicing in Australia by reference to the employer of each of the asserted members but has not done so.

[55] The question I am currently considering is whether the UNA’s application should be dismissed because it has no reasonable prospects of success. It is possible the UNA could produce adequate evidence even though it has not done so as it was directed to do. Given the conduct of the proceedings to date, I am deeply sceptical that the UNA will file evidence sufficient to satisfy the requirement in s 19(1)(d). There is, however, a more fundamental problem. As explained above, the UNA has not admitted any members consistent with its purported rules and the procedures and decision-making bodies to permit the admission of members do not appear to exist. In those circumstances, I am satisfied that the UNA’s application does not have reasonable prospects of demonstrating that it has at least 50 members who are employees.

Section 19(1)(f)

[56] Section 19(1)(f) provides that the rules of the association must make provision as required by the RO Act. The ANMF points to a very large number of defects in the rules of the

UNA when compared with the requirements set out in the RO Act for the rules of an organisation. It is unnecessary to set out each of the deficiencies set out in the ANMF's submissions. It is appropriate to record that I do not accept each of the criticisms made by the ANMF of the rules of the UNA and some are debateable. However, most of the deficiencies referred to by the ANMF correctly identify that the rules fail to make provision as required by the RO Act in a great many respects. In summary, some of the relevant defects identified by the ANMF in the rules of the UNA are as follows:

- (a) Section 141(1)(b)(ii) provides that the rules must provide for the manner of summoning meetings of members of the organisation and its branches, and meetings of the Committees of the organisation and its branches. The UNA's rules appear to provide for a range of bodies which might meet, including the Central Council (rule 9), the Annual General Body Meeting (rule 10), the National Congress (rules 9.1.6 and 10.6), the General Council (rules 9.4.3, 9.5 and 10.6) and the Hospital/Educational Institution/Designated Organisations Unit (rule 9(5)). Although rule 9.3.4 provides for "special meetings" of the Central Council to be convened by the President, there is otherwise no provision for summoning any of these bodies.
- (b) Section 141(1)(b)(ii)(a) provides that the rules must provide for the keeping of minute books in which are recorded proceedings and resolutions of meetings of committees of management of the organisation and its branches. There is no provision for the keeping of minute books as such. The Honorary Secretary is responsible for maintaining "Central Council records" (rule 9.1.3) but not minute books in relation to other decision-making bodies.
- (c) Section 141(1)(b)(iii) provides that the rules must provide for the removal of holders of offices in the organisation and its branches. Provision is made in rule 6 for termination of membership and in rule 15 for the removal of "UNA representatives". A "UNA representative" appears to be a workplace delegate. However, no provision is made for the removal of holders of offices in the Applicant.
- (d) Section 141(1)(b)(v) provides that the rules must provide for the manner in which documents may be executed by or on behalf of the organisation. No specific provision is made with respect to the execution of documents.
- (e) Section 141(1)(b)(vi) provides that the rules must provide for the manner of notifying the Commission of industrial disputes. No provision is made for the notification of industrial disputes.
- (f) Section 141(1)(ca) provides that the rules must require the organisation and each of its branches to develop and implement policies relating to the expenditure of the organisation or branch (as the case may be). There is no provision in the UNA's rules to satisfy this requirement.
- (g) Section 141(1)(d) provides that the rules must require the organisation to inform applicants for membership, in writing, of the financial obligations arising from

membership and the circumstances, and the manner, in which a member may resign from the organisation. There is no proper provision to satisfy this requirement.

- (h) Section 142(1)(c) provides that the rule must not impose on applicants for membership or members conditions, obligations or restrictions that are oppressive, unreasonable or unjust. The ANMF submits, and I accept, that the provision in rule 6.4 that a person's membership can be terminated by unanimous resolution of the council of the UNA for any reason it deems fit and proper is contrary to s 142(1)(c).
- (i) Sections 143 and 144 provides that the rules must make various provisions with respect to the election of office holders in an organisation. The UNA's rules do not provide for a direct voting system or a collegiate electoral system and appear to contain inadequate provision in relation to the role of a returning officer, treatment of defective nominations, for the nomination of candidates, for the conduct of a secret ballot, for the closure of the roll of voters or for direct voting by a secret postal ballot.
- (j) Section 146 provides that the rules of an organisation may provide for the filling of casual vacancies by an ordinary election or in any other manner provided in the rules subject to certain constraints. Rule 9.3 of the UNA's rules provide that vacancies can be filled regardless of the limitations set out in s 146.
- (k) Section 149 provides that rules must provide in respect of loans, grants or donations exceeding \$1,000 such that the committee of management must have satisfied itself of various matters and approved the making of the loan, grant or donation. There is no provision in the UNA's rules with respect to this matter.

[57] A difficulty with accepting the submission that the defects in the rules of the UNA provide a basis upon which to conclude its application for registration has no reasonable prospects of success is that the RO Act permits an applicant for registration to alter its rules whilst its application is being considered by the Commission. Section 25(1)(a) permits the Commission to grant leave to an association applying to be registered to alter its rules "to enable it to comply with this Act". Section 25(2) permits an application of that kind to be made even though the application for registration is pending. Referring to s 25 when it appeared in Schedule 1B to the *Workplace Relations Act 1996* (Cth), Lander J said in *Australian Education Union v Lawler*:¹⁶

In my opinion, s 25 assumes that an association may need to alter its rules to enable it to comply with the Schedule (including s 18) at some time prior to determination of its application.

Section 25 therefore would allow an association whose rules do not comply with s 18 but which has made an application to be registered as an organisation under the Schedule to apply to the Commission to alter its rules to enable it to comply with the Schedule.

[58] Accordingly, it is open to an association which has applied for registration, if leave is granted, to alter its rules so as to ensure compliance with the requirements of the RO Act whilst the application for registration is being dealt with by the Commission. At the hearing of the

applications under s 587 of the FW Act, Mr Parel tendered email communications purporting to indicate that consideration was being given to altering the rules of the UNA to address at least some of the difficulties identified in the submissions of the ANMF. However, leave to alter the rules of the UNA has not been sought. Even if leave were granted to alter the rules of the UNA, it is necessary that any rule changes actually be adopted by the association.¹⁷

[59] Having regard to the capacity of an applicant association to seek leave to alter its rules during the proceedings, deficiencies in the rules of an applicant association are, in themselves, unlikely to mean an application has no reasonable prospects of success. However, in my opinion, the deficiencies identified in the rules of the UNA in this matter are sufficient to mean that its application does not have reasonable prospects of success. In light of the manner in which its application has been prepared, the way in which the proceedings have been conducted and the number and variety of the deficiencies in the UNA’s rules, I have no confidence that the UNA has the capacity or competence, at least in the short term, to formulate and adopt rules which comply with the RO Act. I do not believe there is any real prospect it will be able to do so at present.

[60] Furthermore, although the UNA’s rules contain provision in clause 21 for the amendment, alteration and repeal of the rules, it is not clear that provision is currently capable of operation. Clause 21.1 provides for notice of a proposed rule change to be given by a member to the Secretary and for the proposed alteration to be “laid before the Council or before a meeting of the Union which may amend, add to, vary or repeal the Rules or any part of them”. The reference to the “Council” might be understood to refer to the Central Council. For reasons I have explained, on the material available to the Commission, no persons have been properly elected to the positions comprising the Central Council. It is not clear what is meant by a “meeting of the Union” in clause 21.1 or how such a meeting could be called. As such, I am not satisfied that the UNA is presently able to validly alter its rules.

[61] For both those reasons, I am satisfied that the UNA has no reasonable prospects of demonstrating that its rules make provision as required by the RO Act for the rules of an organisation or of making changes to its rules so as to bring them into compliance with the requirements of the RO Act.

Section 19(1)(h)

[62] Section 19(1)(h) provides that a majority of members present at a general meeting, or an absolute majority of the committee of management of the association, must have passed a resolution in favour of registration of the association as an organisation. The UNA’s application answered “yes” in response to the question “Was a resolution in favour of registration of the association as an organisation under the RO Act passed by a majority of members present at a general meeting or an absolute majority of the committee of management of the association in accordance with the association’s rules”. However, the state of evidence in relation to the mechanism by which a resolution is alleged to have been passed by the UNA is again unsatisfactory.

[63] The application is dated 17 April 2024 but was filed on 11 September 2024. No copy of any resolution was attached to the application. By declaration dated 11 December 2025, Mr Parel purported to verify the facts stated in the declaration, the application and the documents

lodged with the application. No document recording any resolution was provided with the declaration. A further document was filed by the UNA which is both undated and unsigned. The document contains the following text:

I, Jimmy George Parel of 36 pines way craigieburn victoria 3064, am the secretary of the UNA and am authorised to make this declaration under regulation 21(1)(d)(vi) of the Fair Work (Registered Organisations) Regulations 2009 in regard to UNA. application for registration as an organisation under section 18 of the Fair Work (Registered Organisations) Act 2009

I, Jimmy Parel, am the Secretary of the UNA. I am making this declaration for the purposes of Regulation 21(1)(b) of the Fair Work (Registered Organisations) Regulations 2009. To the best of my knowledge and belief the facts stated in this declaration and application and in the documents lodged with the application are true and correct. We, as committee members unanimously approve the proposed submission at the meeting on 24/08/24 by the absolute majority of the committee members in accordance with the rules of the UNA.

[64] The document appears to refer to the meeting agenda for a meeting to occur on 24 August 2024 which is entitled “Endorsement of Application for Fair Work Commission Approval” and records, as an agenda item, “Motion to Endorse the Application”. The agenda document records the names of persons designated as President, Vice President, Secretary, Treasurer and Executive Committee Members. As the ANMF submits, there is no evidence that a meeting occurred, who was present if it did occur or that any resolution was moved or passed at the meeting.

[65] Even if it is assumed that a meeting occurred, I do not consider there is any real prospect that the UNA will be able to demonstrate that it has passed a resolution either at a general meeting or of the committee of management. There is no suggestion a general meeting of members has been held. If a meeting did occur on 24 August 2024, there is no evidence the meeting was called or conducted in accordance with the rules of the UNA. If the meeting was properly called and it was attended by the persons whose names appear at the end of the agenda document and those persons resolved to endorse the application, it does not assist the UNA. For the reasons I have explained, on the material before the Commission, no persons can have been elected to positions on the Central Council, and the Central Council cannot have been constituted or conducted a meeting.

[66] In the circumstances, there are no reasonable prospects of the UNA being able to demonstrate that a majority of members present at a general meeting, or an absolute majority of the committee of management, have passed a resolution in favour of registration of the association as an organisation.

Other grounds relied upon in support of the s 587 applications

[67] It is not necessary to address a number of additional contentions advanced by the ANMF or the other unions in support of the s 587 applications. The ANMF submits that, in various ways, the application for registration made by the UNA does not comply with the requirements of regulation 21 of the RO Regulations. The ANMF submits that these deficiencies are unable to be rectified by the UNA and that the Commission has no power to excuse non-compliance. The submission is not elaborated upon in any detail and is not correct. Regulation 179(1) of the RO Regulations provides that the Commission “may exempt a person from compliance with a

procedural requirement under the Act or these Regulations if the FWC is satisfied there are special circumstances”. In light of that capacity, I do not consider the failure of the UNA to comply with the procedural requirements in regulation 21 relating to the content of the application to provide an independent ground to dismiss the application under s 587(1)(c).

[68] The AWU submits that the Commission should not be satisfied that, if registered, the UNA would conduct its affairs in a way that meets the obligations of an organisation for the purposes of s 19(1)(e) or that its registration would further Parliament’s intention in enacting the RO Act and the object in s 3 of the FW Act for the purposes of s 19(1)(i). I have significant concerns about the conduct of the UNA in these proceedings. It has made numerous serious allegations in relation to the conduct of established unions, and officials of those unions, which appear to me to be unsupported by any evidence. It has repeatedly referred to historical events affecting those unions, and other entirely unrelated organisations, which have little or no relevance to the present application. The UNA also made disparaging and scandalous statements in relation to the lawyers appearing for the ANMF. Those comments were entirely irrelevant, uncalled for and without any intelligible foundation.

[69] It has not been necessary to describe or set out all of the matters referred to in the material filed by the UNA. Its conduct in the proceedings gives rise to serious concerns that the UNA would not, if registered, conduct itself in a manner that complies with the obligations of registered organisations for the purposes of s 19(1)(e). However, I do not consider that it is appropriate to make findings in relation to that matter, or whether the registration of the UNA would further Parliament’s intention in enacting the RO Act, after a preliminary hearing which was directed only at whether the application should be dismissed on the basis that it does not have reasonable prospects of success. At this stage, I do not consider that I can be affirmatively satisfied there are no reasonable prospects of the UNA satisfying those criteria.

Conclusion

[70] For these reasons, I am satisfied that the UNA’s application does not have reasonable prospects of success. I am satisfied that no association exists that has been properly formed and is operating in a manner that permits the UNA to make an application for registration under s 18(b) of the RO Act. I am also satisfied that the UNA does not have reasonable prospects of satisfying the requirements in, at least, s 19(1)(d), (f) and (h) of the RO Act. The consequence is that it is open to the Commission to dismiss the application under s 587(1)(c) of the FW Act.

[71] Even if an application can be dismissed under s 587, the Commission has a discretion as to whether to take that step. Given the number and seriousness of the deficiencies which have been revealed in the UNA’s application and its attempt to become registered, I consider it is appropriate for its application to be dismissed. In this respect, the ANMF pointed out that the dismissal of the current application does not prevent the UNA from applying for registration again if it were to get its house in order.¹⁸ It is, in my opinion, relevant to the exercise of the discretion as to whether the application should be dismissed that the UNA can make a further application if it takes the necessary steps to constitute itself as an association, adopt compliant rules, resolve to apply for registration and prepare a satisfactory application. It is not convenient or appropriate to permit the present application to continue.

[72] The Commission orders that the application made by the UNA be dismissed.



VICE PRESIDENT

Appearances:

J Parel, A Mani and N John for the applicant.

E White, of counsel, instructed by Gordon Legal for the Australian Nursing and Midwifery Federation.

C Gourlay, Industrial Officer, for the Health Services Union.

Z Duncalfe, Senior National Legal Officer, for the Australian Workers' Union.

K Smith, Industrial Officer, for the United Workers' Union.

Hearing details:

28 April 2025.

Melbourne (in person).

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¹ *Application by the United Nurses of Australia* [2025] FWC 239.

² See, for example, *Jefferson Ford Pty Ltd v Ford Motor Company of Australia Ltd* [2008] FCAFC 60 at [124] (Gordon J); *Halyday v Commonwealth* [2025] FCA 330 at [16] (Bromwich J); *Bilal v Ampol Limited* [2025] 1189 at [10] (Shariff J).

³ *Spencer v Commonwealth* [2010] HCA 28; (2010) 241 CLR 118 at [53] and [59]-[60] (Hayne, Crennan, Kiefel and Bell JJ).

⁴ *Re Elecnor Australia Pty Ltd* [2024] FWCFCB 245 at [23].

⁵ *Spencer v Commonwealth* [2010] HCA 28; (2010) 241 CLR 118 at [24]-[25] (French CJ and Gummow J).

⁶ See, for example, *Health Services Union-Victoria No 1 Branch v Sanli* [2018] FWCFCB 745 at [114].

⁷ Prior to the commencement of the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) Act 2002* (Cth) on 12 May 2003 which moved the relevant provisions relating to registration of organisations to Schedule 1B — Registration and Accountability of Organisations of the *Workplace Relations Act 1996* (Cth).

⁸ *Re Society of Australian Surgeons* (2003) 122 IR 447 at [63]-[64].

⁹ The history of the amendments is described in *Ambulance Employees Association of Western Australia v United Workers' Union* [2024] FWCFCB 451 at [52]-[59].

¹⁰ *Re Postal Delivery Officers' Union* (unreported, AIRC, McIntyre VP, Print S3192, 18 February 2000) at [60]; *Re Australian Principals Federation* (unreported, AIRC, Ross VP, Print PR968104, 27 January 2006) at [137].

¹¹ *Federated Clerks Union of Australia v Wool Selling Brokers Officers Association of Australia* (1950) 67 CAR 232 at 234.

¹² *Re Application by Emergency Medical Services Protection Association (NSW)* [2013] NSWIRComm 35; (2013) 233 IR 400 at [49] (Haylen J).

¹³ *Kibby v Registrar of Titles* [1999] 1 VR 861 at [50]-[51] (Mandie J). Cited with approval in *Australian Federation of Islamic Councils Inc v United Muslims of New South Wales Inc* [2021] NSWCA 311 at [94] (Bathurst CJ with whom Bell P and Meagher JA agreed).

¹⁴ *Re Society of Australian Surgeons* (2003) 122 IR 447 at [67].

¹⁵ *Australian Education Union v Lawler* [2008] FCAFC 135; (2008) 169 FCR 327 at [252], [261] and [269] (Jessup J).

¹⁶ *Australian Education Union v Lawler* [2008] FCAFC 135; (2008) 169 FCR 327 at [81]-[82] (Lander J).

¹⁷ *Australian Road Transport Industrial Organisation v NatRoad Ltd* [\[2013\] FWCFCB 8691](#); (2013) 237 IR 147 at [34]-[39].

¹⁸ See approach adopted by the Full Bench in *Australian Road Transport Industrial Organisation v NatRoad Ltd* [\[2013\] FWCFCB 8691](#); (2013) 237 IR 147 at [40].