

29 October 2021

Post-election report

Primary Employers Tasmania
Scheduled election
E2021/1

Contents

Election(s) Covered in this Report	3
Rules.....	3
Other Matters	3
Signed.....	4
Attachments	5
A. PET_E2021-1_Stage1_DeclarationOfUncontestedResults.pdf	5
B. PET_E2021-1_Stage1_Recall_DeclarationOfContestedResults.pdf	5
C. PET_E2021-1_Stage2_DeclarationOfUncontestedResults.pdf	5

Election(s) Covered in this Report

Organisation: Primary Employers Tasmania
Election: Scheduled
Election Decision No/s: E2021/1

Rules

Rules used for the election: [002T: Incorporates alterations of 8 August 2019 (D2019/8)]
replaces 24 June 2019 version (R2019/51)

Rules difficult to apply/interpret: No
Model Rule reference (if any): N/A

For more details see the Model Rules on the AEC website: www.aec.gov.au/ieb/

Other Matters

Returning Officer actions required (Section 193): Yes

Details:

- Rules regarding the timetable of the election were set aside as the AEC held concerns that the coronavirus pandemic may impact on the ability for stakeholders to fully participate in the election. A timetable for the conduct of the ballot which varied from the rules was set when the AEC was satisfied that stakeholders would be able to fully participate.
- Withdrawal of Nominations not allowed after the close of nominations as the rules are silent on this issue.
- Rule 27.2 states “that If the candidates are subject to election the Association shall place on its webpage a statement and photograph supplied by the candidate complying with the following:
 - (i) The Statement shall give the name and the address at which the nominee mainly carries on their particular industry and indicate in not more than one hundred words the candidate’s:
 - (a) service to that industry;
 - (b) service to the community; and
 - (c) special interests and qualifications of any type.”

A Candidate statement will be produced by the RO and included as part of the ballot material to be sent out to all eligible members entitled to vote in the ballot.

- Rule 30.14 states that – “In the event of insufficient nominations being received in respect of an election conducted pursuant to Rule 30.0, any vacancy or vacancies upon the Executive Committee shall be filled as follows: Nominations shall be called at the Annual General Meeting” Rules requiring in-person nominations were set aside as the AEC held concerns that the coronavirus pandemic would impact on the ability for all stakeholders to attend. Instead nominations and all subsequent ballots were conducted via post.

Signed



Michael Clarke
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 02 9375 6301
29 October 2021

Attachments

- A. PET_E2021-1_Stage1_DeclarationOfUncontestedResults.pdf
- B. PET_E2021-1_Stage1_Recall_DeclarationOfContestedResults.pdf
- C. PET_E2021-1_Stage2_DeclarationOfUncontestedResults.pdf

Primary Employers Tasmania
DECLARATION OF RESULTS - E2021/1 - Stage 2
Uncontested Offices

Scheduled Election

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

President (1)

Candidates

GRUBB Benjamin Frederick

Vice President (1)

Candidates

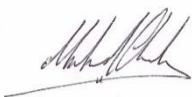
TERRY Stephanie

Treasurer (1)

Candidates

FERGUSON Melissa Jane

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.



Michael Clarke
Returning Officer
Telephone: 02 9375 6301
Email: IEEvents@aec.gov.au
13/10/2021

Primary Employers Tasmania
DECLARATION OF RESULTS - E2021/1 - Stage 1
Contested Offices

Recall Election

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

Primary Industries Tasmania

VOTING MATERIAL ISSUED	
Total number of people on the roll of voters (a)	477
Number of voters issued with voting material	477
Total number of voters issued with replacement voting material	0
Total number of voting material packs issued	477
VOTING MATERIAL RETURNED	
Total number of envelopes returned for scrutiny by closing date of ballot (b)	130
Number of declaration envelopes rejected at preliminary scrutiny (minus)	1
Number of ballot papers returned outside declaration envelopes (minus)	0
COUNT	
Total ballot papers admitted to the count	129
LATE OR UNRETURNED VOTING MATERIAL	
Voting material returned as unclaimed mail by closing date of ballot	8
Voting material packs not returned by voters by closing date of the ballot	339
Percentage of voting material packs returned by voters to number of people on the roll of voters (b/a)	27 %

Executive Committee Member (1)

<u>Candidates</u>	<u>Final Votes</u>
JAMES, Marcus	34
GREENACRE, Sophie	94

Total ballot papers admitted for this office	129
Formal Ballot papers	128
Informal Ballot papers	1

I declare the following elected:

- GREENACRE, Sophie

Michael Clarke
Returning Officer
Telephone: 02 9375 6301
Email: IEBevents@aec.gov.au
09/09/2021

Primary Employers Tasmania
DECLARATION OF RESULTS - E2021/1 - Stage 1
Uncontested Offices

Scheduled Election

The results of the election for the following offices conducted in accordance with the provisions of the *Fair Work (Registered Organisations) Act 2009* and the rules of the organisation are:

Executive Committee Member (5)

Candidates

FERGUSSON Melissa

GOFTON Kate

GRUBB Ben

TERRY Stephanie

As the number of nominations accepted did not exceed the number of positions to be filled, I declare the above candidates elected.



Michael Clarke
Returning Officer
Telephone: 02 9375 6301
Email: IEEvents@aec.gov.au
15/07/2021



DECISION

Fair Work (Registered Organisations) Act 2009
s.189—Arrangement for conduct of an election

Primary Employers Tasmania (E2021/1)

MR STEENSON

SYDNEY, 3 MARCH 2021

Arrangement for conduct of election.

[1] On 11 February 2021 the Primary Employers Tasmania (the organisation) lodged with the Registered Organisations Commission (the Commission) prescribed information for an election to fill the following offices:

President	(1)
Vice President	(1)
Treasurer	(1)
Executive Committee Member	(5)

Election schedule

[2] The rules of the organisation, in particular rule 27, specify that the management of the organisation is vested in an Executive Committee comprising ten (10) officers in total, including the President, Vice President and Treasurer who are elected from among those officers.

[3] The rules further specify, in sub-rule 27.4 that the term of office for Executive Committee Members is four (4) years.¹ Sub-rule 27.1 provides that half of the committee (i.e. five (5) committee members) is elected in each odd numbered each year.²

[4] The rules further specify, at rule 26, that the offices of President, Vice President and Treasurer are elected, in a collegiate election, by and from the members of the Executive Committee for a one (1) year term.

Lodgement of prescribed information

[5] The *Fair Work (Registered Organisations) Act 2009* (**RO Act**) requires prescribed information to be lodged with the Commission in order for the Commissioner or his delegate to determine whether an election is required to be held in accordance with the organisation's

¹ As a consequence of rule alteration D2019/8, certified by the Fair Work Commission on 8 August 2019, which changed the term of office of Executive Committee members.

² Transitional rule 43.3 provided that to implement the rotational system of election set out in rule 27.4, the inaugural terms of Executive Committee members (for two years or four years) were determined by the drawing of lots.

rules and, if so, to issue an election decision to arrange for the Australian Electoral Commission (AEC) to conduct such an election in accordance with the organisation's rules.

[6] In order to do this, the RO Act requires information to be lodged by registered organisations by a prescribed day, which regulation 138(3) of the *Fair Work (Registered Organisations) Regulations 2009 (RO Regulations)* defines as a day two months before the first day on which nominations open under the organisation's rules.

[7] In the case of this organisation, its rules (in particular sub-rule 30.0(c)) provide that:

Nominations shall be called for not less than nine (9) weeks prior to the annual general meeting and shall be lodged with the Returning Officer not less than seven (7) weeks before the annual general meeting.

[8] The prescribed information lodged by the organisation states that nominations for Executive Committee Members open on 18 March (rule 30.0(c)) and that nominations for the offices of President, Vice President and Treasurer open on 20 May (rule 31.3). On 1 March 2021 the organisation confirmed, via email, that the annual general meeting this year will be held on 20 May 2021.

[9] The prescribed day for lodgement of prescribed information for Executive Committee elections this year is therefore 18 January 2021 (i.e. two months before nominations are due to open).

[10] As part of its lodgement of prescribed information, the organisation acknowledged that the prescribed information was lodged late. As indicated above, the prescribed information should have been lodged by 18 January 2021. It was instead lodged on 11 February 2021. This means that the lodgement of prescribed information occurred 23 days late. The organisation's President stated that the delay was an oversight due to the closure of the organisation's office and its relocation which occurred on 6 January 2021.

[11] The issue of late lodgement of prescribed information, which is a civil penalty provision, has been brought to the attention of this organisation on more than one occasion, for example in election matters **E2017/273** and **E2018/277**.³ The decision of the Delegate in **E2018/277** reviews these issues in detail.⁴

[12] I note that no issue of late lodgement arose in relation to the prescribed information lodged for the organisation's 2020 election (**E2020/10**), which was an election only for President, Vice-President and Treasurer.⁵

[13] In circumstances where the issue of late lodgement has previously been brought to the attention of the organisation, and where a number of the same senior office-bearers and employees continue to have responsibility for attending to these matters, it is surprising that late lodgement continues, albeit for apparently different reasons on this occasion.

³ Decisions [2018] ROCD 51 (when the organisation was known as the TFGA Industrial Association) and [2019] ROCD 69 respectively.

⁴ [2019] ROCD 69, available at <https://www.roc.gov.au/ArticleDocuments/409/002T-e2018-277.pdf.aspx>

⁵ The Post-Election Report (PER) issued by the AEC indicated, however, that the running of that election was conducted at a later date by the AEC due to the COVID-19 pandemic and associated restrictions. That PER is available on the ROC website at <https://www.roc.gov.au/ArticleDocuments/409/002t-e2020-10.pdf.aspx>

[14] I again take the opportunity to remind the organisation that the late lodgement of prescribed information – necessary for the running of elections in a timely manner – is a civil penalty provision.⁶

[15] In circumstances where one of the objects of the legislation is the democratic control and accountability of registered organisations, it is important for the regulator to take appropriate action in response to apparent contraventions of legislation. Such response can include the Commissioner instituting civil penalty proceedings.⁷

[16] As previously indicated to the organisation, particularly in E2018/277, the normal and reasonable expectation is that registered organisations will take steps to ensure they comply with the time-frame requirements set out not only in the RO Act but also in instruments or references pertaining to their own governance (such as their own rules).

[17] I have carefully considered all of the available information, including the reasons provided, the on-time lodgement of prescribed information in 2020, and the organisation's previous record of late lodgement for a range of reasons.

[18] On this occasion, I decline to allow a later day for the lodgement of prescribed information under section 189(2) of the RO Act. I have requested that Commission staff consider what compliance action is appropriate in light of the apparent contravention by the organisation.

[19] Regardless of the date of lodgement of the prescribed information, as Delegate of the Commissioner, I am required to determine whether an election is required under the rules of the organisation. Having considered the prescribed information and the rules of the organisation, I am satisfied that an election for the abovenamed offices is required to be held under the rules of the organisation and, under subsection 189(3) of the RO Act, I am making arrangements for the conduct of the election by the AEC.



DELEGATE OF THE COMMISSIONER

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⁶ s.189(2), RO Act (unless the Commissioner allows a later date for the lodgement of the information).

⁷ Such as in *Registered Organisations Commission v Australian Hotels Association* [2019] FCA 1516, <https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2019/2019fca1516>, where penalties were imposed for repeated contraventions of s.189(2)

PRESCRIBED INFORMATION FOR ELECTIONS in accordance with Section 189 Fair Work (Registered Organisations) Act 2009 and Regulation 138 Fair Work (Registered Organisations) Regulations 2009

I, Felicity Richards being the President of Primary Employers Tasmania make the following statement:

1. I am authorised to sign this statement containing prescribed information for Primary Employers Tasmania.
2. The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. The elections that are required are set out in the table in Annexure A.

impact the election.

This statement **IS NOT** lodged at least 2 months before nominations open for the election(s) in Annexure A. The reason it is lodged after the prescribed time is:

- a. We closed moved to a new office on 6 January, 2021.
- b. Due to this an oversight was made in relation to lodging the necessary documentation.

NOTE: Extensions of time should be requested at least two months before nominations open. A failure to lodge Prescribed Information on time can lead to civil penalties under the RO Act.

4. Signed: *Richards*

Dated: *11/2/2021*

NOTE: This statement should be lodged with the Registered Organisations Commission at least 2 months prior to nominations opening. It can be submitted to regorgs@roc.gov.au.

Annexure A

- Elections that are required [insert as many pages as required]

Branch	Name of Office	Number required	Voting System <i>Direct voting system; Collegiate electoral system</i>	Reason for Election <i>Scheduled; Casual vacancy; New office created; Insufficient nominations</i>	Electorate
Primary Employers Tasmania	President	1	Collegiate electoral system	Scheduled	Members of Executive Committee – Rule 31
Insert branch name	Vice President	1	Collegiate electoral system	Scheduled	Members of Executive Committee – Rule 31
Insert branch name	Treasurer	1	Collegiate electoral system	Scheduled	Members of Executive Committee – Rule 31
	Committee Member	5	Direct Voting System	Scheduled	All financial members of Primary Employers Tasmania – Rule 30

- Important dates:

	Direct Voting System	Collegiate Electoral System
Nominations OPEN	18 March, 2021 – Rule 30.0 (c)	20 May, 2021 – Rule 31.3
Nominations CLOSE	1 April, 2021 – Rule 30.0 (c)	20 May, 2021 – Rule 31.3
Roll of Voters cut off date	25 March, 2021 Rule 30.2	20 May, 2021 – Rule 31.2

NOTES: For insufficient nominations and casual vacancies, the date nominations open and close, unless specified in the rules, should be listed as ‘To be determined by the returning officer’. This also applies where rules are silent as to the nominated dates.

If the nomination dates are ‘To be Determined by the Returning Officer’, but your organisation has a *preference*, please state ‘To be Determined by Returning Officer’ and clearly indicate that your nominated date is a preference.

If the P.I. includes a position that is not an office, please refer to our template [Prescribed information for the election of officer and non-officer positions](#)