

19 July 2021

Post-Election Report

Australian Business Industrial
Scheduled Election and Recall Election
E2020/88

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Election(s) Covered in this Report

Organisation: Australian Business Industrial

Election: Scheduled and Recall

Election Decision No/s: E2020/88

Rules

Rules used for the election:

[143N: Incorporates alterations of 22 July 2019 in matter R2019/33]

Replaces rulebook dated 05/04/2016 [R2015/277]

Rules difficult to apply/interpret:

36. Nominations

An Eligible Member may nominate for election to the Council by lodging his/her nomination with the Returning Officer in writing within three weeks of the publication or distribution of the election notice.

Self-nomination was accepted since this was not specified in the rules for a requirement of “another” or “any other” member. It is requested that the organisation specify that self-nomination will be accepted.

Model Rule reference (if any):

20.1.3 A nominee may self nominate; or 20.1.4 A nominee must be nominated by (insert number) nominators. A nominator for any office must be a member of the electorate.

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

Roll of Voters

Based on an analysis of the register of members the Returning Officer has formed the opinion that the:

- No concerns

Total number of voters on the Roll:	Stage 1:	1705
	Stage 1 – Recall:	2782
	Stage 2:	13

Number of apparent workplace addresses: N/A

Number of non-current addresses: N/A

Other matters pertaining to the roll of voters:

- Many members are unaware of their associated membership with ABI

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.

Signed

Tiffany Nguyen
Returning Officer
Australian Electoral Commission
E: IEEvents@aec.gov.au
P: 02 9375 6395
19 July 2021

Attachments

- A. Declaration of Results for Uncontested Offices – Stage 1
- B. Declaration of Results for Uncontested Offices – Stage 1
– Recall
- C. Declaration of Results for Uncontested Offices – Stage 2

Australian Business Industrial

DECLARATION OF RESULTS - E2020/88 - 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:

Executive Committee

President (1)

Candidates

WILSON Kerry J

Vice-Presidents (2)

Candidates

BROWN Keiran

WADE Anna-Maria

Secretary/Treasurer (1)

Candidates

KIRKHAM Rob

Executive Committee Members (3)

Candidates

BRIGHT Nathan

BRITTON Skye

EDWARDS Paul

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

Tiffany Nguyen
Returning Officer
Telephone: 02 9375 6395
Email: IEBevents@aec.gov.au
01/07/2021

Australian Business Industrial
DECLARATION OF RESULTS - E2020/88 - Stage 1
Uncontested 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:

Australian Business Industrial

Councillors (2)

Candidates

No Nominations Received

As no nominations have been received for positions to be filled, I declare the recall election completed.

Tiffany Nguyen
Returning Officer
Telephone: 02 9375 6395
Email: IEBevents@aec.gov.au
19/05/2021



Australian Business Industrial

DECLARATION OF RESULTS - E2020/88 - 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:

Australian Business Industrial

Councillors (15)

Candidates

BAILEY Claire
BRIGHT Nathan
BRITTON Skye
BROWN Keiran
CARR Gerry
EDWARDS Paul
KIRKHAM Rob
LILLEY Ian
MACKENZIE Bruce
SURRA Vincent
TYRRELL Glenn
WADE Anna-Maria
WILSON Kerry J

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



Tiffany Nguyen
Returning Officer
Telephone: 02 9375 6395
Email: IEEvents@aec.gov.au
11/03/2021



DECISION

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

Australian Business Industrial
(E2020/88)

MR ENRIGHT

MELBOURNE, 30 JULY 2020

Arrangement for conduct of election.

[1] On 22 July 2020 the Australian Business Industrial lodged with the Registered Organisations Commission prescribed information for an election to fill the following offices:

Executive Committee

President	(1)
Vice-Presidents	(2)
Secretary/Treasurer	(1)
Executive Committee Members	(3)

Council

Councillors	(15)
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[2] 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 *Fair Work (Registered Organisations) Act 2009*, I am making arrangements for the conduct of the election by the Australian Electoral Commission.



DELEGATE OF THE COMMISSIONER

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22 July 2020

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Dear General Manager

RE: LODGEMENT OF PRESCRIBED INFORMATION FOR ELECTION

Australian Business Industrial (**ABI**) is a registered organisation under the *Fair Work (Registered Organisations) Act 2009 (FW(RO) Act)*, organisation code 143N. ABI is seeking to conduct an election in accordance with the Rules of ABI most recently amended on 22 July 2019 (**Rules**), and the FW(RO) Act, and formally requests that the Registered Organisations Commission (**ROC**) arrange for the election to be conducted.

Composition of ABI Council

Under Rule 26 of the Rules, ABI is required to elect a Council which shall be the Committee of management and shall comprise fifteen (15) eligible members of ABI elected as provided by the Rules. These members are to be directly elected by and from the membership of ABI.

The declaration of the newly elected Council establishes an electoral college, under Rule 46, from which are elected the following formal office bearers:

- a) President,
- b) two Vice-Presidents,
- c) the Secretary-Treasurer (Rule 48) and;
- d) an additional three executive committee members (Rule 49),

Rule 28 of the Rules dictates that the Council shall be elected by a secret postal ballot.

ABI requests that you arrange for the conduct of both the general (direct) election of Councillors from the membership and the subsequent election of office bearers and executive committee members from the electoral college.

ABI does not comprise branches and as such regulation 138(1)(d) does not apply.

Timing of the Election

We wish to draw ROC's attention to the fact that ABI's election was previously planned to be completed on around July 2020 to comply with Rule 29. With the unprecedented intervention of COVID-19, and the fact that the AEC wrote to registered organisations and indicated they would not be conducting industrial elections for three months from 24 March 2020, ABI was unable to conduct its election as planned.

On 22 April 2020, ABI reached out to ROC to seek assistance with next steps in the Election process. ABI put forward two, somewhat interrelated, solutions:



Moving the Election

ABI Rule 29 confers an express discretion on ABI's Council to move the election process if the 'Council determines otherwise'. In light of this provision, ABI were of the view that the interests of ABI and its stakeholders is for Council to determine and adopt a revised timetable that move's the election to a date later in the year to ensure the integrity of, and the maximum participation by stakeholders in, the Election.

Holding Over

In the alternative, ABI sought ROC's view as to whether the doctrine of 'Holding Over' could apply to ABI.

Rule 28 – 'Election of Council' states that:

(b) At Quadrennial Elections all the members of the existing Council shall be deemed to have retired at the time that all fifteen (15) Eligible Members have been declared elected to the new Council by the Returning Officer;

(c) The term of the new Council commences at the time that all fifteen (15) Eligible Members have been declared elected by the Returning Officer.

The ABI rules do not state an explicit time limit on a Councillor's term. Rather, a Councillor's term comes to an end when the new the Returning Officer declares that 15 eligible members have been elected. On that basis, the Council could continue to govern ABI until the AEC is able to conduct elections again in the near future.

On 27 May 2020, Dean Tyler, Senior Associate at Australian Business Lawyers & Advisors, received a call from MaryAnne Guina from ROC in response to the correspondence of 22 April 2020.

Ms Guina advised that she agreed with the approach in the 22 April correspondence and that the current ABI Council could continue in its term until a new Council is elected.

In terms of a path forward, Ms Guina indicated ABI must hold and complete the Election process by 31 December 2020 to ensure compliance with the ABI Rules.

It is based on the above that ABI notifies ROC it is now seeking to conduct its Election.

Please accept the following as the prescribed information ABI is required to provide under s 189(1) of the FW(RO) Act and in accordance with regulation 138 of the *Fair Work (Registered Organisations) Regulations 2009*. We also attach a paper from ABI Council's most recent meeting where the Council voted to conduct the Election in accordance with the timetable set out Attachment A of that paper.

If you have any further questions please contact Dean Tyler on (02) 9458 7583 or via Dean.Tyler@ablawyers.com.au.

Yours faithfully

Robert Kirkham

Secretary/Treasurer