

24 January 2022

Post-election report

National Fire Industry Association
Scheduled election
E2021/151

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Election(s) Covered in this Report

Organisation: National Fire Industry Association
Election: Scheduled
Election Decision No/s: E2021/151

Rules

Rules used for the election:

[164V: Incorporates alterations of 07/01/2014 [R2014/277]]
Replaces rulebook dated 02/01/2014 [R2013/469]

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/

Roll of Voters

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

- No concerns

Irregularities

Details of written allegations of irregularities, and action taken by AEC: None

Other irregularities identified, and action taken: None

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

Desiree Beasley
Returning Officer
Australian Electoral Commission
E: iebevents@aec.gov.au
P: 03 92857111
24 January 2022

Attachments

- A. Declaration of results for Uncontested Offices - Stage 1
- B. Declaration of results for Uncontested Offices – Stage 2

National Fire Industry Association
National Fire Industry Association
DECLARATION OF RESULTS - E2021/151 - 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

HICKMAN Andrew

Vice President (1)

Candidates

MOHTADI Haysam

Secretary/Treasurer (1)

Candidates

BENNETT Shayne

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

Desiree Beasley
Returning Officer
07/01/2022



National Fire Industry Association
DECLARATION OF RESULTS - E2021/151 - 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:

New South Wales/Australian Capital Territory Region - General Members

Councillor (1)

Candidates

No Nominations Received

New South Wales/Australian Capital Territory Region - Industrial Members

Councillor (1)

Candidates

STALLEY Gordon

Victoria/Tasmania Region - General Members

Councillor (1)

Candidates

MOHTADI Haysam

Victoria/Tasmania Region - Industrial Members

Councillor (1)

Candidates

No Nominations Received

Queensland/Northern Territory Region - General Members

Councillor (1)

Candidates

HICKMAN Andrew

Queensland/Northern Territory Region - Industrial Members

Councillor (1)

Candidates

DAVIES Brian

Western Australia Region - General Members

Councillor (1)

Candidates

No Nominations Received

Western Australia Region - Industrial Members

Councillor (1)

Candidates

THOMAS Andy

South Australia Region - General Members

Councillor (1)

Candidates

DUNN Graham

South Australia Region - Industrial Members

Councillor (1)

Candidates

BENNETT Shayne

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

Andrew Reid
Returning Officer
Telephone: 07 3049 2165
Email: IEBevents@aec.gov.au
22/11/2021





DECISION

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

National Fire Industry Association (E2021/151)

MR STEENSON

MELBOURNE, 26 JULY 2021

Arrangement for conduct of election.

[1] On 19 July 2021 the National Fire Industry Association (**the Association**) lodged with the Registered Organisations Commission (**the Commission**) prescribed information for an election to fill the following offices:

Councillor	(10)
President	(1)
Vice President	(1)
Secretary-Treasurer	(1)

[2] The Association was over a year late in lodging prescribed information to arrange for this election. Section 189(1) of the *Fair Work (Registered Organisations) Act 2009* (**the RO Act**) requires that registered organisations whose elections are conducted by the Australian Electoral Commission (**the AEC**) – i.e. the default position under the legislation¹ – must lodge prescribed information with the Commission in order for arrangements to be made for those elections.

[3] Section 189(2) requires that prescribed information be lodged before what is known as the ‘prescribed day’. The RO Act, in particular Regulation 138(3), defines ‘prescribed day’ as the date occurring ‘2 months before the first day when a person may, under the rules of the organisation or branch, become a candidate in the election’. In other words, it must be lodged at least two months before the date on which nominations open. Section 189(2) is a civil penalty provision. As such, late lodgement (or non-lodgement) of prescribed information, can make an organisation liable to civil penalty litigation and penalties.²

[4] The Association’s rules provide that the term of office for Councillors and the senior office-bearers (including the President, Vice President and Secretary-Treasurer) is three (3) years. Rule 25(d) provides that the scheduled election for offices is to occur every third year after 2005 – namely 2008, 2011, 2014, 2017, 2020, 2023 and so on.

¹ Chapter 7 of the RO Act, in particular s.182 requires that elections for registered organisations be conducted by the AEC unless an exemption has been granted under s.186 of the RO Act.

² *Registered Organisations Commission v Australian Hotels Association* [2019] FCA 1516

[5] Rule 44(b) provides that nominations open ‘at least six weeks before 7th September in each three (3) years’. As 2020 was a scheduled election year for Association, in order to comply with its own rules, nominations should have opened no later than 27 July 2020. On the basis of that timeframe, the date for lodging prescribed information was no later than 27 May 2020.

[6] Section 189(2) of the RO Act enables the Commissioner (and, by inference, his Delegate) to allow a lodgement date later than the prescribed date. In its correspondence dated 16 July 2021, the Association stated that the delay was due to a number of factors, including:

- the AEC delaying the conduct of elections due to the COVID-19 pandemic;
- the Association believing that the election could be held at a later date in 2020 as a result of this delay;
- the Association’s operations being adversely affected, making the holding of the election problematic;
- that the Association apparently believing that its rules made no provision for the conduct of meetings through the use of modern electronic technology; and
- these combined factors resulting in the Council failing to pass resolutions (referred to in rule 43(a) of its rules) in relation to the appointment of a Returning Officer.

[7] For the reasons that I set out below, I am not satisfied that the factors stated by the Association are sufficient to justify the failure to comply with a statutory obligation, and for that non-compliance to continue for over a year. Having regard to the normal and reasonable expectation that registered organisations take steps to ensure they comply with the timeframe requirements set out not only in the RO Act but also in instruments or references pertaining to their own governance formulated by the organisations themselves, such as their own rules, I decline on this occasion to allow, under section 189(2) of the Act, a later day for lodgement.

[8] In reaching this conclusion I have taken into account the significant delay in lodgement (over twelve months) and the fact that the Association did not consult with the Commission about the delayed prescribed information until 2021 (and only after several queries from the Commission). I have also considered the extent to which the factors stated by the Association may provide a basis for granting a later date for lodgement.

[9] In relation to the delay in the AEC conducting elections in registered organisations, I note that at the time that the prescribed information was due to be lodged for this election (i.e. May 2020), the AEC had notified registered organisations of a temporary suspension of industrial elections (until 30 June 2020; later extended to 30 September 2020). At the time, arrangements were made in relation to elections already commenced (e.g. extending the time for ballots) but no new elections were to be commenced. The AEC’s advice to organisations indicated that if an election for a critical office in an organisation / branch was required (i.e. an office without which the organisation would have difficulty functioning), the organisation should discuss this matter with the Commission and with the AEC.

[10] In addition, the Commission issued guidance material for registered organisations in relation to elections. This included, on 9 April 2020, published information to organisations encouraging them to continue to lodge prescribed information wherever possible. In addition, the Commission later published a Guidance Note entitled *Guidance on the conduct of elections in organisations and their branches during coronavirus (COVID-19) restrictions*, which reminded organisations that prescribed information should be lodged if an election was required

by their rules and confirming that ‘the requirements to lodge prescribed information ... remain unchanged’.³

[11] In relation to the Association’s apparent belief that the election could be held at a later date in 2020, this is consistent with the guidance provided by the Commission, which indicated that there were provisions in the RO Act that enabled the AEC to put in place an alternative timetable for a particular election if circumstances were such that provisions in an organisation’s rules (including relevant dates) were unable to be met. However, the Commission’s guidance material also clearly stated that organisations should continue to lodge prescribed information in accordance with the RO Act and their rules.

[12] The Association’s apparent belief is also inconsistent with the declaration that it made in its 2020 annual return of information (AR2020/58) which declared on 30 March 2020 that ‘[n]o elections are scheduled this year’.⁴ In addition, if the Association was genuinely proceeding on the belief that the election could be held later in 2020, that cannot be a basis for not lodging prescribed information until more than halfway through 2021.

[13] In relation to the broader adverse impact on the Association’s business operations, I acknowledge that all registered organisations have experienced challenges in the way that they operate. However, I also note that the great majority of registered organisations have continued to meet their regulatory obligations, including in relation to lodging prescribed information for elections, and have actively engaged with the Commission when required to seek assistance and guidance.

[14] In relation to the apparent belief by the Association that its rules made no provision for the conduct of meetings through the use of modern electronic technology, this appears contrary to the wording of the rules which provide, at rule 26, that:

The Council shall unless it otherwise determines meet at least twice each year on such day and at such place **and in such a manner** as the President may, from time to time determine, and may otherwise meet for the despatch of business and may adjourn and otherwise regulate all meetings and proceedings.

A duly convened meeting of the members of the Council for the time being, at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under these rules for the time being vested in or exercisable by the Council generally.

[Emphasis added]

[15] In addition, the Commission has issued a range of guidance material to registered organisations, from March 2020 onwards, in relation to the holding of meetings, which has included providing clarification that meetings using electronic means are permitted unless the rules of the organisation expressly provide otherwise.⁵

³ Guidance note GN054: *Guidance on the conduct of elections in organisations and their branches during coronavirus (COVID-19) restrictions*, issued 3 August 2020 (and reissued 22 October 2020 after the AEC recommenced industrial elections). A range of other election-related guidance material was also published and remains available on the Commission’s website

⁴ AR2020/58, available at www.roc.gov.au/ArticleDocuments/392/164v-ar2020-58.pdf.aspx

⁵ Guidance Note GN053: *Guidance on Meetings of Committees of Management, Annual General Meetings and other General Meetings during coronavirus (COVID-19) restrictions*, issued 31 March 2020, and associated material available on the Commission’s website.

[16] The further factor that the Association cited in its letter dated 16 July 2021 was that the other factors listed above led to the Association's Council being unable to pass a resolution (referred to in rule 43(a) of its rules) in relation to the appointment of a Returning Officer. As outlined in the above paragraphs of this decision, the combination of circumstances were not such as to prevent the holding of a meeting of the Council, and particularly not for the entirety of the period from May 2020 (when the prescribed information was due to be lodged) through to June 2021 (when the Council meeting was eventually held, according to the Association's 16 July 2021 letter).

[17] In any event, as the Association would be aware (and as apparently acknowledged in its 16 July 2021 letter), the AEC is the designated Returning Officer for its elections under the RO Act, even without a resolution that rule 43 of the Association's rules seemingly requires.

[18] Another circumstance alluded to in the Association's 16 July 2021 letter is the applications made to the Fair Work Commission (FWC) for the apparent purpose of cancelling the registration of the Association under the RO Act. It is also apparent, on the information available to the Association and this Commission, that a decision on cancellation of registration by the FWC could not be regarded as imminent. As has been indicated to the Association in a number of separate items of correspondence regarding its compliance obligations, these obligations – including the holding of elections, and the submission of material to enable them to occur – remain while ever the Association remains registered as an organisation under the RO Act.

[19] I note that in relation to its most recent previous scheduled election (E2017/86), the Association also lodged prescribed information late, contrary to section 189(2) of the RO Act. It is noted on that occasion, the Delegate of the Commissioner declined to allow a later date for lodgement of prescribed information in circumstances where the Association assured the Commission at the time that actions were being taken to remedy the issues that apparently led to the late lodgement.⁶ On that occasion the prescribed information was a week late. For the current election, it is over a year late.

[20] The prescribed information requested the election of ten (10) Councillors. While this is not incorrect, it would benefit from supplementary information about the electorates from which these Councillors are elected, as set out in the AEC's declaration of results in the previous election (E2017/86).

[21] As indicated above, I decline to allow a later date for lodgement of the prescribed information for this election. However, the refusal to grant a later date for lodgement under section 189(2) of the RO Act does not affect the requirement that I make a determination under section 189(3) of the RO Act as to whether the requested election is due.

[22] 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 Australian Electoral Commission.

[23] I also note, as alluded to in the Association's correspondence that the timing of the lodgement is such that the timetable of specific dates for the election (nominations opening, closing, etc.) prescribed in the Association's rules are unlikely to be met. However, I also note that section 193 of the RO Act empowers an AEC official responsible for conducting an

⁶ [2017] ROCD 60

election, in spite of the rules of an organisation, to take such steps as are required to prevent irregularities in the conduct of that election.



DELEGATE OF THE COMMISSIONER

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PR352005

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, ANDREW HICKMAN, being the PRESIDENT of the NATIONAL FIRE INDUSTRY ASSOCIATION make the following statement:

1. I am authorised to sign this statement containing prescribed information for the NATIONAL FIRE INDUSTRY ASSOCIATION.
2. The following information is lodged under subsection 189(1) of the Fair Work (Registered Organisations) Act 2009 (the RO Act).
3. On 24 June 2021, the NFIA appointed the AEC as the Returning Officer for the elections to take place.
4. The names of each office or position for which an election is required, the reason for such elections, and the voting system to be used, are set out in the table in Annexure A.
5. 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. addressed in the attached letter of 16 July 2021, outlining the reasons for lodgement after the prescribed time.
 - b. An extension of time request has not been lodged for this election. We herein request an extension of time.

Signed:



Andrew Hickman

President

National Fire Industry Association

Dated: 19 July 2021

Annexure A

- Elections that are 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
National	Councillor	10	Direct Voting System	Scheduled	All Members – Rule 44
National	President	1	Collegiate electoral system	Scheduled	National Council – Rule 45
National	Vice President	1	Collegiate electoral system	Scheduled	National Council – Rule 45
National	Secretary-Treasurer	1	Collegiate electoral system	Scheduled	National Council – Rule 45

- Important dates:

For Councillors

	Direct Voting System
Nominations OPEN	At least 6 weeks before 7 September (27 July 2021) Rule 44(b)-(c)
Nominations CLOSE	No less than 14 days from postage of nominations Rule 44(b)
Roll of Voters cut off date	7 days before the opening of nominations (20 July 2021)

	Rule 44(k)
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For President, Vice President, and Secretary-Treasurer:

Collegiate Electoral System	
Nominations OPEN	To be determined by the Returning Officer, after 7 September Rule 45(a)
Nominations CLOSE	To be determined by the Returning Officer, after 7 September Rule 45(c)
Roll of Voters cut off date	Determined by outcome of Councillor election Rule 45(b)